

**PREPARED TESTIMONY OF
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ACTING COMMISSIONER,
SMALL BUSINESS/SELF-EMPLOYED OPERATING DIVISION
INTERNAL REVENUE SERVICE
BEFORE
THE SENATE FINANCE COMMITTEE
HEARING ON
TAX SCAMS AND SCHEMES
APRIL 1, 2003**

INTRODUCTION AND SUMMARY

The IRS is committed to ensuring everyone pays a fair share, including those who have the resources to move money offshore or engage in abusive schemes or shelters. Honest taxpayers should not bear the burden for others who skirt their responsibility.

I also want to thank you and Senator Baucus for your visible and vocal support. Your actions demonstrate the united front we are mounting against those who evade paying their taxes and violate the trust of honest taxpayers, while respecting fully taxpayers' rights.

The IRS is working smarter to identify and refocus its resources on the biggest areas of risk to the tax system in a comprehensive strategy. Toward the end of FY 2002, the IRS began realigning its resources to focus on key areas of non-compliance with the tax law, including:

- The promotion of abusive tax schemes.
- The misuse of devices such as offshore accounts to hide or improperly reduce income.
- The use of abusive corporate tax avoidance transactions.
- The underreporting of income by higher-income individuals.
- Non-filing by higher-income individuals.
- Earned Income Tax Credit program.
- The National Research Program.

The IRS Fiscal Year 2004 budget complements and supports this through three key proposals aimed at improving the fairness of tax administration and compliance.

The first proposal focuses additional resources on high-income taxpayers and businesses in areas where noncompliance is likely to be greatest. The second proposal permits private collection agencies to support the IRS' collection efforts while affording full protection of taxpayer rights, allowing the IRS to devote resources to more complex enforcement and collection issues. The third proposal strives to improve the effectiveness of the Earned Income Tax Credit (EITC) program by ensuring that benefits go to those who qualify for them.

Indeed, the principal focus of the President's proposed FY 2004 budget is strengthening compliance activities in these and related areas. We are most encouraged by the additional funds requested to help us address these difficult compliance issues.

The IRS Small Business/Self-Employed (SB/SE) Division is leading the new civil compliance effort on issues affecting individuals and businesses. However, compliance efforts will continue in other parts of the agency, such as the abusive tax shelter initiative in the Large and Mid-Sized Business (LMSB) Division. IRS Criminal Investigation also continues its investigative efforts regarding abusive schemes and promoters.

We will use a full scope of tools and techniques ranging from summons enforcement, injunctions, and criminal investigation of promoters to civil audits of participants. We are also using every possible communications channel to issue warnings about these scams and the consequences of participating in one of them.

Our strategy reflects the new way of doing business at the IRS. Several of these efforts, such as the offshore credit card initiative, display innovative approaches to tackling long-standing tax problems. Moreover, the agency's restructuring allowed key parts of the organization to work together in ways they did not previously.

New levels of cooperation and coordination have been woven into initiatives that involve both civil actions and criminal investigations. Our response to the problems of scams and schemes illustrates how the new IRS business model better positions the agency to respond to high-risk tax areas.

Mr. Chairman, I believe we are making progress combating these pernicious attacks against our tax administration system. We are better warning taxpayers about the dangers of the schemes and scams. We are better identifying the promoters and participants in them. We are using our enforcement powers more effectively. We are better coordinating our actions with the Justice Department to shut the schemes down before they do more damage. We are bringing taxpayers back into compliance. We are helping to restore public confidence in the fairness of our tax administration system.

Although I believe the tide has turned, there is still much work to do. This type of organized tax evasion and cheating poses an enormous threat – one that we as an agency and a nation have not previously confronted. But we now have a concrete plan to deal with the threat and are taking clear actions to implement it. With the continued support of the Administration, Congress, and the American people, I believe we can succeed.

Mr. Chairman, I would now like to describe briefly the various scams and schemes and then illustrate in greater detail the actions we have taken since last year's hearing to warn the public, identify promoters and participants, and take enforcement actions against them.

SCAMS AND SCHEMES: THE DIRTY DOZEN

With the filing season in full swing, we are seeing the traditional increase in tax trickery. Although we are witnessing few new schemes *per se*, the traditional ones are wrapped in a variety of guises – from the highly sophisticated to the patently absurd – and marketed through a host of means – from the Internet to word of mouth. Some are mere taxpayer rip-offs and hoaxes.

In an update of our annual consumer alert, we urged taxpayers not to fall victim to one of the “Dirty Dozen” tax scams. In the new 2003 ranking, several scams reached the top of our consumer watch list, including offshore bank transactions and identity theft schemes. Taxpayers who suspect tax fraud can report it to the IRS at 1-800-829-0433.

Offshore Transactions

As we discussed at last year’s hearing, schemes designed to allow upper-income, and now middle-income, taxpayers to hide their income are proliferating. They cause the greatest revenue loss, are the hardest to detect, and have the greatest potential for undermining the fairness of the tax system. The devices used to hide income include trusts, both foreign and domestic, and offshore bank accounts. Diversion of income to offshore tax havens with strict bank secrecy laws adds an additional layer of complexity, which, in turn, has permitted the taxpayers to hide their income more effectively.

However, once the income is offshore, the taxpayer has the problem of getting the money back when he or she wants to spend it. Credit and debit cards issued by banks in tax haven countries are often used as a convenient and efficient way of bringing back and spending the money hidden offshore. These cards, sometimes hawked on the Internet, are used by the taxpayer in the U.S. to withdraw cash and to pay for everyday expenses, including groceries, medical bills and gasoline.

While it is not illegal to have a credit card issued by an offshore bank, there is ample basis for believing that many people are using offshore credit cards to repatriate funds hidden offshore to evade paying U.S. taxes. Use of an offshore credit card, trust, or other arrangement to hide or underreport income or to claim false deductions on a federal tax return is illegal.

The offshore credit card problem has the dubious honor of making the top of our watch list – and for a very good reason. Our investigations suggest hundreds of thousands of U.S. citizens are holding debit/credit cards issued by offshore banks.

Identity Theft

Identity theft is one of the fastest growing crimes in the nation. Identity thieves use someone’s personal data to steal his or her financial accounts, run up charges on the victim’s existing credit cards, apply for new loans, credit cards, services or benefits in the victim’s name, and even file fraudulent tax returns.

Tax-related identity theft takes different forms, as demonstrated by two recent schemes that recently came to our attention. In one, tax preparers allegedly used information, such as Social Security numbers and financial information, from their clients' tax returns to commit identity theft. In another, con men sent bank customers fictitious bank correspondence and IRS forms in an attempt to trick them into disclosing their personal and banking data.

Last May, we warned taxpayers about a fraudulent scheme that uses fictitious bank correspondence and IRS forms in an attempt to trick taxpayers into disclosing their personal and banking data. The information fraudulently obtained is then used to steal the taxpayer's identity and bank account deposits.

We received reports of the scam surfacing from coast-to-coast, including Maine, New York, Georgia, North Carolina, Texas, California and the state of Washington. Dozens of U.S. and foreign victims have been identified.

In this scam, a letter claiming to be from the taxpayer's bank states that the "bank" is updating its records in order to exempt the taxpayer from reporting interest or having tax withheld on interest paid on his or her bank accounts or other financial dealings. Legally, banks must report interest to the IRS, and taxpayers must include it as income.

The "bank" correspondence encloses a phony form that purports to come from the IRS and seeks detailed personal and financial data. The letter urges the recipient to fax the completed form to a specific number within 7 days or lose the reporting and withholding exemption, resulting in withholding of 31% on the account's interest. The scheme promoters then use the faxed information to impersonate the taxpayer and gain access to the taxpayer's finances.

One such phony form is labeled "W-9095, Application Form for Certificate Status/Ownership for Withholding Tax." The form requests personal data frequently used to prove identity, including passport number and mother's maiden name. It also asks for sensitive financial data such as bank account numbers, passwords, and PIN numbers that can be used to gain access to the accounts.

The fictitious W-9095 appears to be an attempt to mimic the genuine IRS Form W-9, "Request for Taxpayer Identification Number and Certification." The only personal information a genuine W-9 requests is the taxpayer's name, address and Social Security number or employer identification number.

Another form used in the scam is Form W-8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding." There is a legitimate IRS Form W-8BEN, which is used by banks to ensure that their non-U.S. customers meet the criteria to remain exempt from tax reporting requirements. However, the W-8BEN used by the scam promoters has been altered to ask for personal information much like the W-

9095. This altered form targets residents of foreign countries who bank in the United States.

Another totally fictitious IRS form used in this scam is labeled “W-8888.” It too asks for information similar to the phony W-9095 and W-8BEN. The real Forms W-9 and W-8BEN can be found on the IRS’s web site at www.irs.gov.

The Treasury Inspector General for Tax Administration (TIGTA) investigates a wide variety of offenses, including the misuse of the IRS’ insignia, seals and symbols and identity theft related to tax administration. Taxpayers who have received a fraudulent letter and form should report this to TIGTA by calling the toll-free fraud referral hotline at 1-800-366-4484, faxing a complaint to 202-927-7018, or writing to the TIGTA Hotline, P.O. Box 589, Ben Franklin Station, Washington, D.C. 20044-0589. TIGTA’s Web site is located at www.ustreas.gov/tigta.

Phony Tax Payment Checks

In this scheme, con artists sell fictitious financial instruments that look like checks to pay a tax liability, mortgage, and other debts. They may also counsel their clients to use a phony check to overpay their taxes so they can receive a refund from the IRS for the overpayment. The false checks, called sight drafts, are worthless and have no financial value. It is illegal to use them to pay a tax liability or other debts.

African-Americans Get a Special Tax Refund

Thousands of African-Americans have been misled by people offering to file for tax credits or refunds related to reparations for slavery. There is no such provision in the tax law. Some unscrupulous promoters have encouraged clients to pay them to prepare a claim for this refund. But the claims are a waste of money. Promoters of reparations tax schemes have been convicted and imprisoned. Taxpayers could face a \$500 penalty for filing such claims if they do not withdraw it.

In early 2002, the slavery reparations scam ranked as the No. 1 scheme on our “Dirty Dozen” list. However, I am pleased to report that we made a real dent in this particular scheme. Following a sweeping public outreach campaign last year and assistance from members of the Congressional Black Caucus and other organizations, the number of slavery reparations claims fell sharply. Tens of thousands of claims were received in 2001, but they dropped to less than 50 per-week in 2002. Nevertheless, the scam has not died out completely. This filing season, there have been flare-ups in both North Carolina and Mississippi to which we are devoting special media and outreach attention.

No Taxes Withheld From Wages

Some individuals falsely claim that pursuant to Section 861 of the Internal Revenue Code, Americans are exempt from taxation on income earned within the United

States. They argue, instead, that federal income taxes are excise taxes imposed only on nonresident aliens and foreign corporations for the privilege of receiving income from sources within the United States. These scams, referred to here as “Section 861” schemes, frequently go under the names of “Zero Tax” or “Employer Abatement” promotions.

Some illegal 861 schemes being promoted instruct employers not to withhold federal income tax or employment taxes from wages paid to their employees. These schemes have been refuted in court and at the request of the IRS, the Department of Justice has obtained injunction to stop seven Section 861 promoters. Taxpayers who have concerns about their employers and employment taxes can get help by calling the IRS at 1-800-829-1040.

Improper Home-Based Business

This scheme purports to offer tax “relief” but is really illegal tax avoidance. The schemes’ promoters claim that individual taxpayers can deduct most, or all, of their personal expenses as business expenses by setting up a bogus home-based business. However, the tax code firmly establishes that a clear business purpose and profit motive must exist in order to generate and claim allowable business expenses.

Pay the Tax, Then Get the Prize

The caller says you have won a prize, and all you have to do to get it is to pay the income tax due. Don’t believe it. Someone who really wins a prize may need to make an estimated tax payment to cover the taxes that will be due at the end of the year, but the payment goes to the IRS – not the caller. Whether the prize is cash, a car, or a trip, a legitimate prize giver generally sends both the winner and the IRS a Form 1099 showing the total prize value that should be reported on the winner’s tax return.

Frivolous Arguments

Frivolous arguments, including the 861 scheme on withholding taxes previously described, are false arguments that are unsupported by law. When a scheme promoter says “I don’t pay taxes – why should you” or “Untax yourself for \$49.95,” taxpayers should be beware. These scams are as old as snake oil, but people continue to be taken in. Now, they are on the Internet.

The ads may say that paying taxes is “voluntary,” but that is simply wrong. The U.S. courts have continuously rejected this and other frivolous arguments. Unfortunately, hundreds of people across the country have paid for the “secret” of not paying taxes or have bought “untax packages.” Then they find out that following the advice contained in them can result in civil and/or criminal penalties. Numerous sellers of the bogus schemes have been convicted on criminal tax charges; they are described

later in this testimony.

Social Security Tax Scheme

Taxpayers should not fall victim to a scam offering refunds of the Social Security taxes they paid during their lifetimes. The scam works by the victim paying the con artist a “paperwork” fee of \$100, plus a percentage of any refund received, to file a refund claim with the IRS. The victims are fleeced for the up-front fee. The law does not allow such a refund of Social Security taxes paid. The IRS processing centers are alert to this scam and have been stopping the false claims.

“I Can Get You a Big Refund ...for a Fee!”

Refund scheme operators may approach someone wanting to “borrow” their Social Security number or give him or her a phony W-2 so it appears that the person qualifies for a big refund. They may promise to split the refund with that person, but the IRS catches most of these false refund claims before they go out. And when one does go out, the participant usually ends up paying back the refund along with stiff penalties and interest.

There are two lessons taxpayers should remember: (1) Anyone who promises someone a bigger refund without knowing their tax situation is likely to be misleading them; and (2) Never sign a tax return without looking it over to make sure it is honest and correct.

Share/Borrow EITC Dependents

Unscrupulous tax preparers “share” one client’s qualifying children with another client in order to allow both clients to claim the Earned Income Tax Credit. For example, one client may have four children but only needs to list two to get the maximum EITC. The preparer will list two children on the first client’s return and the other two on another client’s tax return. The preparer and the client “selling” the dependents split a fee. The IRS asks the Department of Justice to prosecute the preparers of such fraudulent claims, and participating taxpayers could be subject to civil penalties.

IRS “Agent” Comes To Your House To Collect

First, taxpayers should not let anyone into their homes unless that individual identifies himself/herself to their satisfaction. IRS special agents, field auditors, and collection officers carry picture IDs and will normally try to contact taxpayers before they visit. If a taxpayer thinks the person on the doorstep is an impostor, he or she should lock the door and call the local police. To report IRS impostors, taxpayers should call the Treasury Inspector General for Tax Administration’s Hotline at 1-800-366-4484.

BEYOND THE DIRTY DOZEN

Mr. Chairman, I want to be clear that beyond the “Dirty Dozen,” there are many other tax schemes and scams that warrant our considerable attention and concern. For example, although for the purposes of today’s hearing we are focusing on *offshore* trusts and accounts, we are also identifying and taking action on *domestic* abusive trusts which pose a major threat.

The abusive trust scheme generally starts with the transfer of a business or other source of professional income to a trust. Taxpayers then typically offset income by overstating business expenses or deducting personal expenses from the income in the trust. To cover their tracks or mislead, these schemes often use tiered multiple entities, such as partnerships, limited liability companies, or secondary level trusts.

Some of these schemes give the appearance that the taxpayer has given up control of his or her business to a trust and progressively reduces the income distributed to the beneficiaries by charging administrative or other expenses at each level. Of course, the transfer of income into the trusts is a sham because the taxpayer continues to control and enjoy the use of the income and assets.

These abusive trusts are marketed largely to higher-income individuals. However, many promoters of illegal schemes will take a dollar from whomever they can and we are seeing a lot of scams marketed on the retail level. For example, in addition to taxpayers submitting frivolous returns, this type of promoted scheme manifests itself in another way – by encouraging taxpayers to stop all withholding, thereby, removing the incentive to file returns at all

Taxpayers may be encouraged to claim “Exempt” or a large enough number of exemptions on their W-4 form that they submit to their employer so that they have no withholding. Each year, approximately 800,000 questionable W-4s (QW4s) are forwarded to the IRS from employers.

A W-4 is considered questionable if the employee claims more than 10 exemptions or claims to be exempt from withholding. After reviewing the Questionable W-4, a letter can be issued to the employer instructing them to withhold the correct amount of the employee’s wages. This, in turn will promote the filing of a return since the taxpayer will no longer be facing a large balance due.

The IRS is currently conducting an investigation into the very real link between taxpayers who claim an excessive amount of allowances on their Form W-4 and those that choose not to file returns. We are also identifying a link with promoters who encourage taxpayers to adjust their Form W-4 as the first step in non-compliance.

Non-filing is no small problem. Of the 800,000 or so QW4s, we estimate that last year after processing, we issued 7,950 “lock-in” letters to employers instructing them to withhold from employees’ wages.

We must also deal on a daily basis with questionable refund schemes that involve tax returns claiming refunds based on false income, false federal income tax withheld, and false refundable credits, such as the EITC, Fuel Tax Credit, Foreign Income Tax Credit, etc.

One scheme that did not make our Dirty Dozen list, but causes continuing problems, is the scam involving the Disabled Access Credit for pay phones.

Unscrupulous promoters sell expensive coin-operated pay telephones to individual investors, rather than businesses. As part of the sale, the company agrees to lease back and service the phones, usually for a fee. Investors are promised low-risk, steady income with guaranteed annual returns. Investors also are incorrectly being advised that they are entitled to claim the Disabled Access Credit of up to \$5,000 on their individual tax returns because the telephones have volume controls.

The Federal Trade Commission determined that these promises are false and misleading. Consumers are being deceived about the availability of local, profitable payphone locations, start-up assistance, and equipment they would receive as part of the venture, as well as their ability to claim the Disabled Access Credit. The telephones are not even delivered in some schemes.

To be eligible to claim the credit, the taxpayer must have a *bona fide* business, and must have incurred expenses to bring the business into compliance with the Americans with Disabilities Act

The IRS disallows this credit if it is claimed by taxpayers not operating as a business or who do not qualify as an eligible small business. The IRS also will disallow the credit if the purchase is not an expense that would make a business accessible to disabled individuals.

INFORMING AND WARNING

An informed taxpayer is the best first line of defense against these scams and their unscrupulous promoters. As Justice Brandeis rightly observed, “sunshine is the best disinfectant.” The more taxpayers who know about these scams, the less likely they will become the latest victim of one of them. They must know that the biggest mistake anyone can make is the first one: getting into a tax scam to begin with.

We raise taxpayer and public awareness about scams and schemes through a variety of methods and tools.

Media Outreach

Our Media Relations Office plays a critical role in our outreach effort. Between our “Tax Tips” and “Newswire” e-subscription services, we reach up to 10,000 media outlets, practitioners, stakeholders, and other interested groups.

This past year, they received press releases, fact sheet, and tax tips related to the “Dirty Dozen” and specific scams that merited individual warnings, such as identity theft. We also heavily publicized initiatives, such as the John Doe Summons on credit cards and the Offshore Voluntary Compliance Initiative.

These stories garnered enormous media and public attention throughout the nation, resulting in hundreds of articles in newspapers, magazines, professional journals, and specialty publications and sweeping coast-to-coast pickup by radio, network and local television stations, web sites, and Internet search engines (*see below*).

This type of saturation helps us to reach down to our primary audience – America’s taxpayers – and make them aware of the scams and schemes and that we are identifying promoters and participants and taking action against them.

In addition, IRS Criminal Investigation (CI) public affairs officers have significantly increased publicity on legal actions relating to scams and schemes. They and CI managers have appeared on talk radio and television talk shows to discuss many of the schemes.

Web Site

Our web site is also one of the most important tools at our disposal for disseminating information and educating taxpayers and practitioners. Using it, we have taken aggressive steps to throw more light on the shadowy world of scams and schemes.

Two years ago, it was admittedly difficult for taxpayers to get from our web site the information they needed about scams and schemes. Today, this material is featured prominently on our portal page and we have built special pages on our site to house it. In fact, two of the four current items are related to our fight against scams and schemes:

- “Beware of Scams, Unscrupulous Preparers – Don’t let the Dirty Dozen tax scams or crooked preparers get you in trouble. Defend yourself.”
- “New Effort on Offshore \$ Schemes – It’s time for those involved in abusive avoidance schemes to make things right.”

Moreover, our web site efforts to alert taxpayers to the scams and schemes are not limited to the filing season. For the entire past year, they have found a place on the *irs.gov* portal page. And, although the IRS website is one of the most popular in the nation, we have also worked with both government and private sector organizations to

have links from their web sites to ours. Taxpayers visiting the Departments of Treasury and Justice (Tax Division) web sites can link directly to the IRS Criminal Investigation page which has in one place a wealth of information about schemes, as well as case summaries of those convicted of committing crimes.

Our private sector stakeholders are also lending their support in the fight against scams and schemes. For example, *TaxTips4U.org* is a new and innovative website offered as a public service by the American Bar Association's Section of Taxation. This page is designed to provide helpful, up-to-date information to consumers seeking a better understanding of their rights and responsibilities as taxpayers.

A taxpayer visiting this site would see, "Make Yourself Right with the IRS." From there, he or she could click on the Offshore Voluntary Compliance Initiative and be taken to the IRS newsroom and the press release on the subject. Practitioner groups, such as the National Association of Enrolled Agents, the American Association of Attorney CPAs, and the National Association of Tax Professionals (NATP) have links to the IRS, and NATP features the updated "Dirty Dozen" list on its portal page.

Even more promising in our fight against scams and schemes is our heightened presence on the Internet, and particularly, search engines which play an increasingly important role in people's searches. A taxpayer curious about obtaining an offshore credit card might use an Internet search engine as a first step in obtaining one. For example, he or she might type "offshore credit card" into a Google™ search. However, that individual would be in for a big surprise.

Because of our aggressive scams and schemes media campaign, and use of the Internet, the first three Google™ results (3/26/03) relate to our Offshore Voluntary Compliance Initiative (OVCI). The first two link to the IRS Newsroom web page prominently displaying our press release on the OVCI and then, our fact sheet, "Chronology on Credit Cards and John Doe Summons." They are followed by a *USA Today* article on the OVCI. Also in the top ten, is a DOJ press release on its efforts to seek offshore credit card records. A similar Lycos™ search also features the IRS in its top ten results. Type in "slavery reparations tax credit" into a Google™ search and every one of the top ten results is a warning or story about the scam.

Although it is difficult to measure quantitatively the impact of such a presence, having so many direct references to the IRS is bound to have a deterrent effect. More than links to our web site, they are highly visible stop signs to someone considering one of these scams.

Also this year, IRS Chief Counsel again updated its web site document – *The Truth About Frivolous Tax Arguments* – addressing false arguments about the legality of not paying taxes or filing returns. The revisions add citations from several cases decided by the courts during 2002 and respond to one additional argument, making a total of 21 frivolous contentions that are addressed. There are also links to the document from "The

Newsroom” section’s “What’s Hot”, the “Tax Pro News,” and the “Topics for Individuals” web pages.

Taxpayer and Stakeholder Outreach

This past year, the Taxpayer Education & Communication (TEC) component of SB/SE prepared and disseminated “toolkits” to our external stakeholders on abusive scams and schemes. We now have “counter-marketing” education programs in place to combat: (1) abusive offshore tax avoidance schemes, (2) anti-tax law evasion schemes (e.g. frivolous arguments that the 16th Amendment was not properly ratified), (3) abusive tax evasion schemes (abusive domestic and foreign trusts), and (4) the misuse of disabled access credits. Typically, the tool kit contains sections on the facts about the schemes, the law, relevant arguments to refute the scheme, and talking points.

Last year’s Nationwide Tax Forums, the IRS’ preeminent outreach event that attracted almost 15,000 practitioners in six cities, also took on abusive schemes. We offered a new and well-attended seminar called, “Tax Scams, Schemes and Cons” and in his keynote address, the Commissioner described our efforts and encouraged practitioners to report suspected scams and schemes to the IRS by calling or *e-mailing* us.

IRS Criminal Investigation and SB/SE also identified six occupational areas on which to concentrate educational and outreach materials. This unified approach focuses on non-compliance trends identified by both CI and SB/SE within specific occupations or industries. They are: Construction, Restaurants, Practitioners, Medical, Automotive, and Real Estate. To date, CI has prepared fact sheets, speeches, articles and conducted media interviews for the construction, restaurants, practitioners, and the medical profession market segments. So far in FY 2003, CI agents and managers have met with over 11,000 individuals during face-to-face outreach to local associations and practitioner groups.

Deflating slavery reparations schemes has been an enormous outreach success story. Indeed, as previously discussed, we launched a massive information and outreach campaign on slavery reparation claims. Materials were distributed nationally and locally to African American churches and religious coalitions, fraternities, sororities, and associations, including the NAACP and Urban League. In one year, the number of receipts fell from 80,000 to 2,246 – a 97% drop.

We are continuing our efforts to tamp down this scheme. For example, last month, Representatives of SPEC’s New York Territory addressed the Tenant Association Presidents in New York City Housing Authority properties on a variety of issues, including slavery reparations. Also in March, the Indianapolis Territory’s Local Stakeholder Relationship Management Council conducted a “Super Saturday” at a large mall on the same date as the Territory’s “Scam Jam.” The topics covered included: slavery reparations, predatory lending, scams targeted to the elderly, preventing identity thief, avoiding mail fraud, keeping your mail safe, protecting your Social Security number, investment and sweepstakes scams, and work-at-home schemes. There was heavy media coverage.

We are also excited about the efforts made in the QW-4 arena over the past few months. A recent W-4 Summit held in February 2003 in Atlanta brought together all of our Stakeholders, Education and Communication (SPEC), Wage and Investment, SB/SE, and LMSB executives and resulted in their commitment to work as partners in improving our effectiveness in this important area of tax administration.

We have already begun looking into the establishment of a web site designed to assist employers and answer many questions on-line. We are also reviewing the Form W-4 for possible revisions designed to assist both the employee and the employer.

All VITA (Volunteer Income Tax Assistance) training materials now include a section on W-4 issues to ensure that all VITA and Tax Counseling for the Elderly (TCE) volunteers know how to educate taxpayers and properly complete a Form W-4. SPEC also developed a product for use in outreach to those entering the workforce. This brochure includes information on Form W-4 for new workers.

The SPEC Greensboro Territory is developing a W-4 outreach strategy and will be meeting with the North Carolina Department of Revenue after April 15 to coordinate efforts. The plan includes the development of a simple document in Spanish to distribute through many partners who reach the Spanish-speaking community. SPEC's Indianapolis Territory has already addressed W-4 outreach to multiple audiences, including all their coalition VITA sites and partners reaching Hispanic populations.

IDENTIFYING PROMOTERS AND PARTICIPANTS

Lead Development Center

Key to the fight against abusive scams and schemes is better identifying their promoters. To succeed, we must go the source and cut off the supply. To this end, SB/SE established a Lead Development Center (LDC) in April 2002. Its purpose is threefold:

- Centralize the receipt and development of leads on promoters of abusive tax schemes;
- Authorize and monitor on a national level abusive tax promoter investigations (also called 6700 investigations) assigned to the field; and
- Promote and effect the coordination of parallel investigation with IRS Criminal Investigation.

Let me explain how the LDC works. The Center receives leads from both internal and external sources, such as practitioners and taxpayers. For example, as I will discuss later in my testimony, the OVCI is producing leads from taxpayers coming clean. We will make excellent use of them at the LDC. LDC personnel also conduct Internet and

other public database searches to develop facts about promoters or the promotion of schemes.

The lead is then classified, prioritized and eventually assigned to LDC agents for development and potential referral to the field. We also coordinate with the IRS' Office of Chief Counsel, Criminal Investigation, and other departments and functions for input on approval of the lead. If approved, the promoter is then referred to the field for case development.

Because of the LDC, we now also have a much better handle on the universe of the problem. Since its formation in April 2002, approximately 1,100 leads have been received by the LDC. The current receipt of new leads is averaging approximately 70-80 per month. As of March 1, 2003, we have 267 investigation referrals being worked in the field, with the remaining being evaluated in the LDC for further action. The leads can also be broken down into promoter brackets or "buckets," with domestic trusts, offshore transactions and frivolous constitutional arguments being the largest.

I also want to point out an interesting pattern that is starting to emerge from our investigations. We are not seeing many new promoters. Rather, it is the same promoters selling a number of new schemes. If one scheme gets too hot, they drop it and move on to sell a different one, and so on and so forth. This is a hallmark of the huckster and confidence man.

Mr. Chairman, critical to our efforts are new expedited procedures developed with the Justice Department to obtain timely injunctions. In the past, many of the scams and schemes continued to operate even when we had identified them as being abusive. In a very real sense, we were fighting with one hand tied behind our back. However, with these new procedures in place, we and our partners at the Justice Department are in a much better position to shut these scams down before they can do any more harm.

As a result of referrals made to the Department of Justice, 22 injunctions were granted. The streamlined procedure for obtaining civil injunctions is markedly faster. Indeed, in the case of Section 861 scams, we have gone from months to weeks after identifying the scheme.

Let me also note that for this fiscal year, we have scheduled three classes to train approximately 100 additional personnel nationwide in promoter investigations. Our regular classroom training program related to scams and schemes for FY 2003 includes: abusive tax promotions (95 revenue agents), abusive schemes/passthroughs (125 managers), John Doe/Offshore cases (1,400 revenue agents), anti-money laundering (240 revenue agents), advanced collection techniques for schemes (120 revenue officers); foreign trust and other offshore (240 revenue agents), Casino Bank Secrecy Act (96 revenue agents), special enforcement training (75 revenue agents), OVCI training (700 revenue agents), and advanced fraud referral specialist (80 agents) and abusive tax scheme coordinators (50 special agents).

Credit Card Summonses

Since October 2000, the IRS has issued a series of summonses to a variety of financial and commercial businesses to obtain information on U.S. residents who held credit, debit, or other payment cards issued by offshore banks. We are identifying promoters and participants. The following is a chronology of our actions, according to public records:

- On October 30, 2000, a federal judge in Miami issued an order authorizing the IRS to serve John Doe summonses on American Express and MasterCard. These summonses were designed to obtain limited information for 1998 and 1999, revealing U.S. participants in offshore arrangements who hold credit cards issued by banks from Antigua and Barbuda, the Bahamas, and the Cayman Islands.
- On March 27, 2002, a federal judge in San Francisco issued an order authorizing the IRS to serve a John Doe summons on VISA International seeking records on transactions for 1999-2001 using cards issued by banks in over 30 tax haven countries.
- On August 21, 2002, a federal judge in Miami issued an order authorizing the IRS to serve a John Doe summons on MasterCard for records on transactions for 1999-2001 using credit cards issued by banks in over 30 tax haven countries.
- In August and October 2002, federal judges in 18 district courts across the nation gave permission to the IRS to serve John Doe summonses on over 120 businesses to assist in the identification of credit card owners.

The results of the investigations have been promising. The first summons alone yielded data from MasterCard on 237,000 cards issued through 28 banks in three countries.

Investigators have been using records from these summonses to trace the identities of those whose use of these payment cards may be related to hiding taxable income. We identified thousands of offshore payment card holders for potential examination and dozens of cases have already been referred to Criminal Investigation for possible action. The investigation itself has entailed combing through data on millions of transactions.

An early estimate suggested that 1-2 million cardholders could be involved. However, after reviewing records in recent months obtained from the "John Doe" effort, we reduced our estimate of the number of abusive cardholders. This re-estimate is based on information we culled on duplicate cards issued to the same individual, inactive or small-dollar accounts, people using the cards because of bad credit, persons traveling abroad, and a wide range of other non-tax reasons for holding the cards. While an exact

figure of taxpayers involved remains uncertain, we now believe the use of offshore credit, debit, and charge cards to evade payment of U.S. taxes involves hundreds of thousands of taxpayers.

Once taxpayers are identified from cards, case building begins. The IRS already has developed over a thousand cases for civil audits or potential criminal investigations. The IRS is increasing resources in Fiscal Years 2003-2004 devoted to working these cases.

Access to information is also critical to ensuring the full and fair enforcement of the tax laws. In addition to techniques, such as the use of these John Doe summonses, the United States has a broad network of bilateral treaties and agreements with countries throughout the world that allow the IRS to obtain information relevant to the tax liabilities of U.S. taxpayers. Information requested from other countries under these treaties and agreements is an important means by which the IRS identifies taxpayers who attempt to hide income offshore to avoid their tax obligations.

The Offshore Voluntary Compliance Initiative

In January 2003, we launched an initiative aimed at bringing taxpayers who used “offshore” payment cards or other offshore financial arrangements to hide their income back into compliance with tax law. The Offshore Voluntary Compliance Initiative (OVCI) grows out of the two-year-old “John Doe” summons investigation described above in my testimony.

Under the OVCI, eligible taxpayers who step forward will not face civil fraud and information return penalties. However, taxpayers will still have to pay back taxes, interest, and certain accuracy or delinquency penalties. The last day a taxpayer can apply is two weeks away – April 15, 2003.

Eligible taxpayers who come forward will also avoid criminal prosecution based upon application of the revised voluntary disclosure practice. A taxpayer who does not come forward now, however, will be subject to payment of taxes, interest, penalties, and potential criminal prosecution.

The Voluntary Compliance Initiative reflects an attempt to bring taxpayers back into compliance quickly while simultaneously gathering more information about the promoters of these offshore schemes. Mr. Chairman, I fully concur with your statement that “while taxpayers will be getting a fresh start, IRS plans on making it the end of the line for crooked perpetrators.”

As part of the request to participate, the taxpayer must provide full details on those who promoted or solicited the offshore financial arrangement.

The IRS will use this information to pursue promoters and to obtain information about taxpayers who have avoided tax through the use of offshore payment cards or other offshore financial arrangements and who do not come forward under the OVCI.

We are striking the proper balance with this initiative. It is sound tax administration, and it will help root out tax evasion. Those who misused offshore credit and other payment cards will be able to pay their fair share. Just as importantly, it will help the IRS get the people promoting these deals.

In addition to the names of those who promoted these offshore financial arrangements, taxpayers deemed eligible to participate in the Voluntary Compliance Initiative must provide the details on all aspects of the scheme used to avoid paying the proper tax liability.

Those who promoted or solicited others to avoid tax by using offshore payment cards and other domestic and offshore abusive schemes are not eligible to participate in the OVCI. Also prohibited is anyone who has illegal source income, such as a drug dealer. Complete details on this initiative and eligibility can be found in Revenue Procedure 2003-11.

Under the OVCI, eligible taxpayers will have to file or amend their returns and pay interest and certain civil penalties, as well as the tax. The interest and penalties depend on the amount of the unpaid tax liability, the years involved, whether a return was inaccurate or if a return should have been filed and was not.

For example, a taxpayer who understated his income to avoid \$100,000 in taxes in 1999 would wind up paying \$149,319 to the government. This includes the tax liability plus \$29,319 in interest and an additional accuracy-related penalty of \$20,000.

If a taxpayer did not step forward, his or her tax liability generally would include the civil fraud penalty of \$75,000, and therefore higher interest of \$42,758. The total amount due would be \$217,758, without considering probable additional civil penalties for failure to file certain information returns.

The accuracy-related penalty, cited in the above examples, is equal to 20 percent of the tax underpayment. The civil fraud penalty is up to 75 percent of the unpaid tax liability attributable to fraud.

To apply for the OVCI, taxpayers must notify the IRS in writing and provide their name, taxpayer identification number, current address, daytime phone number, and certain promoter information as specified in the Revenue Procedure.

As part of the OVCI, the IRS will also be closely monitoring the filing of amended returns. If, in order to circumvent this initiative, taxpayers simply file an amended return without complying with the other required provisions, they run the risk of having the civil fraud penalty and other information return penalties applied. As Senator

Baucus rightly observed, “The IRS’ message to tax evaders is clear – either come forward and pay what is owed to the country today, or find the IRS knocking on your door with jail time and high financial penalties tomorrow.”

People interested in participating in the Offshore Voluntary Compliance Initiative can contact the IRS by calling 215-516-3537 (not toll-free), or visit our web site.

OVCi results to date are promising and we expect more taxpayers to take advantage of the initiative in its final two weeks. We will provide the Committee with an update after the close of the program.

Anecdotally, there are excellent examples of the results we are receiving. The OVCi unit is also receiving promoter and other fraud related information from taxpayers who have seen the OVCi media coverage, but who are not involved in offshore activities. These promotional materials and leads are being referred to the SB/SE and CI Lead Development Centers.

Earned Income Tax Credit (EITC) Initiative

Mr. Chairman, although not the focus of today’s hearing, let me briefly comment on the EITC program that benefits millions of low-income workers. The current error rate for the EITC program is too high. In 1999, between 27 and 32 percent of EITC claims – or between \$8.5 billion and \$9.9 billion – were paid in error. EITC has been consistently listed among high-risk federal programs. Congress has recognized this by providing a separate appropriation that has been used for EITC compliance enforcement.

The FY 2004 Budget requests an additional \$100 million to begin a new strategy for improving the EITC program. This approach, suggested by the Department of Treasury EITC Task Force, concludes that the IRS must obtain additional information on certain EITC eligibility criteria before payment of the EITC-portion of refunds. A major portion of the request will be used to invest in suitable information technology and develop business processes.

The IRS will begin to use an integrated approach to address potential erroneous claims by identifying cases that have the highest likelihood of error before they are accepted for processing and before any EITC benefits are paid.

A key part of this strategy is to begin certifying taxpayers who claim qualifying children on the relationship and residency requirements. In addition, the IRS will use limited additional taxpayer information, in combination with taxpayer-specific IRS historical data, third party data and error detection systems to detect and freeze the EITC-portion of refunds that pose a high risk of filing status errors or income misreporting. The IRS will seek to minimize the burdens on taxpayers by using existing databases and other sources of information to verify eligibility in advance. This integrated approach is designed to provide far greater assurance that EITC payments go to the individuals who qualify for the credit, without sacrificing the goals of the EITC program.

ENFORCEMENT ACTION AGAINST PROMOTERS AND PARTICIPANTS

In conjunction with the Justice Department, the IRS continues to mount civil and criminal actions to combat the many tax-avoidance schemes, ranging from cases involving frivolous arguments to slavery reparations to credit cards issued by offshore banks.

Our new emphasis against promoters of abusive tax devices has shown results. As of March 19, 2003, the IRS had 22 promoter injunctions granted, 13 promoter injunctions pending in District Court and 2-3 pending at the Department of Justice, 216 promoter exams and information requests underway, and 464 ongoing criminal investigations of promoters of various tax schemes.

Mr. Chairman, of great interest to the Committee is our effort to shut down web sites that promote schemes. When a temporary injunction is ordered, all promoters running web sites are ordered to keep them running and post the injunction to the site to notify future visitors of the government's actions. A list of these web sites is found below. If the promoter does not comply, the Justice Department will and has pursued contempt.

The following are some of the representative actions broken down by civil and criminal actions. The information comes from DOJ press releases and publicly-filed court documents

CIVIL ACTIONS

Offshore Credit Cards

On March 13, the IRS announced that summons enforcement petitions have been filed by the Justice Department in seven U.S. District Courts against individual taxpayers related to the Offshore Credit Card Project. This marks the first time in the Offshore Project that the IRS has taken this step; previous court efforts centered on credit card companies and businesses. These actions are against individual participants.

According to publicly-filed court documents:

- The IRS took these steps based on information gathered in the Offshore Project – an on-going effort to identify persons who hide taxable income by transferring funds to offshore jurisdictions and then use payment cards to access these funds in the United States.
- The summons enforcement petitions were filed against individuals who used a MasterCard payment card issued by the Leadenhall Bank & Trust Company in Nassau, Bahamas. The enforcement petitions were filed after the individuals did not produce for examination the books or records requested in earlier IRS summonses.

- The IRS and Justice Department filed the petitions in U.S. District Courts in the Eastern District of California, the Middle District of Florida, the Southern District of Florida, the District of Maryland, the District of Nevada, the District of North Dakota, and the Western District of Tennessee.

Treasury Assistant Secretary for Tax Policy Pam Olson stated that “the IRS has focused resources on identifying and weeding out the threats to our tax system posed by tax avoidance activities, such as hiding income offshore. The Treasury Department is supporting the IRS initiatives by putting sunlight on the offshore sector. The Treasury and the IRS will continue to use all of the tools available to ensure that every taxpayer pays what it owes to support this great country.”

Slavery Reparations

According to a October 3, 2002 DOJ press release, the Department filed two lawsuits in Georgia federal courts to stop three different people from preparing clients' tax returns which claim bogus tax credits for slavery reparations. In one of the lawsuits, filed in Macon, Ga., the government alleged that Willie Haugabook of Montezuma, Ga., prepared more than 350 tax returns which claimed an estimated \$18 million in slavery reparations. In the other lawsuit, filed in Augusta, Ga., the government stated that Eddie and Erma Mims of Sylvania, Ga., prepared more than 70 tax returns which claimed almost \$3 million in slavery reparations.

Tax Avoidance Schemes

According to a March 20, 2003 DOJ press release, a federal court in Las Vegas issued a temporary restraining order barring Irwin Schiff and two associates, Cynthia Neun and Lawrence N. Cohen, from promoting their tax scams. The order prohibits the trio from holding any seminars to promote or sell Schiff's fraudulent “zero tax” plan or “any other false, fraudulent, or frivolous tax schemes or arguments.”

The order also prohibits Schiff and his associates from selling or advertising tax-scam books, audiotapes and other tax-related products and services, and from preparing any federal income tax returns for others. Within 10 days, Schiff, Neun, and Cohen must provide a copy of the order to their current customers and former customers with whom they have done business since January 1, 1999.

According to court papers filed by the Justice Department, Schiff, Neun, and Cohen conduct seminars and sell audiotapes and other products designed to help customers evade federal taxes, primarily by filing income-tax returns falsely listing no income and no tax due. The Justice Department has alleged that customers of Schiff and his associates attempted to evade an estimated \$56 million in income taxes from 1999 through 2001.

This is the latest in a series of actions brought by the Justice Department in recent years against alleged tax scam promoters across the country. In the past two years, the Department has filed suits asking for injunction orders against 35 promoters and has prevailed in every case decided so far.

Also, according to a February 28, 2003 DOJ press release, a federal court in Tampa ordered David Bosset of Spring Hill, Fla., to stop promoting a fraudulent tax scheme. The permanent injunction bars Bosset from promoting the frivolous “Section 861” argument. Bosset had falsely claimed that Section 861 of the Internal Revenue Code exempted from federal income taxes persons with U.S.-source income. Bosset also must contact clients and inform them of the injunction.

In the permanent injunction order, the court stated that in promoting the scheme Bosset made “false or fraudulent statements.” The court last March had entered a preliminary injunction against Bosset. Federal courts have enjoined five other “Section 861” tax scam promoters in other cases.

Web Site Actions

As of March 16, 2003, the following web sites were shut down or had injunctions posted on them:

- Al Abdo, www.amtaxplan.com, preliminary injunction entered and website shut down 5/25/01. (This was the first site shut down by means of an IRS/DOJ injunction suit.)
- Joy Foundation & Jack Malone, www.joyfoundation.com, permanent injunction on 10/21/02 and injunction posted on website within a week thereafter. Government moved for contempt because posting was not sufficiently prominent; thereafter the posting was made more prominent.
- Michael Richmond & Rex Black, www.mcep.com; www.libertyinstitute.com & www.nationaCEP.com, permanent injunction against Rex Black on 6/14/02. Black served 3 months in prison and incurred substantial fines for civil contempt for failing to post the injunction on the sites. Injunction was finally posted in February.
- Thurston Bell, www.nite.org, Preliminary injunction entered 1/10/03; injunction posted on website a few days later.

Suit has been filed and is pending against:

- Chad Prater, www.taxinformer.com, preliminary injunction entered December 19, 2002. Court declined to order posting of injunction order on website, but did order Prater to remove false statements from the site. Prater has not complied with the injunction. DOJ moved for contempt on 3/10/03, and again

asked the court to order Prater to post the injunction. A hearing on the contempt motion is scheduled for April 2, 2003.

- Irwin Schiff, www.paynoincometax.com, www.ischiff.com, suit filed 3/12/03 seeking temporary restraining order (TRO) to remove false statements from websites. TRO granted on March 20, 2003

Three additional suits have been referred to DOJ in which we requested DOJ to enjoin false statements on websites.

CRIMINAL ACTIONS

Shift to Tax Administration

With the IRS' major compliance initiatives now revolving around promoters and abusive scams and schemes, CI developed a comprehensive compliance strategy that incorporates all IRS operating divisions and their taxpayer bases. To begin the process, CI worked particularly closely with the other divisions to develop a strong fraud referral program.

Fraud Referrals from other IRS Operating Divisions

CI works closely with SB/SE, LMSB and W&I operating divisions to improve the fraud referral process. SB/SE established the position of "fraud referral specialists" to aid employees in identifying matters suitable for referral for criminal investigation. CI's lead development managers also work closely with SB/SE's fraud specialists to monitor the process. This has complemented CI's efforts to re-focus its investigative resources on legal source income cases. The acceptance rate for fraud referrals from other IRS operating divisions was 63% for FY2002 - a 10% jump from the previous fiscal year.

Refund Fraud Program

Over the past four years, CI identified a significant increase in fraud and abuse in refund claims. For example, in calendar year 2002, the CI fraud detection centers prevented \$350,000,000 of more than \$470,000,000 in fraudulent refund claims from going out.

Criminal Investigation continues to work with W&I to ensure there is an effective program to deal with refund-related crimes. Fraud and abuse related to both the Questionable Refund Program (QRP) and the Return Preparer Program (RPP) is increasing. This increase applies to both the filing of paper returns and in electronically-filed personal and business returns.

One of the contributing factors to the increase is identity theft and their use to file fraudulent returns. By employing our Electronic Fraud Detection System and the enhanced analytical skills of the redesigned Fraud Detection Centers, CI and W&I

developed an effective deterrent in both QRP and RPP. This is a continuing process wherein our Fraud Detection Centers work with IRS submission processing to evaluate its effectiveness in identifying fraud.

Non-filer Program

Non-filers were a key area of emphasis for CI again this year. Of the 503 non-filer investigations conducted in FY 2002, 224 prosecutions were recommended with 233 indictments and 227 convictions received.

Employment Tax

The proper withholding and payment of income taxes and employment taxes is an important compliance issue. CI made this too an emphasis area. For FY 2002, we initiated 92 investigations; 56 prosecutions were recommended and we received 55 indictments and 41 convictions. These represent as much as a 40 percent growth over the previous fiscal year.

Abusive Trusts

In FY 2002, CI initiated 108 investigations compared to 79 in FY 2001, recommended 55 prosecutions as compared to 30 in FY 2001, received 44 indictments as compared to 32 the previous year and won 26 convictions compared to 45 in FY 2001. The incarceration rate was 88.2 percent and average months served in prison was 32 months

For the Anderson Ark & Associates abusive scheme, 79 investigations were initiated and 23 prosecutions were recommended. There were also 20 indictments and 10 convictions. Two individuals were sentenced and incarcerated with an average of 18 month to serve in prison.

Electronic Crimes and Technology Based Tax Crimes - and the Internet

Computers are increasingly used to facilitate and commit sophisticated financial crimes. The records of financial transactions are moving from the paper ledger to the computer to off-site, online storage, and we are developing the tools and techniques to follow and find those records, wherever they may be.

CI has the capability to investigate Internet based schemes utilizing its computer crime development center that was established this year. The Center provides an expanded capability to trace the online activities of subjects of investigation. It also serves as a collection point of electronic data gathered through court-ordered wiretaps and trap and trace devices and as the delivery point for subpoenaed evidence that is submitted in electronic form.

Preparer Fraud

The IRS continues to investigate promoters of frivolous arguments and to refer cases to the Department of Justice for criminal prosecution. Taxpayers who file frivolous income tax returns face a \$500 penalty, and may be subject to civil penalties of 20 or 75 percent of the underpaid tax. Those who pursue frivolous tax cases in the courts may face a penalty of up to \$25,000, in addition to the taxes, interest and civil penalties that they may owe.

We have more than doubled the number of criminal investigations of preparers of federal tax returns in 2002 compared to the previous fiscal year. In FY 2002, 254 investigations were initiated, compared to 116 the year before. More cases were referred to the Department of Justice for prosecution – 89 in FY 2002, up from 73 the year before. Preparers convicted of tax crimes received longer average prison terms – 27 months in FY 2002, up from 20 months the year before.

Additionally, there has been a significant increase during the first quarter of FY 2003 in the number of criminal investigations referred to the Department of Justice for prosecution regarding individuals whose occupation includes accountant, electronic return originator and return preparer.

Return preparer fraud generally involves the preparation and filing of false income tax returns (in either paper or electronic form) by preparers who claim inflated personal or business expenses, false deductions, unallowable credits or excessive exemptions on returns prepared for their clients. Abusive preparers may also manipulate income figures to obtain fraudulent tax credits, such as the EITC.

Voluntary Disclosure

Outside of the on-going Offshore Voluntary Compliance Initiative, as of February 28, 2003, Criminal Investigation has received a total of 30 voluntary disclosure requests, 16 have been approved, five declined and nine are still pending.

Offshore – Abusive Trust Guilty Plea Victory

In a March 5, 2003 press release, the Department of Justice announced that two former administrators of the Institute of Global Prosperity (IGP) admitted in federal court in Charleston, S.C., that they used a foreign bank account to commit tax evasion. Shoshana B. Szuch, former Director of Operations of IGP, and her husband, Jeffrey S. Szuch, a former IGP conference planner, each entered a guilty plea before U.S. District Judge David C. Horton.

According to the charging document filed in court, the Szuchs were administrators of the Institute of Global Prosperity (IGP), an organization that hosted offshore seminars for promoters of abusive trusts and anti-tax schemes. IGP was also known by other names, including Global Prosperity Marketing Group (GPMG) and

Global Prosperity Group (GPG). Members of IGP marketed and sold various IGP products, including an “education course” named “Global 1” priced at \$1,250; a ticket to a three-day offshore seminar named “Global 2” priced at \$6,250; and a ticket to a five-day offshore seminar named “Global 3” priced at \$18,750. The Global 2 and Global 3 seminars brought together portions of the IGP membership to hear, among other things, presentations by individuals and organizations involved in the sale and operation of foreign trusts designed in part to conceal income from the IRS.

Shoshana Szuch marketed and sold IGP products from the fall of 1996 until the fall of 1997 and was the Director of Operations of IGP from the fall of 1997 through February 2001, according to documents filed in court. Her husband, Jeffrey Szuch, assisted her in selling IGP products and planning offshore conferences hosted by IGP.

On or about Sept. 4, 1997, Shoshana Szuch and Jeffrey Szuch purchased an International Business Corporation (IBC) and related offshore bank account in the name of Oro Blanco, Ltd. This bank account, located in Antigua, was used by the Szuchs to conceal the income paid to Shoshana Szuch by IGP and the income earned from the sale of IGP products. Shoshana and Jeffrey Szuch failed to file a 1997 tax return despite having approximately \$62,540 in taxable income from IGP-related activities, upon which they owed approximately \$21,051 in income tax.

The plea agreement requires the Szuchs to cooperate fully with the government regarding their involvement and the involvement of others with IGP and to cooperate with the IRS in the ascertainment, computation, and payment of their correct federal income tax liability for 1997 through 1999. The maximum statutory penalties for tax evasion are imprisonment for five years, release under court supervision for three years and a fine of \$250,000. No sentencing date has been set for the Szuchs.

A member of IGP, Margo E. Jordan, pled guilty to tax evasion regarding her 1997 income taxes in the District of Maine on Feb. 28, 2003.

CONCLUSION

Mr. Chairman, combating these abusive scams and schemes is our number one compliance priority. More than sapping the government of badly needed revenues, they undermine the confidence of honest taxpayers in the fairness of our time-honored system of voluntary compliance. I am pleased to report the progress we have made over the past year to identify the promoters and participants and to shut some schemes down. Clearly, we have a much better grip on the situation than we did a year ago. But clearly too, we still have much work to do. Yet I am convinced that if we stay the course we are on today, we can succeed.

From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
Sent: 3/29/2003 6:41:39 AM
Subject: Fw:

Byron York on Owen, below

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

From: PRA 6
To: Leitch, David G.
Sent: Sat Mar 29 06:34:06 2003
Subject:

March 28, 2003 10:30 a.m.
Another Democratic Filibuster?
Democrats prepare to obstruct again — war or no war.

Say you're a Democratic senator. You're filibustering the nomination of Miguel Estrada to a place on the D.C. Circuit Court of Appeals, the first time in history such a tactic has been used against an appellate-court judge. You're taking a lot of criticism, with dozens of editorials in papers across the country condemning your actions, but so far you and 44 other Democrats have held your ground.

Still, you're having a progressively harder time explaining why you're filibustering. You loudly protested that Estrada did not answer your questions, only to have it reported that you had not bothered to submit any questions to the nominee when the White House offered. You demanded that the White House release Justice Department documents Estrada wrote while in the Clinton-era Solicitor General's office, only to have it revealed that you didn't bother to consult any of the former Clinton officials who offered to answer questions about the documents.

That led some observers to question the, uh, sincerity of your motives. But in spite of all that, you've hung tough: in three cloture votes so far, Republicans have not been able to muster more than 55 votes of the 60 needed to break the filibuster. This week, because of the war, there's been no cloture vote at all. Maybe there will be another one next week, and maybe not.

So here's the question: Given all that, are you in the mood to launch an unprecedented second filibuster of an appeals court nominee?

Absolutely.

The next target is likely to be Priscilla Owen, the Texas supreme-court justice who is president's nominee to a seat on the Fifth Circuit Court of Appeals. Owen, who was voted down by the Senate Judiciary Committee last year when it was controlled by Democrats, was approved yesterday by the same committee under GOP control. The vote was straight party line: All ten Republicans voted for Owen, and all nine Democrats voted against her.

Democrats have not yet committed to a filibuster of the nomination in the full Senate, but leaders of liberal interest groups, who often call the shots in these matters — people like Kate Michelman of NARAL, Nan Aron of the Alliance for Justice, and Ralph Neas of People for the American Way — say they expect Democrats to filibuster.

But on what grounds? The biggest objection to Owen concerns her rulings on a Texas law which requires underage girls who want to have an abortion to notify their parents (not get their consent, just notify them). The law also allows girls who fear their parents' reaction to seek a court-ordered bypass of the notification requirement. While Owen has not questioned the basic legal right to an abortion, she has sometimes taken a more limited view of the bypass option than other justices on the Texas high court.

That was enough to persuade hard-core Democrats to vote against her in the Judiciary Committee. But is it enough to sustain a full-fledged filibuster?

Probably not. The dilemma for Democrats is that parental-notification laws are quite popular around the country: polls show more than 80 percent of Americans approve of them. Given that political reality, it seems unlikely that Democrats would use such an unpopular issue as a reason to filibuster.

Rather, it appears that, just as they did with Estrada, Democrats are preparing to object to Owen on mostly procedural grounds. Democrats had no evidence to suggest that Estrada was not qualified, so they claimed that he (and the White House) had not cooperated with the Senate in the process of confirmation. Now, with Owen, they might again skip the substance and resort to a process argument.

Nan Aron of the Alliance for Justice says there are "very serious procedural issues" with the nomination. "Owen is a nominee who has already been defeated by the Senate," Aron said after yesterday's vote. "It's inappropriate and unprecedented for her to have been renominated having already been defeated. We believe a filibuster will be just as easy to organize for her as Estrada."

Aron's statement suggests that Democrats will base a filibuster of Owen on grounds that her renomination was a slap in the face of Democrats who had voted her down last year. While that argument has no actual merit — measures that die in one Congress have often found life in a later Congress after a change in party control — it could prove effective in uniting Democrats who might otherwise be hesitant to object to Owen on a popular issue like parental notification.

In short, the Democratic argument will not be that Owen is not qualified. It will be that the White House can't push us around.

So look for another stalemate in the Senate. The Owen strategy, along with Estrada and recent votes on the budget and oil drilling in Alaska, show the Democrats feel perfectly comfortable in pushing the president around, war or no war. What remains to be seen is how hard the president will push back.

<http://www.nationalreview.com/york/york032803.asp>

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>; J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>; James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>; Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Theodore W. Ullyot/WHO/EOP@EOP [WHO] <Theodore W. Ullyot>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>; Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 3/29/2003 7:00:10 AM
Subject: : Note about the Judge's schedule

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:29-MAR-2003 12:00:10.00

SUBJECT:: Note about the Judge's schedule

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

REV_00232394

End Original ARMS Header

The Judge will depart for Lexington, Virginia tomorrow afternoon to deliver a speech at Washington and Lee Law School on Monday morning. He'll be back in the office;late Monday afternoon.;

;
David Leitch will lead staff meeting in his absence.

;
Thanks!
Carrie

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>; J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>; James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>; Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Theodore W. Ullyot/WHO/EOP@EOP [WHO] <Theodore W. Ullyot>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>; Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 3/29/2003 7:00:07 AM
Subject: : Note about the Judge's schedule

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:29-MAR-2003 12:00:07.00

SUBJECT:: Note about the Judge's schedule

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

End Original ARMS Header

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To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>; J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>; James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>; Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>; Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 3/29/2003 7:00:12 AM
Subject: : Note about the Judge's schedule

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:29-MAR-2003 12:00:12.00

SUBJECT:: Note about the Judge's schedule

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

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READ:UNKNOWN

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READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

REV_00232400

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Sent: 3/31/2003 4:38:34 AM
Subject: Updated Associate Counsel Assignments
Attachments: F_FT16F003_NSC.TXT_1.xlw; F_FT16F003_NSC.TXT_2.xlw; F_FT16F003_NSC.TXT_3.ppt

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:31-MAR-2003 09:38:34.00
SUBJECT:: Updated Associate Counsel Assignments
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])
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TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
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TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached are updated Counsel Assignment sheets, State Assignments,;and
agency contact information.

;
The Counsel directory will be updated as soon as we have all the;necessary
contact information for Jenny.;

;
If you have any questions, please let me know.

;
Thanks,
Patrick

;
;
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_FT16F003_NSC.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_FT16F003_NSC.TXT_2>

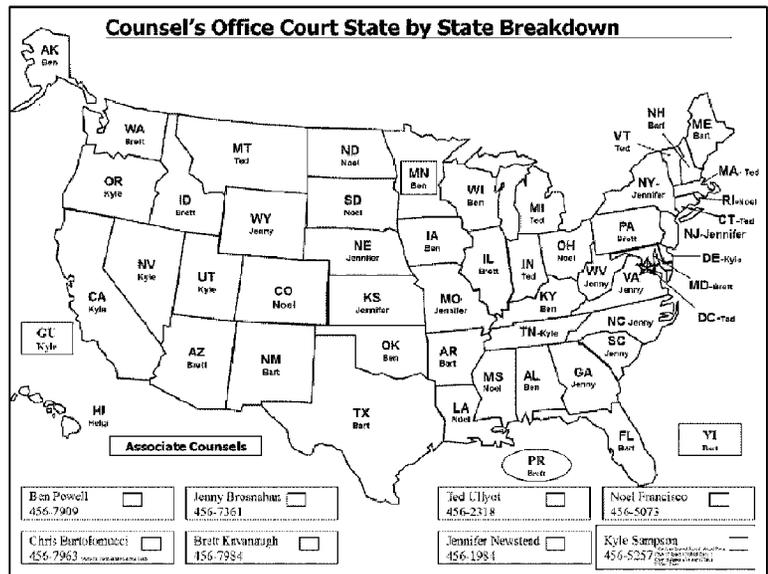
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_FT16F003_NSC.TXT_3>

Document Produced Natively

Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
Education	Roderick Paige	202-280-0058	Steven Winnick (DPTY) Brian Jones (nominated)	Carolyn Adams Sheryl Vanniere	202-205-3687 (while a designate) 202-401-6000 (once confirmed)	202-205-2689	steve.winnick@ed.gov			
Energy	Spencer Abraham	202-586-6210	Lee Otis	Katharine Dickerson	202-586-5281	202-586-1499	lee.otis@hq.doe.gov			Forrestal Building
EPA	Christie Todd Whitman	202-564-6953	Bob Fabricant (acting)	Tiye Houston	202-564-8040	202-564-1778	no email			Ariel Rios Building
FEMA	Mike Brown (undersecretary of DHS for Emergency Preparedness)	202-646-3900 or 646-4395	Jordan Fried (acting)		202-646-4167 (Direct Line) or 202-626-4105 (Fried's scheduler's #)	202-646-3930 202-646-4536	michael.d.brown@fema.gov			
DHS	Tom Ridge	282-8203	Joe Whitley		786-0137 temp					
HHS	Tommy Thompson	202-890-7000	Alex Azar	Pam Roller	202-690-7741	202-690-7998	alex.azar@hhs.gov			Humphrey Bldg.,
HUD	Mel Martinez	708-4093 x5647	Richard Hauser	Gwen Curry	202-708-2244	202-708-3389	richard_a_hauser@hud.gov			
Interior	Gail Norton	202-208-7351 (Asst: Pat Connelly)	William Myers	Mary Thomas	202-208-4423	202-208-5584	no email			
Justice	John Ashcroft	202-514-2001 202-514-4195	Adam Ciongoli (Persl Counsel) Ted Olson (Sol. Gen.)	Evelyn is Asst. (Andy-Schedule)	514-4995-Ciongoli 514-2201-Ted Olsen	202-353-5935 (Ciongoli)	adam.ciongoli@usdoj.gov			
Labor	Elaine Chao	202-693-6000	Howard Radzely	Janet Gillens	202-693-5260	202-693-5278	radzely-howarc@dol.gov			Frances Perkins Building
OMB	Mitch Daniels	202-395-9164 or 395-4840	Phil Perry	Carla Stone	202-395-5044	202-395-7289				
State	Colin Powell	202-647-5291 202-647-5733	Will Taft	Marianne Hata	202-647-9598	202-647-1037	taftwh@ms.state.gov			Harry S Truman Building
Transportation	Norman Mineta	202-366-1111	Kirk Van Tine	Veronica Garrison	202-366-4702	202-366-3388	kvantine@dot.ost.gov			
Fed Aviation	Jane Garvey									
Treasury	John Snow	202-822-1100	David Aufhauser	Elizabeth Vannoy (Betty)	202-622-0283	202-622-2882	david.aufhauser@do.treas.gov			
USTR	Bob Zoellick	202-395-6890	Peter Davidson	Erin Leonard 202-487-8400 (cell)	202-395-3150 395-9486 (Assist. Direct Line)	202-395-3639	pdavidson@ustr.gov			Winder Building,
Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reeseey Jeter	202-273-6686	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 3/31/2003 4:38:43 AM
Subject: Updated Associate Counsel Assignments
Attachments: F_7U16F003_NSC.TXT_1.xlw; F_7U16F003_NSC.TXT_2.xlw; F_7U16F003_NSC.TXT_3.ppt

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CREATION DATE/TIME:31-MAR-2003 09:38:43.00
SUBJECT:: Updated Associate Counsel Assignments
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
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;
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File attachment <F_7U16F003_NSC.TXT_1>

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File attachment <F_7U16F003_NSC.TXT_2>

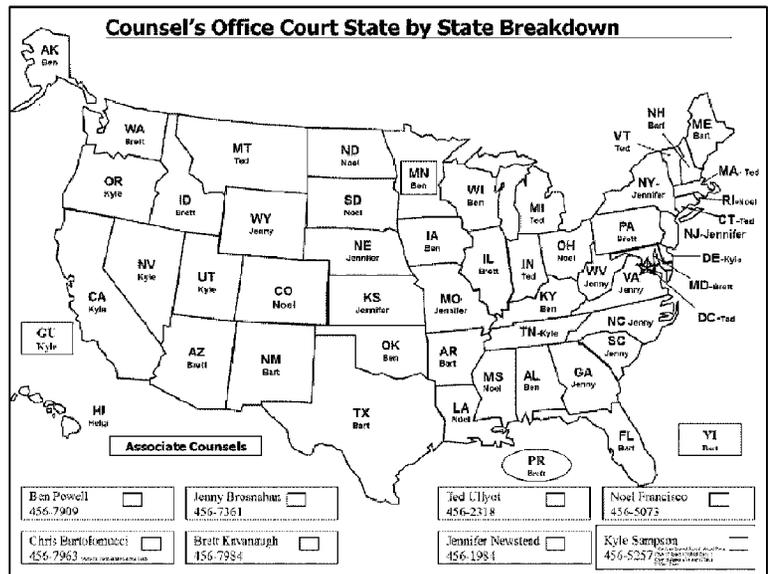
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_7U16F003_NSC.TXT_3>

Document Produced Natively

Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
Education	Roderick Paige	202-280-0058	Steven Winnick (DPTY) Brian Jones (nominated)	Carolyn Adams Sheryl Vanniere	202-205-3887 (while a designate) 202-401-6000 (once confirmed)	202-205-2689	steve.winnick@ed.gov			
Energy	Spencer Abraham	202-586-6210	Lee Otis	Katharine Dickerson	202-586-5281	202-586-1499	lee.otis@hq.doe.gov			Forrestal Building
EPA	Christie Todd Whitman	202-564-6953	Bob Fabricant (acting)	Tiye Houston	202-564-8040	202-564-1778	no email			Ariel Rios Building
FEMA	Mike Brown (undersecretary of DHS for Emergency Preparedness)	202-646-3900 or 646-4395	Jordan Fried (acting)		202-646-4167 (Direct Line) or 202-626-4105 (Fried's scheduler's #)	202-646-3930 202-646-4536	michael.d.brown@fema.gov			
DHS	Tom Ridge	282-8203	Joe Whitley		786-0137 temp					
HHS	Tommy Thompson	202-890-7000	Alex Azar	Pam Roller	202-690-7741	202-690-7998	alex.azar@hhs.gov			Humphrey Bldg.,
HUD	Mel Martinez	708-4093 x5647	Richard Hauser	Gwen Curry	202-708-2244	202-708-3389	richard_a_hauser@hud.gov			
Interior	Gail Norton	202-208-7351 (Asst: Pat Connelly)	William Myers	Mary Thomas	202-208-4423	202-208-5584	no email			
Justice	John Ashcroft	202-514-2001 202-514-4195	Adam Ciongoli (Persl Counsel) Ted Olson (Sol. Gen.)	Evelyn is Asst. (Andy-Schedule)	514-4995-Ciongoli 514-2201-Ted Olsen	202-353-5935 (Ciongoli)	adam.ciongoli@usdoj.gov			
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OMB	Mitch Daniels	202-395-9164 or 395-4840	Phil Perry	Carla Stone	202-395-5044	202-395-7289				
State	Colin Powell	202-647-5291 202-647-5733	Will Taft	Marianne Hata	202-647-9598	202-647-1037	taftwh@ms.state.gov			Harry S Truman Building
Transportation	Norman Mineta	202-366-1111	Kirk Van Tine	Veronica Garrison	202-366-4702	202-366-3388	kvantine@dot.ost.gov			
Fed Aviation	Jane Garvey									
Treasury	John Snow	202-822-1100	David Aufhauser	Elizabeth Vannoy (Betty)	202-622-0283	202-622-2882	david.aufhauser@do.treas.gov			
USTR	Bob Zoellick	202-395-6890	Peter Davidson	Erin Leonard 202-487-8400 (cell)	202-395-3150 395-9486 (Assist. Direct Line)	202-395-3639	pdavidson@ustr.gov			Winder Building,
Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reeseey Jeter	202-273-6686	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 3/31/2003 4:38:48 AM
Subject: Updated Associate Counsel Assignments
Attachments: F_JU16F003_NSC.TXT_1.xlw; F_JU16F003_NSC.TXT_2.xlw; F_JU16F003_NSC.TXT_3.ppt

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CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:31-MAR-2003 09:38:48.00
SUBJECT:: Updated Associate Counsel Assignments
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN

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READ:UNKNOWN
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READ:UNKNOWN
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Patrick

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File attachment <F_JU16F003_NSC.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_JU16F003_NSC.TXT_2>

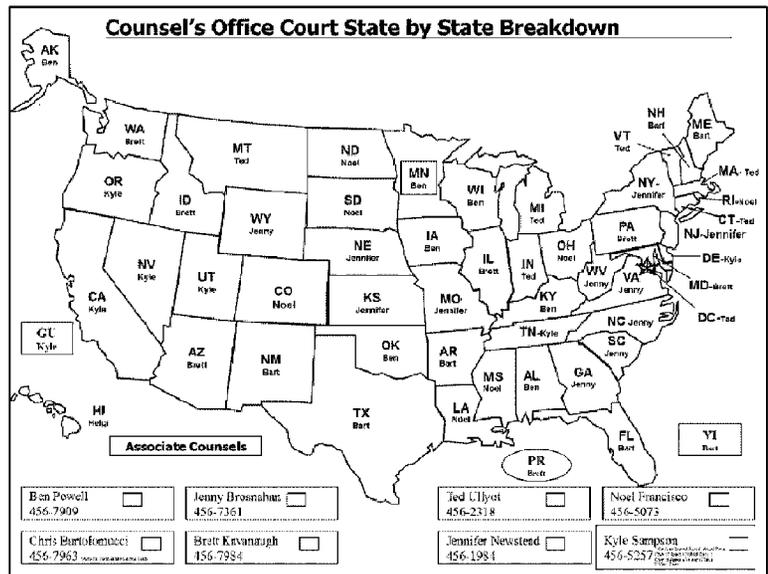
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Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reeseey Jeter	202-273-6666	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
<h1>PRA 6</h1>			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
Sent: 3/31/2003 4:45:24 AM
Subject: : RE: Updated: Status of Circuit Nominees

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 31-MAR-2003 09:45:24.00
SUBJECT: : RE: Updated: Status of Circuit Nominees
TO: "Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)"
<James_Ho@Judiciary.senate.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

The list includes future vacancies created by publicly announced retirements, which are listed under "Future Vacancies" on the AO website.

"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov>
03/31/2003 09:43:04 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: Updated: Status of Circuit Nominees

My mistake (I must have confused your private conversation about April expected nominees, which I assume is confidential, and this total list of vacancies). BTW, I assume the list includes expected vacancies (e.g., the uscourts website only lists one 3rd Circuit vacancy without a nominee).

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, March 28, 2003 1:11 PM
To: Ho, James (Judiciary)
Subject: RE: Updated: Status of Circuit Nominees

This is the list of all vacancies without nominations, which is public.

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: Updated: Status of Circuit Nominees

Is this public? I ask because I got this from a public e-mail list, too. I would have thought that the list of upcoming nominations would be private, so I was concerned when I got it from a public e-mail list. Anyway, just asking.

-----Original Message-----
From: by way of "James C. Ho" <JamesCho@stanfordalumni.org>
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, March 27, 2003 9:44 PM
To: Ho, James (Judiciary)
Subject: Updated: Status of Circuit Nominees

108th Congress

REV_00232428

? Circuit Nominees

Confirmed (1)

Jay Bybee (9th Nevada)

On Executive Calendar (6)

Miguel Estrada (DC)

John Roberts (DC)

Priscilla Owen (5th Texas)

Jeff Sutton (6th Ohio)

Deborah Cook (6th Ohio)

Tim Tymkovich (10th Colorado)

In Judiciary Committee (12)

Richard Wesley (2nd New York)

Michael Chertoff (3rd New Jersey)

Terry Boyle (4th North Carolina)

Ed Prado (5th Texas)

Charles Pickering (5th Mississippi)

David McKeague (6th Michigan)

Susan Neilson (6th Michigan)

Richard Griffin (6th Michigan)

Henry Saad (6th Michigan)

Steve Colloton (8th Iowa)

Consuelo Callahan (9th California)

Carolyn Kuhl (9th California)

To be nominated (9)

D.C. Circuit

D.C. Circuit

3rd Circuit (Pennsylvania)

3rd Circuit (Pennsylvania)

4th Circuit (NC/VA/MD)

4th Circuit (NC/VA/MD)

9th Circuit (Idaho)

9th Circuit (California)

11th Circuit (Alabama)

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 3/31/2003 4:38:34 AM
Subject: Updated Associate Counsel Assignments
Attachments: F_CT16F003_NSC.TXT_1.xlw; F_CT16F003_NSC.TXT_2.xlw; F_CT16F003_NSC.TXT_3.ppt

Begin Original ARMS Header #####
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CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:31-MAR-2003 09:38:34.00
SUBJECT:: Updated Associate Counsel Assignments
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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READ:UNKNOWN
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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_CT16F003_NSC.TXT_2>

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File attachment <F_CT16F003_NSC.TXT_3>

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Justice	John Ashcroft	202-514-2001 202-514-4195	Adam Ciongoli (Persl Counsel) Ted Olson (Sol. Gen.)	Evelyn is Asst. (Andy-Schedule)	514-4995-Ciongoli 514-2201-Ted Olsen	202-353-5935 (Ciongoli)	adam.ciongoli@usdoj.gov			
Labor	Elaine Chao	202-693-6000	Howard Radzely	Janet Gillens	202-693-5260	202-693-5278	radzely-howarc@dol.gov			Frances Perkins Building
OMB	Mitch Daniels	202-395-9164 or 395-4840	Phil Perry	Carla Stone	202-395-5044	202-395-7289				
State	Colin Powell	202-647-5291 202-647-5733	Will Taft	Marianne Hata	202-647-9598	202-647-1037	taftwh@ms.state.gov			Harry S Truman Building
Transportation	Norman Mineta	202-366-1111	Kirk Van Tine	Veronica Garrison	202-366-4702	202-366-3388	kvantine@dot.ost.gov			
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Treasury	John Snow	202-622-1100	David Aufhauser	Elizabeth Vannoy (Betty)	202-622-0283	202-622-2882	david.aufhauser@do.treas.gov			
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Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reeseey Jeter	202-273-6686	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
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Attachments: F_9T16F003_NSC.TXT_1.xlw; F_9T16F003_NSC.TXT_2.xlw; F_9T16F003_NSC.TXT_3.ppt

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READ:UNKNOWN
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READ:UNKNOWN
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Thanks,
Patrick

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;
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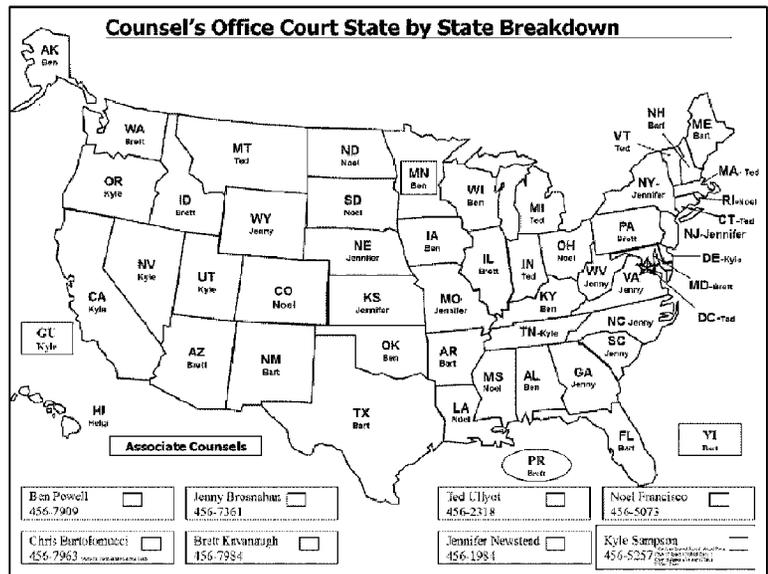
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Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
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Energy	Spencer Abraham	202-586-6210	Lee Otis	Katharine Dickerson	202-586-5281	202-586-1499	lee.otis@hq.doe.gov			Forrestal Building
EPA	Christie Todd Whitman	202-564-6953	Bob Fabricant (acting)	Tiye Houston	202-564-8040	202-564-1778	no email			Ariel Rios Building
FEMA	Mike Brown (undersecretary of DHS for Emergency Preparedness)	202-646-3900 or 646-4395	Jordan Fried (acting)		202-646-4167 (Direct Line) or 202-626-4105 (Fried's scheduler's #)	202-646-3930 202-646-4536	michael.d.brown@fema.gov			
DHS	Tom Ridge	282-8203	Joe Whitley		786-0137 temp					
HHS	Tommy Thompson	202-890-7000	Alex Azar	Pam Roller	202-690-7741	202-690-7998	alex.azar@hhs.gov			Humphrey Bldg.,
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Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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Subject: Updated Associate Counsel Assignments
Attachments: F_PT16F003_NSC.TXT_1.xlw; F_PT16F003_NSC.TXT_2.xlw; F_PT16F003_NSC.TXT_3.ppt

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CREATION DATE/TIME:31-MAR-2003 09:38:38.00
SUBJECT:: Updated Associate Counsel Assignments
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Thanks,
Patrick

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;
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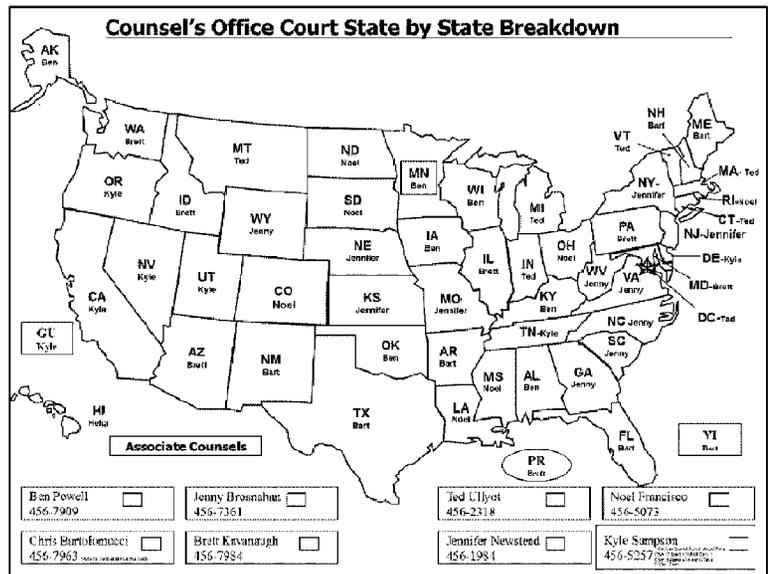
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PRA 6

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PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
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File attachment <F_PU16F003_NSC.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_PU16F003_NSC.TXT_3>

Document Produced Natively

Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
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Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reeseey Jeter	202-273-6686	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
<h1>PRA 6</h1>			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			

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Attachments: F_DT16F003_NSC.TXT_1.xlw; F_DT16F003_NSC.TXT_2.xlw; F_DT16F003_NSC.TXT_3.ppt

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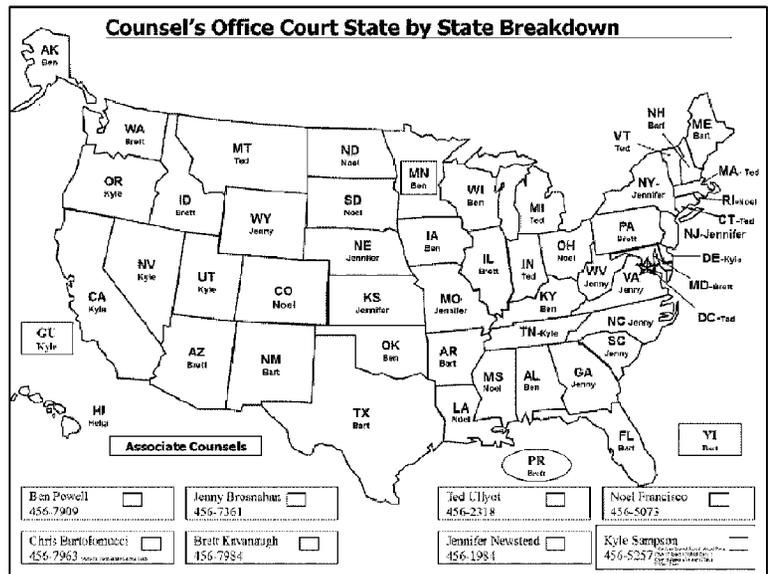
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PRA 6

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			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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Sent: 3/31/2003 4:38:53 AM
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Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reeseey Jeter	202-273-6666	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-697-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 3/31/2003 4:38:39 AM
Subject: Updated Associate Counsel Assignments
Attachments: F_TT16F003_NSC.TXT_1.xlw; F_TT16F003_NSC.TXT_2.xlw; F_TT16F003_NSC.TXT_3.ppt

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SUBJECT:: Updated Associate Counsel Assignments
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READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
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TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
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TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Attached are updated Counsel Assignment sheets, State Assignments,;and
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;
The Counsel directory will be updated as soon as we have all the;necessary
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If you have any questions, please let me know.

;
Thanks,
Patrick

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;
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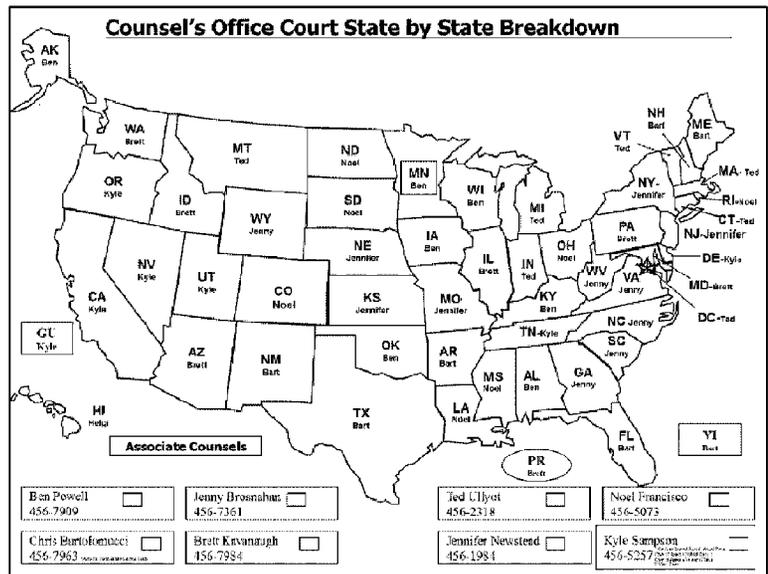
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Document Produced Natively

Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
Education	Roderick Paige	202-280-0058	Steven Winnick (DPTY) Brian Jones (nominated)	Carolyn Adams Sheryl Vanniere	202-205-3887 (while a designate) 202-401-6000 (once confirmed)	202-205-2689	steve.winnick@ed.gov			
Energy	Spencer Abraham	202-586-6210	Lee Otis	Katharine Dickerson	202-586-5281	202-586-1499	lee.otis@hq.doe.gov			Forrestal Building
EPA	Christie Todd Whitman	202-564-6953	Bob Fabricant (acting)	Tiye Houston	202-564-8040	202-564-1778	no email			Ariel Rios Building
FEMA	Mike Brown (undersecretary of DHS for Emergency Preparedness)	202-646-3900 or 646-4395	Jordan Fried (acting)		202-646-4167 (Direct Line) or 202-626-4105 (Fried's scheduler's #)	202-646-3930 202-646-4536	michael.d.brown@fema.gov			
DHS	Tom Ridge	282-8203	Joe Whitley		786-0137 temp					
HHS	Tommy Thompson	202-890-7000	Alex Azar	Pam Roller	202-690-7741	202-690-7998	alex.azar@hhs.gov			Humphrey Bldg.,
HUD	Mel Martinez	708-4093 x5647	Richard Hauser	Gwen Curry	202-708-2244	202-708-3389	richard_a_hauser@hud.gov			
Interior	Gail Norton	202-208-7351 (Asst: Pat Connelly)	William Myers	Mary Thomas	202-208-4423	202-208-5584	no email			
Justice	John Ashcroft	202-514-2001 202-514-4195	Adam Ciongoli (Persl Counsel) Ted Olson (Sol. Gen.)	Evelyn is Asst. (Andy-Schedule)	514-4995-Ciongoli 514-2201-Ted Olsen	202-353-5935 (Ciongoli)	adam.ciongoli@usdoj.gov			
Labor	Elaine Chao	202-693-6000	Howard Radzely	Janet Gillens	202-693-5260	202-693-5278	radzely-howard@dol.gov			Frances Perkins Building
OMB	Mitch Daniels	202-395-9164 or 395-4840	Phil Perry	Carla Stone	202-395-5044	202-395-7289				
State	Colin Powell	202-647-5291 202-647-5733	Will Taft	Marianne Hata	202-647-9598	202-647-1037	taftwh@ms.state.gov			Harry S Truman Building
Transportation	Norman Mineta	202-366-1111	Kirk Van Tine	Veronica Garrison	202-366-4702	202-366-3388	kvantine@dot.ost.gov			
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Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reeseey Jeter	202-273-6686	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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Sent: 3/31/2003 4:38:40 AM
Subject: Updated Associate Counsel Assignments
Attachments: P_XT16F003_WHO.TXT_1.xlw; P_XT16F003_WHO.TXT_2.xlw; P_XT16F003_WHO.TXT_3.ppt

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CREATION DATE/TIME:31-MAR-2003 09:38:40.00
SUBJECT:: Updated Associate Counsel Assignments
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READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
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TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
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TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
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TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
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TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])
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TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
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TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
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TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached are updated Counsel Assignment sheets, State Assignments,;and
agency contact information.

;
The Counsel directory will be updated as soon as we have all the;necessary
contact information for Jenny.;

;
If you have any questions, please let me know.

;
Thanks,
Patrick

;
;
ATT CREATION TIME/DATE: 0 00:00:00.00
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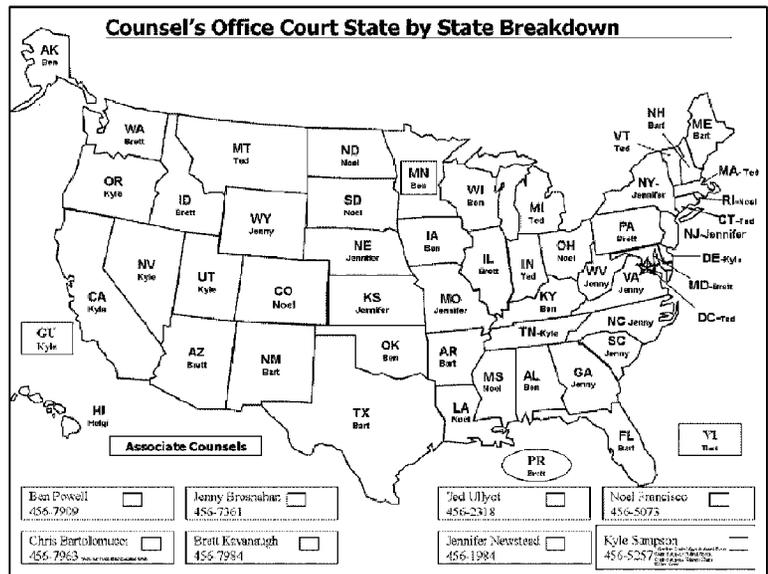
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Document Produced Natively

Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
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HHS	Tommy Thompson	202-890-7000	Alex Azar	Pam Roller	202-690-7741	202-690-7998	alex.azar@hhs.gov			Humphrey Bldg.,
HUD	Mel Martinez	708-4093 x5647	Richard Hauser	Gwen Curry	202-708-2244	202-708-3389	richard_a_hauser@hud.gov			
Interior	Gail Norton	202-208-7351 (Asst: Pat Connelly)	William Myers	Mary Thomas	202-208-4423	202-208-5584	no email			
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PRA 6

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PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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Sent: 3/31/2003 4:38:55 AM
Subject: Updated Associate Counsel Assignments
Attachments: F_XU16F003_NSC.TXT_1.xlw; F_XU16F003_NSC.TXT_2.xlw; F_XU16F003_NSC.TXT_3.ppt

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SUBJECT:: Updated Associate Counsel Assignments
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READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached are updated Counsel Assignment sheets, State Assignments,;and
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;
Thanks,
Patrick

;
;
ATT CREATION TIME/DATE: 0 00:00:00.00
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File attachment <F_XU16F003_NSC.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <F_XU16F003_NSC.TXT_3>

Document Produced Natively

Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
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PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
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Subject: Updated Associate Counsel Assignments
Attachments: F_7T16F003_NSC.TXT_1.xlw; F_7T16F003_NSC.TXT_2.xlw; F_7T16F003_NSC.TXT_3.ppt

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TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
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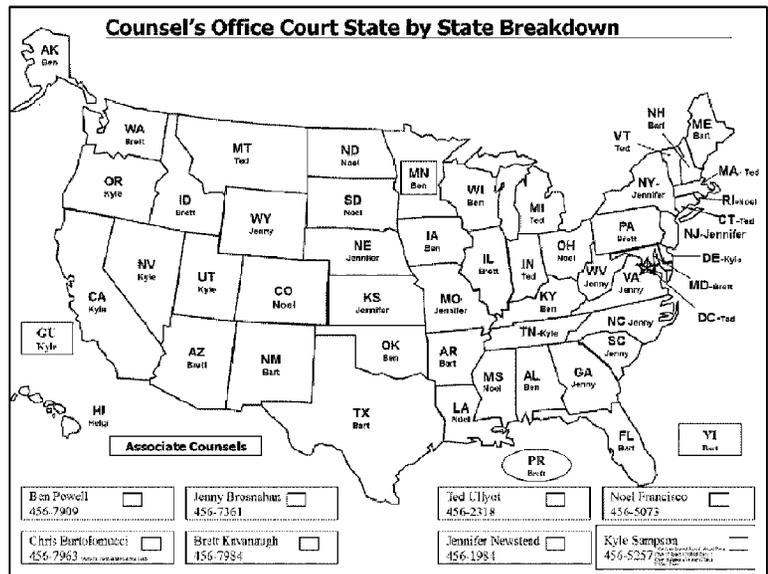
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PRA 6

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PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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Sent: 3/31/2003 4:38:34 AM
Subject: Updated Associate Counsel Assignments
Attachments: P_CT16F003_WHO.TXT_1.xlw; P_CT16F003_WHO.TXT_2.xlw; P_CT16F003_WHO.TXT_3.ppt

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CREATION DATE/TIME:31-MAR-2003 09:38:34.00
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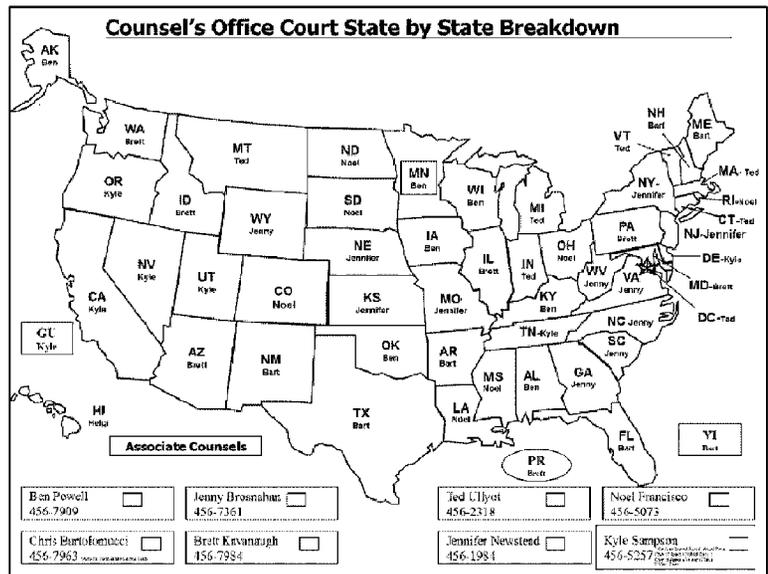
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Chris			



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To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 3/31/2003 4:38:50 AM
Subject: Updated Associate Counsel Assignments
Attachments: F_OU16F003_NSC.TXT_1.xlw; F_OU16F003_NSC.TXT_2.xlw; F_OU16F003_NSC.TXT_3.ppt

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CREATION DATE/TIME:31-MAR-2003 09:38:50.00
SUBJECT:: Updated Associate Counsel Assignments
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Attached are updated Counsel Assignment sheets, State Assignments,;and
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Thanks,
Patrick

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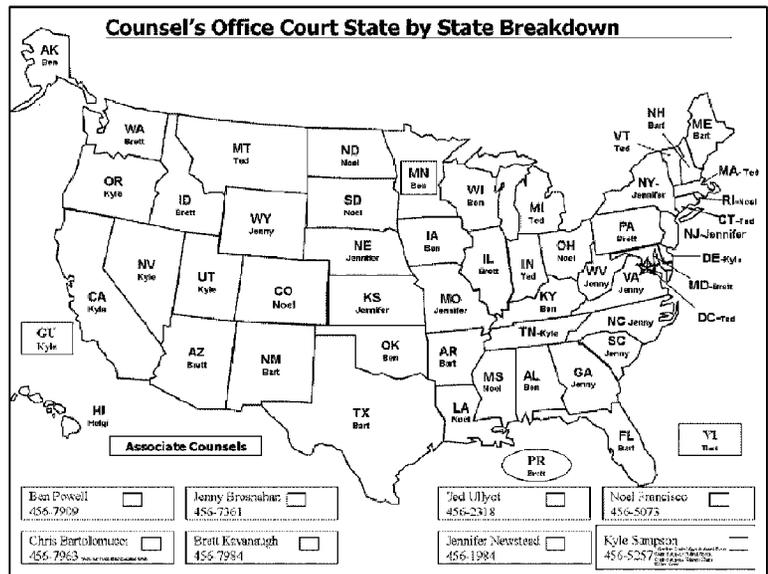
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Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
Education	Roderick Paige	202-280-0058	Steven Winnick (DPTY) Brian Jones (nominated)	Carolyn Adams Sheryl Vanniere	202-205-3887 (while a designate) 202-401-6000 (once confirmed)	202-205-2689	steve.winnick@ed.gov			
Energy	Spencer Abraham	202-586-6210	Lee Otis	Katharine Dickerson	202-586-5281	202-586-1499	lee.otis@hq.doe.gov			Forrestal Building
EPA	Christie Todd Whitman	202-564-6953	Bob Fabricant (acting)	Tiye Houston	202-564-8040	202-564-1778	no email			Ariel Rios Building
FEMA	Mike Brown (undersecretary of DHS for Emergency Preparedness)	202-646-3900 or 646-4395	Jordan Fried (acting)		202-646-4167 (Direct Line) or 202-626-4105 (Fried's scheduler's #)	202-646-3930 202-646-4536	michael.d.brown@fema.gov			
DHS	Tom Ridge	282-8203	Joe Whitley		786-0137 temp					
HHS	Tommy Thompson	202-890-7000	Alex Azar	Pam Roller	202-690-7741	202-690-7998	alex.azar@hhs.gov			Humphrey Bldg.,
HUD	Mel Martinez	708-4093 x5647	Richard Hauser	Gwen Curry	202-708-2244	202-708-3389	richard_a_hauser@hud.gov			
Interior	Gail Norton	202-208-7351 (Asst: Pat Connelly)	William Myers	Mary Thomas	202-208-4423	202-208-5584	no email			
Justice	John Ashcroft	202-514-2001 202-514-4195	Adam Ciongoli (Persl Counsel) Ted Olson (Sol. Gen.)	Evelyn is Asst. (Andy-Schedule)	514-4995-Ciongoli 514-2201-Ted Olsen	202-353-5935 (Ciongoli)	adam.ciongoli@usdoj.gov			
Labor	Elaine Chao	202-693-6000	Howard Radzely	Janet Gillens	202-693-5260	202-693-5278	radzely-howarc@dol.gov			Frances Perkins Building
OMB	Mitch Daniels	202-395-9164 or 395-4840	Phil Perry	Carla Stone	202-395-5044	202-395-7289				
State	Colin Powell	202-647-5291 202-647-5733	Will Taft	Marianne Hata	202-647-9598	202-647-1037	taftwh@ms.state.gov			Harry S Truman Building
Transportation	Norman Mineta	202-366-1111	Kirk Van Tine	Veronica Garrison	202-366-4702	202-366-3388	kvantine@dot.ost.gov			
Fed Aviation	Jane Garvey									
Treasury	John Snow	202-822-1100	David Aufhauser	Elizabeth Vannoy (Betty)	202-622-0283	202-622-2882	david.aufhauser@do.treas.gov			
USTR	Bob Zoellick	202-395-6890	Peter Davidson	Erin Leonard 202-487-8400 (cell)	202-395-3150 395-9486 (Assist. Direct Line)	202-395-3639	pdavidson@ustr.gov			Winder Building,
Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reeseey Jeter	202-273-6666	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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Subject: Updated Associate Counsel Assignments
Attachments: F_JT16F003_NSC.TXT_1.xlw; F_JT16F003_NSC.TXT_2.xlw; F_JT16F003_NSC.TXT_3.ppt

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SUBJECT:: Updated Associate Counsel Assignments
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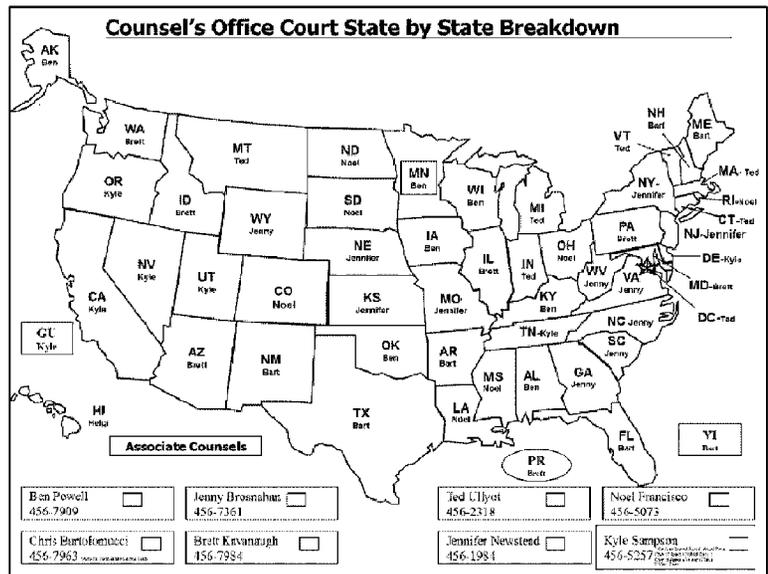
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Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
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Joint Chiefs of Staff	Gen. Richard Meyers	703-697-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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Sent: 3/31/2003 4:38:48 AM
Subject: : Updated Associate Counsel Assignments
Attachments: F_KU16F003_NSC.TXT_1.xlw; F_KU16F003_NSC.TXT_2.xlw; F_KU16F003_NSC.TXT_3.ppt

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CREATION DATE/TIME:31-MAR-2003 09:38:48.00

SUBJECT:: Updated Associate Counsel Assignments

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READ:UNKNOWN

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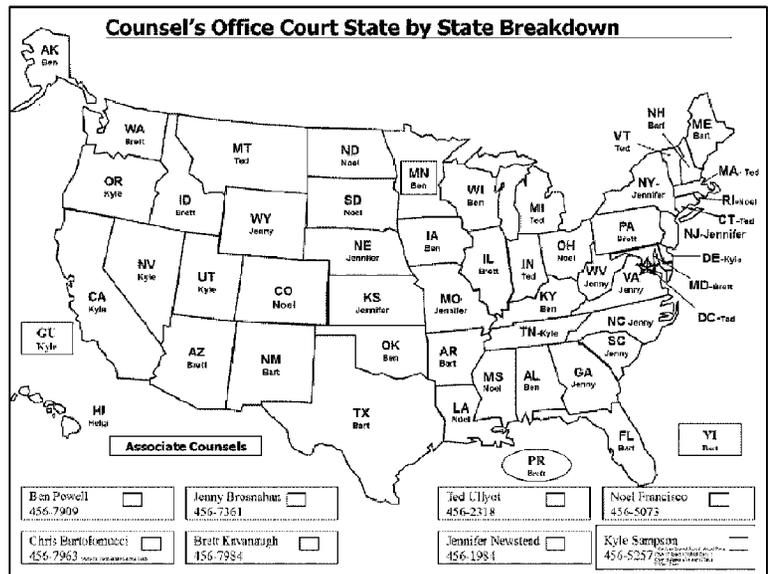
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Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
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PRA 6

Address 2	City, State	Zip	WH Counsel
PRA 6			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 3/31/2003 4:38:45 AM
Subject: Updated Associate Counsel Assignments
Attachments: F_CU16F003_NSC.TXT_1.xlw; F_CU16F003_NSC.TXT_2.xlw; F_CU16F003_NSC.TXT_3.ppt

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CREATION DATE/TIME:31-MAR-2003 09:38:45.00
SUBJECT:: Updated Associate Counsel Assignments
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TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
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Patrick

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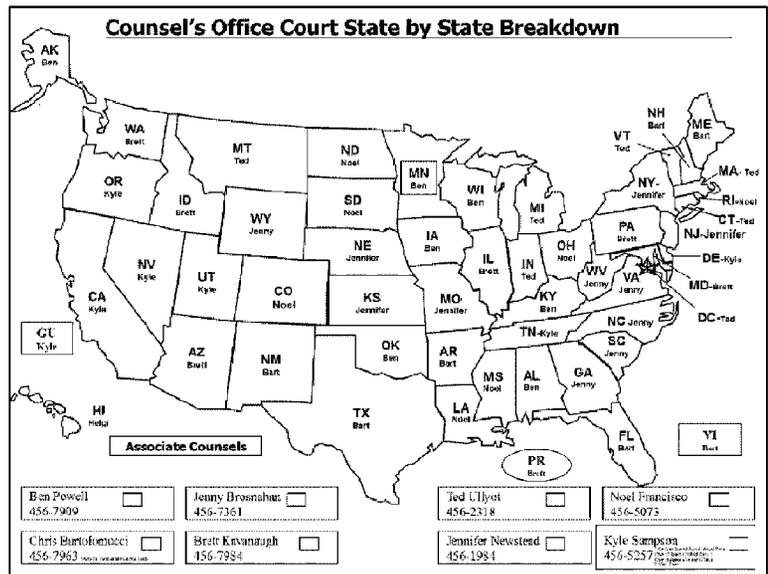
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PRA 6

Address 2	City, State	Zip	WH Counsel
<h1>PRA 6</h1>			Chris
			Ted
			Chris
			Noel
			Kyle
			Kyle
			Ben
			Ben
			Jennifer
			Jenny
			Kyle
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Chris			



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Sent: 3/31/2003 4:38:40 AM
Subject: Updated Associate Counsel Assignments
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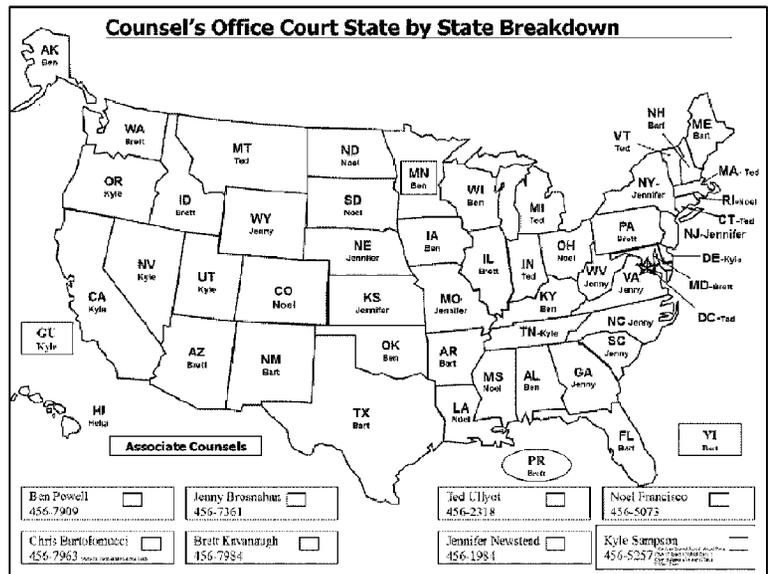
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			Kyle
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			Jenny
			Kyle
			Ted/Jennifer
			Jenny
			Jenny
			Ben
			Brett
			Jenny
			Brett
			Noel
			Brett
Chris			



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To: david.aufhauser@do.treas.gov@SMTP@Exchange [UNKNOWN]
<david.aufhauser@do.treas.gov@SMTP@Exchange>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>; Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>; John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN] <paul.harris@usdoj.gov@SMTP@Exchange>; Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN] <hatamj@ms.state.gov@SMTP@Exchange>
CC: marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN] <marlene.s.boysel@usdoj.gov@SMTP@Exchange>; Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>; Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>; elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN] <elizabeth.vannoy@do.treas.gov@SMTP@Exchange>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Carla B. Stone/OMB/EOP@EOP [OMB] <Carla B. Stone>
Sent: 3/31/2003 4:49:05 AM
Subject: : Compensation for Victims of Terrorism Meeting - Wed

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])

CREATION DATE/TIME: 31-MAR-2003 09:49:05.00

SUBJECT: : Compensation for Victims of Terrorism Meeting - Wed

TO: david.aufhauser@do.treas.gov@SMTP@Exchange (david.aufhauser@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

TO: Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ: UNKNOWN

TO: Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ: UNKNOWN

TO: paul.harris@usdoj.gov@SMTP@Exchange (paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

TO: Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: hatamj@ms.state.gov@SMTP@Exchange (hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

CC: marlene.s.boysel@usdoj.gov@SMTP@Exchange (marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

CC: Joan Hunerwadel (CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [NSC])

READ: UNKNOWN

CC: Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])

READ: UNKNOWN

CC: elizabeth.vannoy@do.treas.gov@SMTP@Exchange (elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

CC: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])

READ: UNKNOWN

CC: Carla B. Stone (CN=Carla B. Stone/OU=OMB/O=EOP@EOP [OMB])

READ: UNKNOWN

End Original ARMS Header

There will be a meeting this Wednesday, April 2nd in EEOB room 211 at 3:30pm.; ; Please let me know if you can attend.; If you are coming from outside of the complex and need to be cleared in, please email me your dob and ssn.; Thanks!

;
;

REV_00232531

From: Bumatay, Patrick J.
To: <Walker, Helgard C.>;<Addington, David S.>;<Bartolomucci, H. Christopher>;<Bellinger, John B.>;<Brilliant, Hana F.>;<Brosnahan, Jennifer R.>;<Bumatay, Patrick J.>;<Carroll, James W.>;<Everson, Nanette>;<Farrell, J. Elizabeth>;<Francisco, Noel J.>;<Ganter, Jonathan F.>;<Jucas, Tracy>;<Kavanaugh, Brett M.>;<McNally, Edward>;<Montiel, Charlotte L.>;<Nelson, Carolyn>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>;<Ullyot, Theodore W.>
Sent: 3/31/2003 9:38:43 AM
Subject: Updated Associate Counsel Assignments
Attachments: Agency Contacts - April 2003.xls; Counsel Assignments - Apr 2003.xls; State Assignments.ppt

Attached are updated Counsel Assignment sheets, State Assignments, and agency contact information.

The Counsel directory will be updated as soon as we have all the necessary contact information for Jenny.

If you have any questions, please let me know.

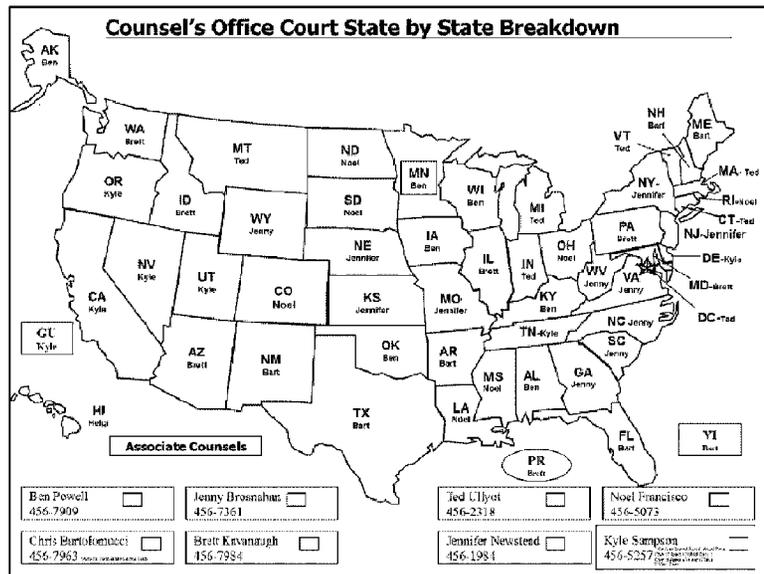
Thanks,
Patrick

Document Produced Natively

Agency	Head	Direct Dial	General Counsel	Executive Assistant	Phone Number	Fax	Email	Cell and Pager	Home	Address 1
Agriculture	Ann Veneman	202-720-3631	Nancy S. Bryson		202-720-3351		nancy.bryson@usda.gov			Jamie L. Whitten Building
Commerce	Donald Evans	202-482-8383	Ted Kassinger	Gwynn Green	202-482-4772	202-482-0042	tkassinger@doc.gov			
Defense	Donald Rumsfeld	703-892-7100 (Asst.Arlene)	William J. Haynes II	Lisa Hamar	703-895-3341	703-893-7278	hayneswj@osdgc.osd.mil			
Education	Roderick Paige	202-280-0058	Steven Winnick (DPTY) Brian Jones (nominated)	Carolyn Adams Sheryl Vanniere	202-205-3887 (while a designate) 202-401-6000 (once confirmed)	202-205-2689	steve.winnick@ed.gov			
Energy	Spencer Abraham	202-586-6210	Lee Otis	Katharine Dickerson	202-586-5281	202-586-1499	lee.otis@hq.doe.gov			Forrestal Building
EPA	Christie Todd Whitman	202-564-6953	Bob Fabricant (acting)	Tiye Houston	202-564-8040	202-564-1778	no email			Ariel Rios Building
FEMA	Mike Brown (undersecretary of DHS for Emergency Preparedness)	202-646-3900 or 646-4395	Jordan Fried (acting)		202-646-4167 (Direct Line) or 202-626-4105 (Fried's scheduler's #)	202-646-3930 202-646-4536	michael.d.brown@fema.gov			
DHS	Tom Ridge	282-8203	Joe Whitley		786-0137 temp					
HHS	Tommy Thompson	202-890-7000	Alex Azar	Pam Roller	202-690-7741	202-690-7998	alex.azar@hhs.gov			Humphrey Bldg.,
HUD	Mel Martinez	708-4093 x5647	Richard Hauser	Gwen Curry	202-708-2244	202-708-3389	richard_a_hauser@hud.gov			
Interior	Gail Norton	202-208-7351 (Asst: Pat Connelly)	William Myers	Mary Thomas	202-208-4423	202-208-5584	no email			
Justice	John Ashcroft	202-514-2001 202-514-4195	Adam Ciongoli (Persl Counsel) Ted Olson (Sol. Gen.)	Evelyn is Asst. (Andy-Schedule)	514-4995-Ciongoli 514-2201-Ted Olsen	202-353-5935 (Ciongoli)	adam.ciongoli@usdoj.gov			
Labor	Elaine Chao	202-693-6000	Howard Radzely	Janet Gillens	202-693-5260	202-693-5278	radzely-howarc@dol.gov			Frances Perkins Building
OMB	Mitch Daniels	202-395-9164 or 395-4840	Phil Perry	Carla Stone	202-395-5044	202-395-7289				
State	Colin Powell	202-647-5291 202-647-5733	Will Taft	Marianne Hata	202-647-9598	202-647-1037	taftwh@ms.state.gov			Harry S Truman Building
Transportation	Norman Mineta	202-366-1111	Kirk Van Tine	Veronica Garrison	202-366-4702	202-366-3388	kvantine@dot.ost.gov			
Fed Aviation	Jane Garvey									
Treasury	John Snow	202-822-1100	David Aufhauser	Elizabeth Vannoy (Betty)	202-622-0283	202-622-2882	david.aufhauser@do.treas.gov			
USTR	Bob Zoellick	202-395-6890	Peter Davidson	Erin Leonard PRA 6	202-395-3150 202-395-9486 (Assist. Direct Line)	202-395-3639	pdavidson@ustr.gov			Winder Building,
Veteran Affairs	Anthony Principi	202-273-4800	Tim McClain	Reesey Jeter	202-273-6686	202-273-6671	tim.mcclain@mail.va.gov			
Joint Chiefs of Staff	Gen. Richard Meyers	703-897-9121	Navy Capt. Jane Dalton - 697-1137	Mary Turner	703-614-8948	703-614-0171	jane.dalton@js.pentagon.mil			

PRA 6

Address 2	City, State	Zip	WH Counsel
1400 Independence Ave. SW	Washington, DC	20250	Chris
14th and Consitution Ave. NW	Washington, DC	20230	Ted
The Pentagon	Arlington, VA	20301	Chris
400 Maryland Ave. SW	Washington, DC	20202	Noel
1000 Independence Ave.	Washington, DC	20585	Kyle
1200 Pennsylvania Ave. NW	Washington, DC	20460	Kyle
500 C St. SW	Washington, DC	20472	Ben
	Washington, DC		Ben
200 Independence Ave. SW ,	Washington, DC	20201	Jennifer
451 7th St. SW, DC 20410	Washington, DC	20410	Jenny
1849 C St. NW	Washington, DC	20240-0001	Kyle
950 Pennsylvania Ave. NW	Washington, DC	20530	Ted/Jennifer
200 Constitution Ave. NW	Washington, DC	20210	Jenny
Eisenhower Excutive Office Building	Washington, DC	20503	Jenny
2201 C St. NW	Washington, DC	20520	Ben
400 Seventh St. SW	Washington, DC	20590	Brett
	Washington, DC		Jenny
1500 Pennsylvania Avenue	Washington, DC	20220	Brett
600 Seventeenth St. NW	Washington, DC	20508	Noel
810 Vermont Avenue	Washington, DC	20420	Brett
			Chris



From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 3/31/2003 5:50:22 AM
Subject: : Updated Counsel assignments
Attachments: F_R786F003_NSC.TXT_1.xlw

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CREATION DATE/TIME:31-MAR-2003 10:50:22.00
SUBJECT:: Updated Counsel assignments
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
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TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
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TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])
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TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
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TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached is a new updated Counsel assignments sheet.; Sorry for any confusion.

;

Patrick

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <F_R786F003_NSC.TXT_1>

Document Produced Natively

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 3/31/2003 5:50:13 AM
Subject: : Updated Counsel assignments
Attachments: P_9786F003_WHO.TXT_1.xlw

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CREATION DATE/TIME:31-MAR-2003 10:50:13.00
SUBJECT:: Updated Counsel assignments
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
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TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Attached is a new updated Counsel assignments sheet.; Sorry for any confusion.

;

Patrick

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_9786F003_WHO.TXT_1>

Document Produced Natively

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>
Sent: 3/31/2003 8:01:42 AM
Subject: : Re: vic of terrorism

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RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:31-MAR-2003 13:01:42.00
SUBJECT:: Re: vic of terrorism
TO:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
End Original ARMS Header

heard nothing yet

Holly T. Moore
03/31/2003 01:01:16 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: vic of terrorism

brett --
i was out on friday. anything happen on the vic of terrorism draft
legislation? anyone react to state's suggested changes? many thanks, htm

From: Kavanaugh, Brett M.
To: <Snee, Ashley>;<Mamo, Jeanie S.>;<Lisaius, Kenneth A.>
Sent: 3/31/2003 12:21:44 PM
Subject: Op-ed for submission to suitable California paper for publication this week

Turnabout Is Not Fair Play

By Vilma Martinez

[Vilma Martinez is a California lawyer and former President of the Mexican American Legal Defense and Educational Fund.]

As a member of Senator Barbara Boxer's committee for screening federal judicial candidates in California during the Clinton Administration, I was proud to recommend Judge Richard Paez for the Ninth Circuit Court of Appeals. President Clinton nominated Judge Paez, but his nomination languished for four years in the Senate, as he was subjected to a campaign of half-truths and cruel caricatures. At the time, California Superior Court Judge Carolyn Kuhl, characteristic of her sense of fairness and respect for an independent judiciary, stepped up to the plate: She wrote letters, made phone calls, and exhorted her fellow Republicans to confirm Judge Paez and other Clinton judicial nominees. Eventually, Judge Paez received an up or down vote and was confirmed.

In June 2001, President Bush nominated Judge Kuhl to the Ninth Circuit. After nearly two years of delay, she finally receives a hearing this week. But some of the groups that supported Judge Paez ironically have turned their fire on Judge Kuhl, apparently to exact payback against Senate Republicans. This turnabout is not fair play. It is the continuation of a vicious cycle that punishes worthy judicial candidates in a misguided effort to use the judiciary to further narrow political ends.

I generally identify myself as a Democrat, am a veteran of civil rights battles, and testified against Judge Robert Bork's nomination to the Supreme Court on the basis of Judge Bork's inadequate judicial temperament for service on the Court. Like others dedicated to the independence of the judiciary, I certainly do not want ideologues serving as judges on our federal courts. That is why I think Judge Kuhl would make a great addition to the Ninth Circuit.

Judge Kuhl is what I think of as an old-fashioned judge. She cares about due process for everyone. In her seven years on the California Superior Court, she has shown that she is careful to hear both sides. She does not try to influence the outcome of a case to favor one side or the other. She is serious about her oath to follow the law, whatever the result. Judge Kuhl takes as her guide the words of Justice Felix Frankfurter that the highest calling of a judge is to subordinate one's personal views to the law.

Judge Kuhl is in the mainstream of the Los Angeles legal community. She is the first woman to serve as the Supervising Judge of the Civil Department of the Los Angeles Superior Court, a court system that is larger than the entire federal trial court system nationwide. She served as the Supervising Judge of that court's very successful Complex Litigation Program in its experimental phase.

Judge Kuhl is actively supported by both the plaintiffs' and defense bars in Los Angeles. Over a dozen Justices of the California Court of Appeal and approximately 100 judges on the California Superior Court have signed letters in support of Judge Kuhl. Twenty-three women judges signed a letter of support, noting Judge Kuhl's role as a mentor to young woman lawyers and new women judges. Many of these supporters are active Democrats. They know Judge Kuhl and like me they know that she has been and would be a fair judge dedicated to neutrally following the law.

I call on fellow Democrats and our elected leaders to step up to the plate to support Judge Kuhl, just like she went to bat for Judge Paez and other Clinton nominees. It is shameful that her generosity and dedication to an

independent judiciary are being repaid by subjecting her to the same sort of calumny that Judge Paez suffered. Until the politicians decide to play fair with judicial candidates, our system of justice will continue to suffer.

From: CN=Diana L. Schacht/OU=OPD/O=EOP [OPD]
To: Ado A. Machida/OVP/EOP@EOP [OVP] <Ado A. Machida>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO/EOP@Exchange@EOP [WHO] <Kristen Silverberg>;Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>
CC: Julieanne H. Thomas/WHO/EOP@EOP [WHO] <Julieanne H. Thomas>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>
Sent: 3/31/2003 8:46:22 AM
Subject: : class action
Attachments: P_URJ6F003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:31-MAR-2003 13:46:22.00
SUBJECT:: class action
TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
CC:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Here are my quick thoughts for some talking points for Karl to the class action coalition this pm. Comments/additions?

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_URJ6F003_WHO.TXT_1>

TALKING POINTS
CLASS ACTION FAIRNESS ACT COALITION
March 31, 2003

- Frivolous lawsuits are a drag on the economy and hurt consumers, union members, small businesses and shareholders.
- The President supports legislation to eliminate frivolous lawsuits while protecting the rights of the truly injured.
- Both the Class Action Fairness Act and medical liability legislation promote this goal. We support both strongly.
- We are optimistic that the Class Action bill will be enacted this year – particularly with the knowledge that you may be close to breakthroughs with democrat Senators before Thursday’s markup.
- The Administration is prepared to support your efforts in whatever way most likely to lead to success – so far we have avoided politicizing the bill in order to maintain bipartisan support.
- We understand that the legislation has been carefully drafted to get to 60 votes, and that it would be a mistake to try to use it as a vehicle for broader reform. This is a one step at a time strategy for success.
- I’d like to note the fine work the Coalition has done on this bill under the direction of the Chamber of Commerce.
- We will continue to work with you and the Congress to move this important legislation to the President’s desk for signature.

From: Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>
To: Brown, Jamie E (OLA) <Jamie.E.Brown@usdoj.gov>; Dinh, Viet <Viet.Dinh@usdoj.gov>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Benczkowski, Brian A <Brian.A.Benczkowski@usdoj.gov>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>
Sent: 3/31/2003 4:26:19 PM
Subject: : FW: Hatch Letter.doc
Attachments: P_GE67F003_WHO.TXT_1.html; P_GE67F003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:31-MAR-2003 21:26:19.00
SUBJECT:: FW: Hatch Letter.doc
TO:"Brown, Jamie E (OLA)" <Jamie.E.Brown@usdoj.gov> ("Brown, Jamie E (OLA)" <Jamie.E.Brown@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> ("Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI -- Here is Edwards response on Terry Boyle. Makan

Makan Delrahim
Staff Director / Chief Counsel
Committee on the Judiciary
United States Senate
Washington DC 20510
Fax: 202-228-1115
Phone: 202-224-0418

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

REV_00232586

From: Jones, Stephanie (Edwards)
Sent: Monday, March 31, 2003 6:52 PM
To: Delrahim, Makan (Judiciary)
Subject: Hatch Letter.doc

Makan -

Attached is Senator Edwards' letter to Chairman Hatch regarding the Boyle nomination. The original was hand delivered to the Judiciary Committee office in 224 Dirksen (because no one answered, it was left under the door).

Please let me know if you have any questions.

<<Hatch Letter.doc>>
- att1.htm - Hatch Letter.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_GE67F003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_GE67F003_WHO.TXT_2>

FYI -- Here is Edwards response on Terry Boyle. Makan

Makan Delrahim

Staff Director / Chief Counsel

Committee on the Judiciary

United States Senate

Washington DC 20510

Fax: 202-228-1115

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

From: Jones, Stephanie (Edwards)

Sent: Monday, March 31, 2003 6:52 PM

To: Delrahim, Makan (Judiciary)

Subject: Hatch Letter.doc

Makan -

Attached is Senator Edwards' letter to Chairman Hatch regarding the Boyle nomination. The original was hand delivered to the Judiciary Committee office in 224 Dirksen (because no one answered, it was left under the door).

Please let me know if you have any questions.

<<Hatch Letter.doc>>

REV_00232588

March 31, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am responding to your letter of March 27, 2003 concerning the nomination of Judge Terrence Boyle to be United States Circuit Judge for the Fourth Circuit. I write to notify you that, as a Senator from North Carolina and as a member of your committee, I object to further consideration of this nominee from my state.

My objection to the nomination is based on Judge Boyle's judicial record. As a North Carolina Senator, I am very familiar with this record. Judge Boyle's decisions have been reversed or vacated more than one hundred times. Two of these rulings were by the United States Supreme Court, one by a unanimous vote. Judge Boyle's record on civil rights is particularly troubling. In numerous cases, he has inaccurately interpreted the law in a way that undercuts basic civil rights protections.

I regret that the White House proceeded with this nomination even though in December I told Judge Gonzales that I opposed Judge Boyle and asked that he not be renominated.

Although the Boyle nomination is not acceptable, I am happy to report on some very encouraging developments in our efforts to reach a consensus North Carolina appointment to the Fourth Circuit. After consultations with all the interested parties, the White House has recommended a consensus nominee who is also a Republican, Allyson Duncan. In a letter dated December 19, 2002, Judge Gonzales informed me that the President had approved Judge Duncan as his choice for the Fourth Circuit, pending the completion of her background check. Both Senator Dole and I support this White House recommendation. I look forward to working with you and the Committee to ensure quick consideration of Judge Duncan's nomination as soon as it is formally submitted to the Senate.

I am very hopeful that this development will again allow North Carolina to be represented on the Fourth Circuit. I am sure you recall the unfortunate history of our state's efforts to achieve this goal. Between 1995 and 2000, while you were chairman of the Committee, the previous administration nominated four North Carolinians to the Fourth Circuit. Two of the nominees would have been the first African-Americans to serve on that Court. None of the nominees received a hearing during the six years of your chairmanship.

The Honorable Orrin G. Hatch
March 31, 2003
Page 2

I understand that you did not give a hearing to these nominees from my state because of your respect for the committee precedent concerning the blue slip. I do not see why you would make a special exception from this precedent for Judge Boyle. As a member of your committee, as a Senator from North Carolina, as the Senator most familiar with Judge Boyle's record, and as your colleague, I ask that you not proceed with this nomination, and instead work with me to confirm consensus nominees.

Yours Sincerely,

John Edwards

From: Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>
To: Brown, Jamie E (OLA) <Jamie.E.Brown@usdoj.gov>; Dinh, Viet <Viet.Dinh@usdoj.gov>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Benczkowski, Brian A <Brian.A.Benczkowski@usdoj.gov>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>
Sent: 3/31/2003 4:26:10 PM
Subject: : FW: Hatch Letter.doc
Attachments: P_BE67F003_WHO.TXT_1.html; P_BE67F003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:31-MAR-2003 21:26:10.00
SUBJECT:: FW: Hatch Letter.doc
TO:"Brown, Jamie E (OLA)" <Jamie.E.Brown@usdoj.gov> ("Brown, Jamie E (OLA)" <Jamie.E.Brown@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> ("Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI -- Here is Edwards response on Terry Boyle. Makan

Makan Delrahim
Staff Director / Chief Counsel
Committee on the Judiciary
United States Senate
Washington DC 20510
Fax: 202-228-1115
Phone: 202-224-0418

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

REV_00232592

From: Jones, Stephanie (Edwards)
Sent: Monday, March 31, 2003 6:52 PM
To: Delrahim, Makan (Judiciary)
Subject: Hatch Letter.doc

Makan -

Attached is Senator Edwards' letter to Chairman Hatch regarding the Boyle nomination. The original was hand delivered to the Judiciary Committee office in 224 Dirksen (because no one answered, it was left under the door).

Please let me know if you have any questions.

<<Hatch Letter.doc>>
- att1.htm - Hatch Letter.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BE67F003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BE67F003_WHO.TXT_2>

FYI -- Here is Edwards response on Terry Boyle. Makan

Makan Delrahim

Staff Director / Chief Counsel

Committee on the Judiciary

United States Senate

Washington DC 20510

Fax: 202-228-1115

Phone: 202-224-0418

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

From: Jones, Stephanie (Edwards)

Sent: Monday, March 31, 2003 6:52 PM

To: Delrahim, Makan (Judiciary)

Subject: Hatch Letter.doc

Makan -

Attached is Senator Edwards' letter to Chairman Hatch regarding the Boyle nomination. The original was hand delivered to the Judiciary Committee office in 224 Dirksen (because no one answered, it was left under the door).

Please let me know if you have any questions.

<<Hatch Letter.doc>>

REV_00232594

March 31, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am responding to your letter of March 27, 2003 concerning the nomination of Judge Terrence Boyle to be United States Circuit Judge for the Fourth Circuit. I write to notify you that, as a Senator from North Carolina and as a member of your committee, I object to further consideration of this nominee from my state.

My objection to the nomination is based on Judge Boyle's judicial record. As a North Carolina Senator, I am very familiar with this record. Judge Boyle's decisions have been reversed or vacated more than one hundred times. Two of these rulings were by the United States Supreme Court, one by a unanimous vote. Judge Boyle's record on civil rights is particularly troubling. In numerous cases, he has inaccurately interpreted the law in a way that undercuts basic civil rights protections.

I regret that the White House proceeded with this nomination even though in December I told Judge Gonzales that I opposed Judge Boyle and asked that he not be renominated.

Although the Boyle nomination is not acceptable, I am happy to report on some very encouraging developments in our efforts to reach a consensus North Carolina appointment to the Fourth Circuit. After consultations with all the interested parties, the White House has recommended a consensus nominee who is also a Republican, Allyson Duncan. In a letter dated December 19, 2002, Judge Gonzales informed me that the President had approved Judge Duncan as his choice for the Fourth Circuit, pending the completion of her background check. Both Senator Dole and I support this White House recommendation. I look forward to working with you and the Committee to ensure quick consideration of Judge Duncan's nomination as soon as it is formally submitted to the Senate.

I am very hopeful that this development will again allow North Carolina to be represented on the Fourth Circuit. I am sure you recall the unfortunate history of our state's efforts to achieve this goal. Between 1995 and 2000, while you were chairman of the Committee, the previous administration nominated four North Carolinians to the Fourth Circuit. Two of the nominees would have been the first African-Americans to serve on that Court. None of the nominees received a hearing during the six years of your chairmanship.

The Honorable Orrin G. Hatch
March 31, 2003
Page 2

I understand that you did not give a hearing to these nominees from my state because of your respect for the committee precedent concerning the blue slip. I do not see why you would make a special exception from this precedent for Judge Boyle. As a member of your committee, as a Senator from North Carolina, as the Senator most familiar with Judge Boyle's record, and as your colleague, I ask that you not proceed with this nomination, and instead work with me to confirm consensus nominees.

Yours Sincerely,

John Edwards

From: Kyle_Sampson@who.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/31/2003 2:23:43 PM
Subject: : Fw: Confirmations today and judicial nominations on the floor this week.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Kyle_Sampson@who.eop.gov (Kyle_Sampson@who.eop.gov [UNKNOWN])
CREATION DATE/TIME: 31-MAR-2003 19:23:43.00
SUBJECT: : Fw: Confirmations today and judicial nominations on the floor this week.
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

FYI

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

From: <Nancy.Scottfinan@usdoj.gov>
To: <Jamie.E.Brown@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<Adam.Charnes@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<Kristi.L.Remington@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<Guy.Lewis@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<Theresa.Bertucci@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<Debbie.Hardos@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
<David.Higbee@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested),
Wendy J. Grubbs/WHO/EOP@EOP,
Kyle Sampson/WHO/EOP@EOP
Cc:
Date: 03/31/2003 06:48:53 PM
Subject: Confirmations today and judicial nominations on the floor this week.

Theresa L. Springmann, U.S. District Judge for the Northern District of Indiana,
by roll call vote of 93-0
McGregor William Scott, U.S. Attorney for the Eastern District of California

They begin the nomination of Timothy Tymkovich, U.S. Circuit Judge for the Tenth Circuit, at 10 am on Tuesday.
Cloture filed again on Estrada; the cloture motion will be ready for vote on Wednesday.

REV_00232610

From: Kavanaugh, Brett M.
To: <Leitch, David G.>
Sent: 3/31/2003 6:56:11 PM
Subject: RE: JSC this week

yes

From: David G. Leitch/WHO/EOP@Exchange on 03/31/2003 04:30:21 PM

Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: JSC this week

Brett -- Are the DOJ folks already in on the CA3 deal?

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

From: Bumatay, Patrick J.

Sent: Monday, March 31, 2003 4:29 PM

To: Kavanaugh, Brett M.; Leitch, David G.

Subject: JSC this week

Looks like all we have are Kyle's US Tax Court and Jen's Eastern District of NY.

shall we cancel?

From: Dahl, Alex (Judiciary) <Alex_Dahl@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Benczkowski, Brian A <Brian.A.Benczkowski@usdoj.gov>
Sent: 3/31/2003 4:08:19 PM
Subject: : FW: Boyle Letter
Attachments: P_2967F003_WHO.TXT_1.html; P_2967F003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ("Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:31-MAR-2003 21:08:19.00
SUBJECT:: FW: Boyle Letter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> ("Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

FYI

Deputy Staff Director & Senior Counsel

Committee on the Judiciary

United States Senate

224 Dirksen Building

Washington, DC 20510

phone: (202) 224-5225

fax: (202) 228-1115

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

From: Jones, Stephanie (Edwards)
Sent: Monday, March 31, 2003 8:45 PM
To: Dahl, Alex (Judiciary)
Subject: Boyle Letter

REV_00232617

Alex - attached is a copy of Senator Edwards' letter to Chairman Hatch regarding the Boyle nomination. Please let me know if you have any questions.

- att1.htm - HatchLetter.doc

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_2967F003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_2967F003_WHO.TXT_2>

FYI

Deputy Staff Director & Senior Counsel
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510
phone: (202) 224-5225
fax: (202) 228-1115

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

From: Jones, Stephanie (Edwards)
 Sent: Monday, March 31, 2003 8:45 PM
To: Dahl, Alex (Judiciary)
Subject: Boyle Letter

Alex - attached is a copy of Senator Edwards' letter to Chairman Hatch regarding the Boyle nomination. Please let me know if you have any questions.

REV_00232619

March 31, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am responding to your letter of March 27, 2003 concerning the nomination of Judge Terrence Boyle to be United States Circuit Judge for the Fourth Circuit. I write to notify you that, as a Senator from North Carolina and as a member of your committee, I object to further consideration of this nominee from my state.

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The Honorable Orrin G. Hatch
March 31, 2003
Page 2

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Yours Sincerely,

John Edwards

From: Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>
To: Brown, Jamie E (OLA) <Jamie.E.Brown@usdoj.gov>; Dinh, Viet <Viet.Dinh@usdoj.gov>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Benczkowski, Brian A <Brian.A.Benczkowski@usdoj.gov>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>
Sent: 3/31/2003 4:26:12 PM
Subject: : FW: Hatch Letter.doc
Attachments: P_CE67F003_WHO.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:31-MAR-2003 21:26:12.00
SUBJECT:: FW: Hatch Letter.doc
TO:"Brown, Jamie E (OLA)" <Jamie.E.Brown@usdoj.gov> ("Brown, Jamie E (OLA)" <Jamie.E.Brown@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> ("Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI -- Here is Edwards response on Terry Boyle.ÿÿ Makanÿ

Makan Delrahim

Staff Director / Chief Counsel

Committee on theÿJudiciary

United States Senate

Washington DC 20510

Fax: 202-228-1115

Phone: 202-224-0418

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REV_00232625

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

From: Jones, Stephanie (Edwards)
Sent: Monday, March 31, 2003 6:52 PM
To: Delrahim, Makan (Judiciary)
Subject: Hatch Letter.doc

Makan -

Attached is Senator Edwards' letter to Chairman Hatch regarding the Boyle nomination. The original was hand delivered to the Judiciary Committee office in 224 Dirksen (because no one answered, it was left under the door).

Please let me know if you have any questions.

<<Hatch Letter.doc>>

- Hatch Letter.doc

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_CE67F003_WHO.TXT_1>

March 31, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am responding to your letter of March 27, 2003 concerning the nomination of Judge Terrence Boyle to be United States Circuit Judge for the Fourth Circuit. I write to notify you that, as a Senator from North Carolina and as a member of your committee, I object to further consideration of this nominee from my state.

My objection to the nomination is based on Judge Boyle's judicial record. As a North Carolina Senator, I am very familiar with this record. Judge Boyle's decisions have been reversed or vacated more than one hundred times. Two of these rulings were by the United States Supreme Court, one by a unanimous vote. Judge Boyle's record on civil rights is particularly troubling. In numerous cases, he has inaccurately interpreted the law in a way that undercuts basic civil rights protections.

I regret that the White House proceeded with this nomination even though in December I told Judge Gonzales that I opposed Judge Boyle and asked that he not be renominated.

Although the Boyle nomination is not acceptable, I am happy to report on some very encouraging developments in our efforts to reach a consensus North Carolina appointment to the Fourth Circuit. After consultations with all the interested parties, the White House has recommended a consensus nominee who is also a Republican, Allyson Duncan. In a letter dated December 19, 2002, Judge Gonzales informed me that the President had approved Judge Duncan as his choice for the Fourth Circuit, pending the completion of her background check. Both Senator Dole and I support this White House recommendation. I look forward to working with you and the Committee to ensure quick consideration of Judge Duncan's nomination as soon as it is formally submitted to the Senate.

I am very hopeful that this development will again allow North Carolina to be represented on the Fourth Circuit. I am sure you recall the unfortunate history of our state's efforts to achieve this goal. Between 1995 and 2000, while you were chairman of the Committee, the previous administration nominated four North Carolinians to the Fourth Circuit. Two of the nominees would have been the first African-Americans to serve on that Court. None of the nominees received a hearing during the six years of your chairmanship.

The Honorable Orrin G. Hatch
March 31, 2003
Page 2

I understand that you did not give a hearing to these nominees from my state because of your respect for the committee precedent concerning the blue slip. I do not see why you would make a special exception from this precedent for Judge Boyle. As a member of your committee, as a Senator from North Carolina, as the Senator most familiar with Judge Boyle's record, and as your colleague, I ask that you not proceed with this nomination, and instead work with me to confirm consensus nominees.

Yours Sincerely,

John Edwards

From: Dahl, Alex (Judiciary) <Alex_Dahl@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 3/31/2003 4:26:10 PM
Subject: : RE: Boyle Letter

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ("Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:31-MAR-2003 21:26:10.00
SUBJECT:: RE: Boyle Letter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

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Yours Sincerely,

John Edwards

;

From: CN=Holly T. Moore/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/1/2003 4:16:39 AM
Subject: : Re: vic of terrorism

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP [NSC])
CREATION DATE/TIME: 1-APR-2003 09:16:39.00
SUBJECT:: Re: vic of terrorism
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

thanks -- do you mean another meeting like last week's? who should i
contact about getting invited? thanks much, h

Brett M. Kavanaugh
03/31/2003 10:24:53 PM
Record Type: Record

To: Holly T. Moore/NSC/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: vic of terrorism

There is mtg wed at 330.

.
----- Original Message -----
From:Holly T. Moore/NSC/EOP
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 03/31/2003 01:01:16 PM
Subject: vic of terrorism

brett --
i was out on friday. anything happen on the vic of terrorism draft
legislation? anyone react to state's suggested changes? many thanks, htm

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/1/2003 4:37:39 AM
Subject: : Re: President's Commission on US Postal Service: records

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
CREATION DATE/TIME: 1-APR-2003 09:37:39.00
SUBJECT:: Re: President's Commission on US Postal Service: records
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

It's based on the nature, function, and composition of the Commission, but is ultimately a judgment call. If the Commission is created by the President (i.e., by EO), appointed by the President, and reports solely to the President, then, in all likelihood, it's presidential, as opposed to ones created by statute, appointed by both the WH and Congress and reporting to both branches. The fact that an agency funds and houses a commission does not mean that it cannot be Presidential, as the President can direct an agency to support him in that way. However, because there is ambiguity in many instances, we have concluded that some commissions can reasonably be determined to be either presidential or federal/agency, which is why we ultimately leave it up to you to decide, based on the 44 USC 2203(a) (President is responsible for his own records management).

Thus, this one would seem to be Presidential; but, by submitting its report to the President through the Secretary of the Treasury (sec. 5), there is some ambiguity, so that it would not be unreasonable for you to decide that it is federal, if you don't want the records to be governed by the PRA and to go to the Library.

I would be happy to talk about it in more detail on the phone.

>>> <Brett_M._Kavanaugh@who.eop.gov> 3/31/03 8:27:14 PM >>>
I know we have discussed, but is there any rhyme or reason to how this has been done in past? Any consistent principles? Or is it just ad hoc?

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 03/31/2003 11:38:33 AM
pic29334.pcx)

Record Type: Record

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

cc:

Subject: Re: President's Commission on US Postal Service: records

REV_00232660

As per attached, I have been asking you the same question. Our assumption, based on the EO and its makeup, is that this Commission is Presidential and creates PRA records. But our longstanding position is that it is you (i.e., the President) that makes the final call.

Based on your decision, we can give the Commission the proper records management advice and guidance and ensure proper care and disposition of its records.

>>> <Brett_M._Kavanaugh@who.eop.gov> 3/31/03 11:20:01 AM >>>
thoughts?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
03/31/2003
11:19 AM -----

(Embedded
image moved Roger.Kodat@do.treas.gov
to file: 03/31/2003 11:19:06 AM
pic19992.pcx)

Record Type: Record

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

cc: Randall.Lewis@do.treas.gov

Subject: President's Commission on US Postal Service: records

Brett,

Further to our telecon this morning, kindly advise whether records created by the newly established President's Commission on the US Postal Service, established by Executive Order 13278, are federal or Presidential records. Pls let me know if you need any more information.

Thanks, Roger

*

Date: Mon, 10 Mar 2003 13:10:18 -0500
From: "GaryM Stern" <garym.stern@nara.gov>
Subject: Re: President's Commission on the United States Postal Service
To: "GaryM Stern" <garym.stern@nara.gov>, "Brett Kavanaugh"
<Brett_M._Kavanaugh@who.eop.gov>
MIME-version: 1.0
Content-type: text/plain; charset=US-ASCII
Content-disposition: inline
Content-transfer-encoding: 7BIT

Brett, I never heard back from you on this question concerning the record status of this commission. Is there any reason not to assume it is creating presidential records?

REV_00232661

>>> GaryM Stern 1/29/03 3:41:32 PM >>>

Brett, we have been made aware of the President's Commission on the United States Postal Service, established under EO 13278 on December 11, 2002. Although it is administratively associated with the Department of Treasury, the Commission is comprised of members appointed by the President, it reports solely to the President, and is slated to be finished by August 30, 2003.

Should we assume that it is creating Presidential records?

Given the very short duration of this Commission, it is important that NARA coordinate with it on records management as soon as possible. Can you please let us know your views on its record status as soon as you can.

Thanks.

Here is the EO:

<http://www.whitehouse.gov/news/releases/2002/12/print/20021211.html>

*

From: CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD]
To: Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN] <george.wolfe@do.treas.gov@SMTP@Exchange>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN] <koffskyp@osdgc.osd.mil@SMTP@Exchange>;paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN] <paul.harris@usdoj.gov@SMTP@Exchange>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN] <hatamj@ms.state.gov@SMTP@Exchange>
CC: marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN] <marlene.s.boysel@usdoj.gov@SMTP@Exchange>;Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN] <elizabeth.vannoy@do.treas.gov@SMTP@Exchange>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;Carla B. Stone/OMB/EOP@EOP [OMB] <Carla B. Stone>
Sent: 4/1/2003 10:53:25 AM
Subject: : FW: Compensation for Victims of Terrorism Meeting - Wed

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])

CREATION DATE/TIME: 1-APR-2003 15:53:25.00

SUBJECT:: FW: Compensation for Victims of Terrorism Meeting - Wed

TO:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:george.wolfe@do.treas.gov@SMTP@Exchange (george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:koffskyp@osdgc.osd.mil@SMTP@Exchange (koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:paul.harris@usdoj.gov@SMTP@Exchange (paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:hatamj@ms.state.gov@SMTP@Exchange (hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:marlene.s.boysel@usdoj.gov@SMTP@Exchange (marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Joan Hunerwadel (CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

CC:Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

CC:elizabeth.vannoy@do.treas.gov@SMTP@Exchange (elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

CC:Carla B. Stone (CN=Carla B. Stone/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

End Original ARMS Header

REV_00232670

This meeting has been rescheduled for THURS, April 4 at 10:30 in Room 211.; Sorry for any inconvenience and thanks very much.

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

From: Vestewig, Lauren J.

Sent: Monday, March 31, 2003 9:49 AM

To: 'hatamj@ms.state.gov'; Bellinger, John B.; Kavanaugh, Brett M.; Silverberg, Kristen; Perry, Philip J.; Schacht, Diana L.; 'paul.harris@usdoj.gov'; 'david.aufhauser@do.treas.gov'

Cc: Stone, Carla B.; Winland, Emily; Lefkowitz, Jay P.; Hunerwadel, Joan; 'elizabeth.vannoy@do.treas.gov'; 'marlene.s.boysel@usdoj.gov'

Subject: Compensation for Victims of Terrorism Meeting - Wed

There will be a meeting this Wednesday, April 2nd in EEOB room 211 at 3:30pm.; ;Please let me know if you can attend.; If you are coming from outside of the complex and need to be cleared in, please email me your dob and ssn.; Thanks!

;
;

From: CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD]
To: Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN] <george.wolfe@do.treas.gov@SMTP@Exchange>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN] <koffskyp@osdgc.osd.mil@SMTP@Exchange>;paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN] <paul.harris@usdoj.gov@SMTP@Exchange>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN] <hatamj@ms.state.gov@SMTP@Exchange>
CC: marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN] <marlene.s.boysel@usdoj.gov@SMTP@Exchange>;Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN] <elizabeth.vannoy@do.treas.gov@SMTP@Exchange>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;Carla B. Stone/OMB/EOP@EOP [OMB] <Carla B. Stone>
Sent: 4/1/2003 11:08:15 AM
Subject: : FW: Compensation for Victims of Terrorism Meeting - Wed

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])

CREATION DATE/TIME: 1-APR-2003 16:08:15.00

SUBJECT:: FW: Compensation for Victims of Terrorism Meeting - Wed

TO:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:george.wolfe@do.treas.gov@SMTP@Exchange (george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:koffskyp@osdgc.osd.mil@SMTP@Exchange (koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:paul.harris@usdoj.gov@SMTP@Exchange (paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:hatamj@ms.state.gov@SMTP@Exchange (hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:marlene.s.boysel@usdoj.gov@SMTP@Exchange (marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Joan Hunerwadel (CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

CC:Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

CC:elizabeth.vannoy@do.treas.gov@SMTP@Exchange (elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

CC:Carla B. Stone (CN=Carla B. Stone/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

End Original ARMS Header

REV_00232672

Sorry--I meant Thurs, April 3.; Thanks.

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

From: Vestewig, Lauren J.

Sent: Tuesday, April 01, 2003 3:54 PM

To: 'hatamj@ms.state.gov'; Bellinger, John B.; Kavanaugh, Brett M.;
Silverberg, Kristen; Perry, Philip J.; Schacht, Diana L.;
'paul.harris@usdoj.gov'; 'george.wolfe@do.treas.gov';
'koffskyp@osdgc.osd.mil'; Moore, Holly T.

Cc: Stone, Carla B.; Winland, Emily; Lefkowitz, Jay P.; Hunerwadel, Joan;
'elizabeth.vannoy@do.treas.gov'; 'marlene.s.boysel@usdoj.gov'

Subject: FW: Compensation for Victims of Terrorism Meeting - Wed

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

From: Vestewig, Lauren J.

Sent: Monday, March 31, 2003 9:49 AM

To: 'hatamj@ms.state.gov'; Bellinger, John B.; Kavanaugh, Brett M.;
Silverberg, Kristen; Perry, Philip J.; Schacht, Diana L.;
'paul.harris@usdoj.gov'; 'david.aufhauser@do.treas.gov'

Cc: Stone, Carla B.; Winland, Emily; Lefkowitz, Jay P.; Hunerwadel, Joan;
'elizabeth.vannoy@do.treas.gov'; 'marlene.s.boysel@usdoj.gov'

Subject: Compensation for Victims of Terrorism Meeting - Wed

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3:30pm.; ;Please let me know if you can attend.; If you are coming from
outside of the complex and need to be cleared in, please email me your dob
and ssn.; Thanks!

;
;

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Lauren J. Vestewig/OPD/EOP@Exchange@EOP [OPD] <Lauren J. Vestewig>; Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>; Meredith A. Terpeluk/WHO/EOP@EOP [WHO] <Meredith A. Terpeluk>; Katherine M. Walters/WHO/EOP@EOP [WHO] <Katherine M. Walters>; Catharine A. Ryun/WHO/EOP@EOP [WHO] <Catharine A. Ryun>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Colby J. Cooper/NSC/EOP@EOP [NSC] <Colby J. Cooper>
BCC: Matthew E. Smith (Matthew E. Smith/WHO/EOP [WHO])
Sent: 4/1/2003 11:17:33 AM
Subject: : Speaking Request

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-APR-2003 16:17:33.00
SUBJECT:: Speaking Request
TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Meredith A. Terpeluk (CN=Meredith A. Terpeluk/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Catharine A. Ryun (CN=Catharine A. Ryun/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Colby J. Cooper (CN=Colby J. Cooper/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
BCC:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The folks at Christian Embassy phoned to say they had a group of folks in this week. We are putting together a briefing for them on Thursday, April 3, 2003 from 10:30) 12:00 p.m. Christian Embassy is a non-political, multi-denominational ministry established in 1975 by Washington officials, concerned business leaders, and Dr. Bill Bright, founder and president of Campus Crusade for Christ.

Date: Thursday, April 3, 2003
Time: 10:30 a.m.) 12:00 p.m.
Location: EEOB Room 450

Invited Briefers:
Elliott Abrams
Richard Falkenrath
Brett M. Kavanaugh
Brian Reardon
Jim Towey
Jay Lefkowitz
Ken Mehlman

Thanks for the consideration.

Matt
X6-7702

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/1/2003 8:14:20 AM
Subject: : Affirmative Action arguments

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 1-APR-2003 13:14:20.00

SUBJECT:: Affirmative Action arguments

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

REV_00232680

READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
-----Original Message-----
From: Snee, Ashley
Sent: Tuesday, April 01, 2003 1:13 PM
To: Bumatay, Patrick J.
Cc: Leitch, David G.; McClellan, Scott
Subject: RE: transcripts

arguments on channel 18 right now

-----Original Message-----
From: Bumatay, Patrick J.
Sent: Tuesday, April 01, 2003 1:10 PM
To: Snee, Ashley
Subject: transcripts

Ashley,
;
;;; Noel says that chances are slim that transcripts will be ready by 2
pm.; We should have them by tomorrow though.
;
Patrick

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/1/2003 8:14:31 AM
Subject: : Affirmative Action arguments

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 1-APR-2003 13:14:31.00

SUBJECT:: Affirmative Action arguments

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

REV_00232682

READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
-----Original Message-----
From: Snee, Ashley
Sent: Tuesday, April 01, 2003 1:13 PM
To: Bumatay, Patrick J.
Cc: Leitch, David G.; McClellan, Scott
Subject: RE: transcripts

arguments on channel 18 right now

-----Original Message-----
From: Bumatay, Patrick J.
Sent: Tuesday, April 01, 2003 1:10 PM
To: Snee, Ashley
Subject: transcripts

Ashley,
;
;;; Noel says that chances are slim that transcripts will be ready by 2
pm.; We should have them by tomorrow though.
;
Patrick

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/1/2003 8:14:10 AM
Subject: : Affirmative Action arguments

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 1-APR-2003 13:14:10.00

SUBJECT:: Affirmative Action arguments

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

REV_00232684

READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
-----Original Message-----
From: Snee, Ashley
Sent: Tuesday, April 01, 2003 1:13 PM
To: Bumatay, Patrick J.
Cc: Leitch, David G.; McClellan, Scott
Subject: RE: transcripts

arguments on channel 18 right now

-----Original Message-----
From: Bumatay, Patrick J.
Sent: Tuesday, April 01, 2003 1:10 PM
To: Snee, Ashley
Subject: transcripts

Ashley,
;
;;; Noel says that chances are slim that transcripts will be ready by 2
pm.; We should have them by tomorrow though.
;
Patrick

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/1/2003 8:14:17 AM
Subject: : Affirmative Action arguments

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 1-APR-2003 13:14:17.00

SUBJECT:: Affirmative Action arguments

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

REV_00232686

READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
-----Original Message-----
From: Snee, Ashley
Sent: Tuesday, April 01, 2003 1:13 PM
To: Bumatay, Patrick J.
Cc: Leitch, David G.; McClellan, Scott
Subject: RE: transcripts

arguments on channel 18 right now

-----Original Message-----
From: Bumatay, Patrick J.
Sent: Tuesday, April 01, 2003 1:10 PM
To: Snee, Ashley
Subject: transcripts

Ashley,
;
;;; Noel says that chances are slim that transcripts will be ready by 2
pm.; We should have them by tomorrow though.
;
Patrick

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/1/2003 8:14:33 AM
Subject: : Affirmative Action arguments

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 1-APR-2003 13:14:33.00

SUBJECT:: Affirmative Action arguments

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

REV_00232688

READ:UNKNOWN
TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
-----Original Message-----
From: Snee, Ashley
Sent: Tuesday, April 01, 2003 1:13 PM
To: Bumatay, Patrick J.
Cc: Leitch, David G.; McClellan, Scott
Subject: RE: transcripts

arguments on channel 18 right now

-----Original Message-----
From: Bumatay, Patrick J.
Sent: Tuesday, April 01, 2003 1:10 PM
To: Snee, Ashley
Subject: transcripts

Ashley,
;
;;; Noel says that chances are slim that transcripts will be ready by 2
pm.; We should have them by tomorrow though.
;
Patrick

From: Kate Walters <kate@georgewbush.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/1/2003 8:35:03 AM
Subject: : FW: May 22 regional fundraiser for ken in Columbus
Attachments: P_RPZ7F003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kate Walters <kate@georgewbush.com> (Kate Walters <kate@georgewbush.com> [UNKNOWN])
CREATION DATE/TIME: 1-APR-2003 13:35:03.00
SUBJECT:: FW: May 22 regional fundraiser for ken in Columbus
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Re: May 22 regional fundraiser in ColumbusBrett- Would you be comfortable with Ken attending this event?

-----Original Message-----
From: Charles Spies - Legal [mailto:CSpies@rnchq.org]
Sent: Tuesday, April 01, 2003 9:37 AM
To: Cuddy Johnson; Kate Walters
Subject: RE: May 22 regional fundraiser for ken in Columbus

From a campaign finance law perspective, there is no problem with Ken being the "featured guest" or "guest speaker" at a state party fundraising event (even if it raises non-federal "soft" dollars). As always, he should not be involved in the solicitation of funds for the event.

- Charlie
-----Original Message-----
From: Cuddy Johnson
Sent: Monday, March 31, 2003 7:08 PM
To: Kate Walters
Cc: Charles Spies - Legal
Subject: Re: May 22 regional fundraiser for ken in Columbus

Kate - my understanding is that so long as ken is a featured guest, and not soliciting funds, he can attend state party and state (soft) dollar fundraisers. I have cc'd Charlie here to get his guidance. The poor guy has gotten like 5 emails from me today with questions....

Charlie - Ken has been invited to be the star at the May 22 Finance Luncheon for the state party... they want to bring in their biggest donors... is this something he can do? thanks for all your help on this stuff - very grateful -

c
----- Original Message -----
From: Kate Walters
To: Cuddy Johnson
Sent: Monday, March 31, 2003 7:02 PM
Subject: RE: May 22 regional fundraiser in Columbus

Would Counsel approve? (if there is soft money involved)
-----Original Message-----
From: Cuddy Johnson [mailto:cjohnson@georgewbush.com]
Sent: Friday, March 28, 2003 3:00 PM

To: Kate Walters
Cc: Ken Mehlman; David Rachelson
Subject: Fw: May 22 regional fundraiser in Columbus

Kate -

The Ohio GOP is holding their biggest fundraiser of '03 in May 22 in Columbus with all their \$25K plus donors...

their request is for Ken to be there, with a possible call-in from karl -

let me know your thoughts as you begin to schedule May -
c

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_RPZ7F003_WHO.TXT_1>

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From: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/1/2003 9:44:26 AM
Subject: : Bruce Fein/Wash. Times: Confirmation treachery

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)"
<James_Ho@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 1-APR-2003 14:44:26.00
SUBJECT:: Bruce Fein/Wash. Times: Confirmation treachery
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

In case you hadn't seen this.

<http://www.washtimes.com/commentary/20030323-9686275.htm>

Confirmation treachery

Bruce Fein

Judicial confirmation treachery is afoot among a fringe of Senate Democrats. It demands an equally bold Senate Republican answer: a Senate vote irrespective of the non-constitutional cloture rule of the Senate and judicial commissions for nominees who attract simple Senate majorities as prescribed by the Constitution. Turn the other cheek is canonical in the New Testament, but it would be foolhardy before the witch's brew of Democrats currently abusing the right of Senate debate. A cynical filibuster has been launched against a vote on President George W. Bush's nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia Circuit. The nominee is a Stradivarius within the professional community: unexcelled academic credentials; celebrated service as a Supreme Court clerk and assistant solicitor general; impressive arguments before the high court in private practice; and, a deluxe rating from the American Bar Association's Committee on the Federal Judiciary, which Senate Democrats themselves have acclaimed as the gold standard for judicial qualifications. Article II of the Constitution contemplates confirmation of the president's judicial nominees by simple Senate majorities. That threshold of consensus, the Founding Fathers believed, would thwart misuse of the president's appointment power to favor cronies or incompetents; and, check undue executive branch influence over the character of the third branch. The idea of Senate supermajorities for confirmations was rejected for reasons that are threefold: appointing a single federal judge was far less politically momentous than treaty ratifications for which a supermajority requirement was thought proper; the judiciary could become understaffed if a Senate minority were empowered to block nominees; and, a popular consensus over judicial philosophy that found expression in the election of the president and a Senate representing the entire nation should not be frustrated by a minority Senate fringe.

Article I, section 5, clause 2 of the Constitution authorizes, "Each House [to] determine rules of its proceedings." But those rules cannot defeat companion constitutional provisions. For instance, a rule that refused to count the votes of black or Hispanic-American Members would run afoul of the equal protection component of the due process clause of the Fifth Amendment.

For long years, Senate rules have tolerated unlimited debate as a tactic to shipwreck full Senate consideration of matters within its jurisdiction absent a supermajority vote to close further filibustering. At present, the rule requires a supermajority of 60 senators to invoke

cloture. An unwritten rule of the Senate for two centuries, however, was that filibustering was taboo for judicial nominees, at least below the United States Supreme Court, in contrast to legislation or treaties. That filibustering custom recognized that a Senate rule as applied to frustrate the enactment of legislation within its constitutional domain is less constitutionally troublesome than the identical rule as applied to thwart the appointment of judges who operate outside the Senate's jurisdiction and are tasked to check legislative abuses. The Founding Fathers worried over an excess of legislation. Thus, laws were required to attract majorities in both the House and Senate; and, the president was endowed with a veto that could be overridden only by two-thirds majorities in both chambers.

When the Senate's 60-vote cloture rule torpedoes legislation that would have commanded a simple Senate majority, it generally advances the Constitution's disfavor of new laws. But even filibusters to oppose legislation can be clearly wrongful, as with the morally compelling 1964 Civil Rights Act.

Furthermore, there are self-evident constitutional limits on Senate cloture rules. Suppose the upper chamber emulated the discredited single-member veto of early Polish parliaments with a rule requiring Senate unanimity either to pass legislation or to ratify treaties. That rule would run roughshod over the constitutionally specified majorities needed for laws or treaties enshrined in Article I, section 7, and Article II, section 2, respectively.

The constitutional cloud over cloture rules darkens considerably when extended to judicial nominees. In contrast to legislation, our constitutional architects voiced no concern over either an excess of judgeships or too much judging. Indeed, they generally celebrated independent federal courts and the power of judges to pronounce on the constitutionality of government action - the jewel in our Constitution's crown as acclaimed by both conservative Chief Justice William H. Rehnquist and liberal Associate Justice Ruth Bader Ginsburg.

Thus, filibustering judicial nominees who would be confirmed by a Senate majority works against the constitutional grain. No exception has been recognized for Senate minority opposition turning on judicial philosophy. President Franklin D. Roosevelt, for instance, packed both the lower federal courts and the Supreme Court with hard-core New Dealers without provoking filibusters.

In sum, neither in Senate traditions nor in constitutional law is there a crumb of justification for the fringe Senate Democrat filibustering of the impeccably qualified Mr. Estrada. Sen. Charles Schumer, New York Democrat, exemplifies their duplicity. In one sentence, he maligns Mr. Estrada as a stealth candidate who confounds the Senate duty to make an informed confirmation vote. In the next, he insists that overwhelming evidence proves the nominee is a far-right conservative outside the judicial mainstream who would create a dangerous imbalance on the court of appeals. And in the third, he accuses President Bush of conservative machinations by following the strong advice of former Democrat Solicitors General Archibald Cox and Walter Dellinger in declining to provide the Senate with confidential and legally privileged memoranda authored by then Assistant Solicitor Miguel Estrada. As F. Scott Fitzgerald bemoaned, the mark of a first-rate intelligence in modern times is the ability to keep two opposite ideas in the mind simultaneously yet retain the capability of functioning.

Senate Majority Leader Bill Frist, Tennessee Republican, should arrange for a Senate vote on Mr. Estrada irrespective of the cloture rule. His confirmation would be certain. The Constitution would be honored. And the federal judiciary would no longer be held hostage by a fringe Democrat minority.

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/1/2003 9:44:24 AM
Subject: : Re: President's Commission on US Postal Service: records

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
CREATION DATE/TIME: 1-APR-2003 14:44:24.00
SUBJECT:: Re: President's Commission on US Postal Service: records
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

One additional thought/clarification. Even if you determine they are federal records, they can still go to the Library. We've done that with commission type records for many of the other libraries: i.e., include federal records as part of the collection. The key difference is that the records would be subject to immediate FOIA access, and not PRA and EO 13233 timelines and procedures.

>>> GaryM Stern 4/1/03 9:36:37 AM >>>
It's based on the nature, function, and composition of the Commission, but is ultimately a judgment call. If the Commission is created by the President (i.e., by EO), appointed by the President, and reports solely to the President, then, in all likelihood, it's presidential, as opposed to ones created by statute, appointed by both the WH and Congress and reporting to both branches. The fact that an agency funds and houses a commission does not mean that it cannot be Presidential, as the President can direct an agency to support him in that way. However, because there is ambiguity in many instances, we have concluded that some commissions can reasonably be determined to be either presidential or federal/agency, which is why we ultimately leave it up to you to decide, based on the 44 USC 2203(a) (President is responsible for his own records management).

Thus, this one would seem to be Presidential; but, by submitting its report to the President through the Secretary of the Treasury (sec. 5), there is some ambiguity, so that it would not be unreasonable for you to decide that it is federal, if you don't want the records to be governed by the PRA and to go to the Library.

I would be happy to talk about it in more detail on the phone.

>>> <Brett_M._Kavanaugh@who.eop.gov> 3/31/03 8:27:14 PM >>>
I know we have discussed, but is there any rhyme or reason to how this has been done in past? Any consistent principles? Or is it just ad hoc?

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 03/31/2003 11:38:33 AM
pic29334.pcx)

Record Type: Record

REV_00232703

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

cc:

Subject: Re: President's Commission on US Postal Service: records

As per attached, I have been asking you the same question. Our assumption, based on the EO and its makeup, is that this Commission is Presidential and creates PRA records. But our longstanding position is that it is you (i.e., the President) that makes the final call.

Based on your decision, we can give the Commission the proper records management advice and guidance and ensure proper care and disposition of its records.

>>> <Brett_M._Kavanaugh@who.eop.gov> 3/31/03 11:20:01 AM >>>
thoughts?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
03/31/2003
11:19 AM -----

(Embedded
image moved Roger.Kodat@do.treas.gov
to file: 03/31/2003 11:19:06 AM
pic19992.pcx)

Record Type: Record

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

cc: Randall.Lewis@do.treas.gov

Subject: President's Commission on US Postal Service: records

Brett,

Further to our telecon this morning, kindly advise whether records created by the newly established President's Commission on the US Postal Service, established by Executive Order 13278, are federal or Presidential records. Pls let me know if you need any more information.

Thanks, Roger

*

Date: Mon, 10 Mar 2003 13:10:18 -0500
From: "GaryM Stern" <garym.stern@nara.gov>
Subject: Re: President's Commission on the United States Postal Service
To: "GaryM Stern" <garym.stern@nara.gov>, "Brett Kavanaugh"
<Brett_M._Kavanaugh@who.eop.gov>
MIME-version: 1.0
Content-type: text/plain; charset=US-ASCII

REV_00232704

Content-disposition: inline
Content-transfer-encoding: 7BIT

Brett, I never heard back from you on this question concerning the record status of this commission. Is there any reason not to assume it is creating presidential records?

>>> GaryM Stern 1/29/03 3:41:32 PM >>>

Brett, we have been made aware of the President's Commission on the United States Postal Service, established under EO 13278 on December 11, 2002. Although it is administratively associated with the Department of Treasury, the Commission is comprised of members appointed by the President, it reports solely to the President, and is slated to be finished by August 30, 2003.

Should we assume that it is creating Presidential records?

Given the very short duration of this Commission, it is important that NARA coordinate with it on records management as soon as possible. Can you please let us know your views on its record status as soon as you can.

Thanks.

Here is the EO:
<http://www.whitehouse.gov/news/releases/2002/12/print/20021211.html>

*

From: CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD]
To: Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN] <george.wolfe@do.treas.gov@SMTP@Exchange>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN] <koffskyp@osdgc.osd.mil@SMTP@Exchange>;paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN] <paul.harris@usdoj.gov@SMTP@Exchange>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN] <hatamj@ms.state.gov@SMTP@Exchange>
CC: marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN] <marlene.s.boysel@usdoj.gov@SMTP@Exchange>;Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN] <elizabeth.vannoy@do.treas.gov@SMTP@Exchange>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;Carla B. Stone/OMB/EOP@EOP [OMB] <Carla B. Stone>
Sent: 4/1/2003 10:53:24 AM
Subject: : FW: Compensation for Victims of Terrorism Meeting - Wed

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])

CREATION DATE/TIME: 1-APR-2003 15:53:24.00

SUBJECT:: FW: Compensation for Victims of Terrorism Meeting - Wed

TO:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:george.wolfe@do.treas.gov@SMTP@Exchange (george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:koffskyp@osdgc.osd.mil@SMTP@Exchange (koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:paul.harris@usdoj.gov@SMTP@Exchange (paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:hatamj@ms.state.gov@SMTP@Exchange (hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:marlene.s.boysel@usdoj.gov@SMTP@Exchange (marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Joan Hunerwadel (CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

CC:Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

CC:elizabeth.vannoy@do.treas.gov@SMTP@Exchange (elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

CC:Carla B. Stone (CN=Carla B. Stone/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

End Original ARMS Header

REV_00232708

This meeting has been rescheduled for THURS, April 4 at 10:30 in Room 211.; Sorry for any inconvenience and thanks very much.

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

From: Vestewig, Lauren J.

Sent: Monday, March 31, 2003 9:49 AM

To: 'hatamj@ms.state.gov'; Bellinger, John B.; Kavanaugh, Brett M.; Silverberg, Kristen; Perry, Philip J.; Schacht, Diana L.; 'paul.harris@usdoj.gov'; 'david.aufhauser@do.treas.gov'

Cc: Stone, Carla B.; Winland, Emily; Lefkowitz, Jay P.; Hunerwadel, Joan; 'elizabeth.vannoy@do.treas.gov'; 'marlene.s.boysel@usdoj.gov'

Subject: Compensation for Victims of Terrorism Meeting - Wed

There will be a meeting this Wednesday, April 2nd in EEOB room 211 at 3:30pm.; ;Please let me know if you can attend.; If you are coming from outside of the complex and need to be cleared in, please email me your dob and ssn.; Thanks!

;

;

From: CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD]
To: Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN] <george.wolfe@do.treas.gov@SMTP@Exchange>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN] <koffskyp@osdgc.osd.mil@SMTP@Exchange>;paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN] <paul.harris@usdoj.gov@SMTP@Exchange>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN] <hatamj@ms.state.gov@SMTP@Exchange>
CC: marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN] <marlene.s.boysel@usdoj.gov@SMTP@Exchange>;Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN] <elizabeth.vannoy@do.treas.gov@SMTP@Exchange>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;Carla B. Stone/OMB/EOP@EOP [OMB] <Carla B. Stone>
Sent: 4/1/2003 11:07:56 AM
Subject: : FW: Compensation for Victims of Terrorism Meeting - Wed

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])

CREATION DATE/TIME: 1-APR-2003 16:07:56.00

SUBJECT:: FW: Compensation for Victims of Terrorism Meeting - Wed

TO:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:george.wolfe@do.treas.gov@SMTP@Exchange (george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

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TO:koffskyp@osdgc.osd.mil@SMTP@Exchange (koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN])

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TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:hatamj@ms.state.gov@SMTP@Exchange (hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:marlene.s.boysel@usdoj.gov@SMTP@Exchange (marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Joan Hunerwadel (CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

CC:Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

CC:elizabeth.vannoy@do.treas.gov@SMTP@Exchange (elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

CC:Carla B. Stone (CN=Carla B. Stone/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

End Original ARMS Header

REV_00232710

Sorry--I meant Thurs, April 3.; Thanks.

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

From: Vestewig, Lauren J.

Sent: Tuesday, April 01, 2003 3:54 PM

To: 'hatamj@ms.state.gov'; Bellinger, John B.; Kavanaugh, Brett M.;
Silverberg, Kristen; Perry, Philip J.; Schacht, Diana L.;
'paul.harris@usdoj.gov'; 'george.wolfe@do.treas.gov';
'koffskyp@osdgc.osd.mil'; Moore, Holly T.

Cc: Stone, Carla B.; Winland, Emily; Lefkowitz, Jay P.; Hunerwadel, Joan;
'elizabeth.vannoy@do.treas.gov'; 'marlene.s.boysel@usdoj.gov'

Subject: FW: Compensation for Victims of Terrorism Meeting - Wed

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Silverberg, Kristen; Perry, Philip J.; Schacht, Diana L.;
'paul.harris@usdoj.gov'; 'david.aufhauser@do.treas.gov'

Cc: Stone, Carla B.; Winland, Emily; Lefkowitz, Jay P.; Hunerwadel, Joan;
'elizabeth.vannoy@do.treas.gov'; 'marlene.s.boysel@usdoj.gov'

Subject: Compensation for Victims of Terrorism Meeting - Wed

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3:30pm.; ;Please let me know if you can attend.; If you are coming from
outside of the complex and need to be cleared in, please email me your dob
and ssn.; Thanks!

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;

From: CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD]
To: Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN] <george.wolfe@do.treas.gov@SMTP@Exchange>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN] <koffskyp@osdgc.osd.mil@SMTP@Exchange>;paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN] <paul.harris@usdoj.gov@SMTP@Exchange>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN] <hatamj@ms.state.gov@SMTP@Exchange>
CC: marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN] <marlene.s.boysel@usdoj.gov@SMTP@Exchange>;Joan Hunerwadel/NSC/EOP@EOP [NSC] <Joan Hunerwadel>;Emily Winland/OPD/EOP@EOP [OPD] <Emily Winland>;elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN] <elizabeth.vannoy@do.treas.gov@SMTP@Exchange>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;Carla B. Stone/OMB/EOP@EOP [OMB] <Carla B. Stone>
Sent: 4/1/2003 11:08:54 AM
Subject: : FW: Compensation for Victims of Terrorism Meeting - Wed

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])

CREATION DATE/TIME: 1-APR-2003 16:08:54.00

SUBJECT:: FW: Compensation for Victims of Terrorism Meeting - Wed

TO:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:george.wolfe@do.treas.gov@SMTP@Exchange (george.wolfe@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:koffskyp@osdgc.osd.mil@SMTP@Exchange (koffskyp@osdgc.osd.mil@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:paul.harris@usdoj.gov@SMTP@Exchange (paul.harris@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:hatamj@ms.state.gov@SMTP@Exchange (hatamj@ms.state.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:marlene.s.boysel@usdoj.gov@SMTP@Exchange (marlene.s.boysel@usdoj.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Joan Hunerwadel (CN=Joan Hunerwadel/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

CC:Emily Winland (CN=Emily Winland/OU=OPD/O=EOP@EOP [OPD])

READ:UNKNOWN

CC:elizabeth.vannoy@do.treas.gov@SMTP@Exchange (elizabeth.vannoy@do.treas.gov@SMTP@Exchange [UNKNOWN])

READ:UNKNOWN

CC:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])

READ:UNKNOWN

CC:Carla B. Stone (CN=Carla B. Stone/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

End Original ARMS Header

REV_00232712

Sorry--I meant Thurs, April 3.; Thanks.

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

From: Vestewig, Lauren J.

Sent: Tuesday, April 01, 2003 3:54 PM

To: 'hatamj@ms.state.gov'; Bellinger, John B.; Kavanaugh, Brett M.;
Silverberg, Kristen; Perry, Philip J.; Schacht, Diana L.;
'paul.harris@usdoj.gov'; 'george.wolfe@do.treas.gov';
'koffskyp@osdgc.osd.mil'; Moore, Holly T.

Cc: Stone, Carla B.; Winland, Emily; Lefkowitz, Jay P.; Hunerwadel, Joan;
'elizabeth.vannoy@do.treas.gov'; 'marlene.s.boysel@usdoj.gov'

Subject: FW: Compensation for Victims of Terrorism Meeting - Wed

This meeting has been rescheduled for THURS, April 4 at 10:30 in Room
211.; Sorry for any inconvenience and thanks very much.

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

From: Vestewig, Lauren J.

Sent: Monday, March 31, 2003 9:49 AM

To: 'hatamj@ms.state.gov'; Bellinger, John B.; Kavanaugh, Brett M.;
Silverberg, Kristen; Perry, Philip J.; Schacht, Diana L.;
'paul.harris@usdoj.gov'; 'david.aufhauser@do.treas.gov'

Cc: Stone, Carla B.; Winland, Emily; Lefkowitz, Jay P.; Hunerwadel, Joan;
'elizabeth.vannoy@do.treas.gov'; 'marlene.s.boysel@usdoj.gov'

Subject: Compensation for Victims of Terrorism Meeting - Wed

There will be a meeting this Wednesday, April 2nd in EEOB room 211 at
3:30pm.; ;Please let me know if you can attend.; If you are coming from
outside of the complex and need to be cleared in, please email me your dob
and ssn.; Thanks!

;
;

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 4/1/2003 11:17:33 AM
Subject: : one change

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-APR-2003 16:17:33.00
SUBJECT:: one change
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

The President commends the Senate for voting on the nomination of Tim Tymkovich and confirming him to be a Judge on the U.S. Court of Appeals for the 10th Circuit. Mr. Tymkovich is known by those who have worked with him for his integrity, intellect, and excellence, and he has strong bipartisan support in Colorado.; He has served the people of Colorado with distinction, including as the state,s former Solicitor General and as counsel to the Governor's Columbine Review Commission. He will make an outstanding Court of Appeals judge.;;;

As the President and Senators of both political parties have stated, all judicial nominees should receive a timely up-or-down vote in the Senate. Mr. Tymkovich was nominated on May 25, 2001, and waited more than 22 months for his vote. Six of the 11 nominees the President submitted to the Senate on May 9, 2001, still have not received votes. The delays in the Senate confirmation process have created a vacancy crisis in the federal courts that is harming the American people. The President calls on the Senate to perform its Constitutional responsibility to hold timely up-or-down votes on all judicial nominees, no matter who is President or which party controls the Senate.

From: Delrahim, Makan \ (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>
To: <Kavanaugh, Brett M.>;<Sampson, Kyle>;<Leitch, David G.>;Brown, Jamie E \ (OLA) <Jamie.E.Brown@usdoj.gov>;Dinh, Viet <Viet.Dinh@usdoj.gov>;<Grubbs, Wendy J.>
Sent: 4/1/2003 3:30:42 PM
Subject: FW: FYI - Leahy statement on Kuhl/blue slips

FYI

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

From: Tapia, Margarita (Judiciary)
Sent: Tuesday, April 01, 2003 3:26 PM
To: Delrahim, Makan (Judiciary); Dahl, Alex (Judiciary); Comisac, RenaJohnson (Judiciary); LeBon, Cherylyn (Judiciary)
Cc: Caramanica, Jessica (Judiciary)
Subject: FYI - Leahy statement on Kuhl/blue slips

A New Low As Senate Republicans Continue To Change, Bend And Even Break
The Rules On Judicial Nominations --

The Republican-led Senate today (Tuesday) changed yet another longstanding Judiciary Committee practice in order to stack the deck for the Bush Administration's efforts to pack the courts with ideologically chosen judicial nominees: Today, FOR THE FIRST TIME, a hearing was held on a nominee (Carolyn Kuhl) for which both blue slips were not returned by the nominee's home-state senators. Never once during his earlier tenure as chairman of the Judiciary Committee did Chairman Orrin Hatch (R-Utah) allow a hearing on any judicial nominee when there was an objection to a hearing from one or both home-state senators. The difference then is that there was a Democratic President in office during Senator Hatch's earlier tenure as chairman, and today there is a Republican President. Blue slips are the enforcement mechanism for consultation by the President with senators about nominations to their home states. Unlike earlier Presidents of both parties, President Bush has refused to meaningfully consult with home-state senators of most of his candidates for judicial vacancies, particularly for the Circuit Courts. More often, White House "consultation" is essentially "notice" of White House intent to nominate someone, regardless of the objections or concerns of home-state Senators.

The Circuit Court nominee at today's hearing is Carolyn Kuhl, for the Ninth Circuit, and the Senator objecting to the hearing is a Democrat, Senator Boxer of California. Senator Hatch had a firm practice when he chaired the Committee and Republican home-state Senators objected to President Clinton's nominees ? no hearing, no consideration, no action. Next week it will be Senator Edwards' objections to Terry Boyle that are overridden, and after Easter it is possible that the objections of Senator Levin and Senator Stabenow to nominees for Michigan vacancies on the Sixth Circuit will be ignored.

REV_00232715

Today's change in committee practice comes on top of other changes in Committee practices that Chairman Hatch had followed earlier -- and even the breaking of the Judiciary Committee's Rule IV, which for nearly a quarter of a century protected the minority's right to debate. All changes are being made on behalf of the most controversial of President Bush's judicial nominees.

Another significant development at today's hearing: The Kuhl nomination also raises the freshest evidence of precedents for the Executive Branch providing the Senate with attorney memos. For most of the last year, the Bush Administration has denied the existence of this or other such precedents, as it refused the Judiciary Committee's request for Miguel Estrada's work memos. As an attorney in the Justice Department, Kuhl had worked on the Reagan Administration's position on the Bob Jones University appeal (involving the university's tax-exempt status). The Reagan Administration subsequently submitted her work memos on the case to the Senate Finance Committee.

Contact: David Carle, **PRA 6**

FOLLOWING is Senator Leahy's opening statement at today's hearing, in which he outlines the lengthening list of changes implemented by the Republican majority now that a Republican is in the White House:

+++++

Opening Statement of Senator Patrick Leahy,

Ranking Democratic Member,

Senate Judiciary Committee

Judicial Nominations Hearing

April 1, 2003

Today we meet to consider the nomination of California Judge Carolyn Kuhl to the United States Court of Appeals for the Ninth Circuit, Florida Judge Cecilia Altonaga to the United States District Court for the Southern District of Florida, and Louisiana Judge Patricia Minaldi to the United States District Court for the Eastern District of Louisiana. The District Court nominees have the support of their home-state Senators, although, as I will discuss in a moment, Senators Graham and Nelson have had a most difficult time getting the White House to agree to continue the tradition of the Florida bipartisan selection commission, and have only recently come to a meeting of the minds with the White House.

The Circuit Court nominee before us today, Judge Carolyn Kuhl, however, is not supported by both of her home-state Senators. Her appearance before this Committee, despite that clearly stated opposition, is the latest in a string of transparently partisan actions taken by the Senate's new majority since the beginning of this Congress. In each of these actions -- each of them unprecedented -- Republicans have done something they never did while in the majority from 1995 to 2001. Each provocative step, taken in tandem with the White House, has broken new ground in politicizing the federal judiciary. The Republican majority has shown a corrosive and raw-edged willingness to change, bend and even break the rules that they themselves followed before when the judicial nominees involved were a Democratic president's choices, instead of a Republican president's choices. Lest some observers wrongly conclude that this sudden and orchestrated series of rules changes is just 'politics as usual,' it most certainly is not.

First, in January, one hearing was held for three controversial Circuit Court nominees, scheduled to take place in the course of a very busy day in the Senate. There was no precedent for this in the years that Republicans served in the majority and a Democrat was in the White House. In six years during the Clinton Administration, never once were three Circuit Court nominees, let alone three very controversial ones, before this body in a single hearing. But in this session, it is the very first hearing that was scheduled. Why the change in practice? The only conceivable difference is that now there is a Republican in the White House.

When there was a Democratic president in the White House, circuit nominees were delayed and deferred, and vacancies on the Courts of Appeals more than doubled under Republican leadership, from 16 in January 1995, to 33 when the Democratic majority took over partway through 2001.

REV_00232717

Under Democratic leadership we held hearings on 20 Circuit Court nominees in 17 months. Indeed, while Republicans averaged 7 confirmations to the Circuit Courts every 12 months, the Senate under Democratic leadership confirmed 17 in its 17 months in the majority ? and we did so with a White House that was uncooperative in a magnitude of historic proportions.

This year with a Republican in the White House, the Republican majority has gone from idling -- the restrained pace it had said was required for Clinton nominees -- to overdrive for the most controversial of President Bush's nominees.

But that dramatic change in pace is not the only politicized action taken by the Senate's new majority this year. Next, the Republican majority supported and facilitated the re-nomination of Priscilla Owen to a seat on the U.S. Court of Appeals for the Fifth Circuit, for which she already had been rejected by this Committee. Then they brought her back for a hearing during which no new facts of any significance were introduced, but during which many leading questions were asked and accusations of unfairness made. This is a nomination that never should have been re-sent to the Senate, and which, if it succeeds, will only be because of a display of raw politics.

Now the Republican majority has scheduled this hearing for a nominee who does not have blue slips returned from both of her home-state Senators ? that is, a nominee for whom only one of her home-state Senators has indicated she agrees that a hearing should be held. Now, we will surely hear today, in defense of this hearing, a long recitation of the history of the blue slip. We will hear how it was used unfairly during the unfortunate past of the Committee, to keep the federal bench from being integrated. We will hear how other Chairmen, Senators Kennedy and Biden, modified their policies to allow for more fairness in the consideration of a more diverse federal bench. And, we will hear how the Chairman's real objection during the Clinton Administration was the so-called "lack of consultation" with Republican Senators, and how fairly and successfully President Bush's White House has consulted with obstreperous Democrats. The Chairman will tell us that he considers himself the heir to Democratic traditions, that he has always followed those policies and is only now acting consistent with his own past practice.

What I doubt we will hear from the other side of the aisle is the plain and simple truth of the two distinct practices the majority has followed. While it is true that various Chairmen of the Judiciary Committee have used the blue-slip in different ways, some to maintain

unfairness, and others to attempt to remedy it, it is also true that each of those Chairmen was consistent in his application of his own policy -- that is, until now. Today is the first time that this Chairman will ever have convened a hearing for a judicial nominee who did not have two positive blue slips returned to the Committee. The first time, ever. Despite protestations that this has been the Chairman's consistent policy over time, the facts show exactly the opposite.

Without going through a dissertation-length statement on each blue slip and the policies they articulated, let me just show you examples of two different ones. These pieces of blue paper are what the Chairman uses to solicit the opinion of home-state Senators about the President's nominees. When President Clinton was in office, this was the blue slip sent to Senators, asking their consent. On the face of the form is written the following:

Please return this form as soon as possible to the nominations office. No further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home state senators.

When President Bush began his term, and Senator Hatch took over the Chairmanship at the start of the 107th Congress in late January, 2001, the blue slip sent out to Senators changed, and today says simply:

Please complete the attached blue slip form and return it as soon as possible to the Committee office.

The blue slip practice is an enforcement mechanism for consultation by the White House with Senators about nominees to their home states. This new blue slip contains no requirement that the President may have to engage in sufficiently meaningful consultation with home-state Senators in order to gain their consent, no rule that one Senator's agreement is enough to move a nominee, no distinction between District and Circuit Court nominees. All it contains is a simple, unsubtle, 180-degree turn in the direction of the policy, now that the person nominating the judges is a Republican.

I know my colleagues on the other side do not want to be reminded of what happened to so many of President Clinton's nominees, but I cannot

entirely leave that part of this story out. The blue slip policy that was in effect and that was strictly enforced by the Chairman during the Clinton Administration operated as an absolute bar to the consideration of any nominee to any court unless both home-state Senators had returned positive blue slips. No time limit was set, no reason had to be articulated. Remember, before the Senate's change to Democratic majority in July of 2001, all of these decisions were being made in secret. Blue slips were not public, and they were allowed to function as an anonymous hold on otherwise qualified nominees.

A few examples of the operation of the blue slip and how it was scrupulously honored by the Committee during the Clinton Presidency are worth remembering. Remember, in the 106th Congress alone, more than half of President Clinton's Circuit Court nominees in the 106th Congress were defeated through the operation of the blue slip or other such partisan obstruction. Perhaps the most vivid is the story of the United States Court of Appeals for the Fourth Circuit, where Senator Helms was permitted by this Committee to resist President Clinton's nominees for six years. James Beaty was first nominated to the Fourth Circuit from North Carolina by President Clinton in 1995, but no further action was taken on his nomination in 1995, 1996, 1997, or 1998. Another Fourth Circuit nominee from North Carolina, Rich Leonard, was nominated in 1995, but no further action was taken on his nomination either in 1995 or 1996. James Wynn, again a North Carolina nominee to the Fourth Circuit, sent to the Senate by President Clinton in 1999, sat without action in 1999, 2000, and early 2001, until President Bush withdrew his nomination.

Why? Because one senator from the nominees' home state objected to their moving forward. Was this right or wrong? That is a question for another day and another history lesson. But it was done by a Republican Senate to the nominee of a Democratic President, and done by the same Chairman who today sees fit to ignore the protests, for very real and substantive reasons, of a Democratic Senator to the nominee of a Republican President.

As for the red herring of consultation, again the facts speak for themselves. No doubt we will hear today that during the Clinton Administration blue slip objections had to be honored because of what will now be called, in a bit of revisionism fit for study by Sovietologists, insufficient consultation with home-state Senators. But those of us who were here then know differently. We know that the Clinton White House bent over backwards to work with Republican Senators and seek their advice on appointments to both Circuit and District Court vacancies. There were many times when the White House made nominations at the direct suggestion of Republican Senators, and there are judges sitting today on the Ninth Circuit and the Fourth Circuit, in the District Courts in Arizona, Utah, Mississippi, and many other places only because the voices of Senators in the opposite party were heeded.

In contrast, since the beginning of its time in the White House, this Bush Administration has sought to overturn traditions of bipartisan nominating commissions and to run roughshod over the advice of Democratic Senators. They changed the systems in Wisconsin, Washington, and Florida that had worked so well for so many years. They ignored the protests of Senators like Barbara Boxer and John Edwards who not only objected to the nominee proposed by the White House, but who, in attempts to reach a true compromise, also suggested their own Republican alternatives. But those overtures were flatly rejected, and today what we see is just another facet of that unfortunate policy.

Ignoring bipartisan judicial nominating commissions is just another step in the march to entirely politicizing the federal judiciary, and that is exactly what the Bush White House did to the State of Florida. Last year Senators Graham and Nelson were compelled to write in protest to the White House Counsel's flaunting of the time-honored procedures for choosing qualified candidates for the bench. A process that had worked to fill 29 District Court vacancies over ten years was bypassed by this President. I am pleased that the White House has finally agreed to the Florida Senators' proposals so that we can get on with processing the nomination of Cecilia Altonaga. I hope the White House will move to cooperate with other Democratic Senators and increase the almost non-existent level of consultation. We look forward to hearing from Judge Altonaga and Judge Minaldi today, and we welcome and congratulate them and their families.

And, although I object to this hearing being held, I will participate in the questioning of Judge Kuhl, whose nomination rightly raises concerns. Her past advocacy for aiding educational institutions which discriminate on the basis of race, as well as her work on cases involving fundamental constitutional rights, including the right to privacy, give me great concern about her willingness to follow the law, and about the extremism that is evident in her record. I look forward to hearing her answers today.

#####

From: CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/1/2003 12:12:53 PM
Subject: : previous story on pardons

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 1-APR-2003 17:12:53.00
SUBJECT:: previous story on pardons
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

here is the previous story lardner wrote --

;
August 27, 2002, Tuesday, Final Edition
SECTION: A SECTION; Pg. A01

LENGTH: 1049 words

HEADLINE: Bush Seeks Secrecy For Pardon Discussions

BYLINE: George Lardner Jr., Washington Post Staff Writer

BODY:

President Bush's lawyers are trying to keep secret the inside stories of President Bill Clinton's last-day pardons by invoking a claim of executive privilege that extends far beyond the White House.

In pleadings filed in U.S. District Court here this month, including affidavits from White House counsel Alberto R. Gonzales and Deputy Attorney General Larry D. Thompson, the Bush administration contends that the privilege covers not only advice given to a president about individual pardons, but also government papers he has never seen and officials he has never talked to, such as the sentencing judge in a particular case.

The stance, taken in opposition to a lawsuit filed by the nonprofit group Judicial Watch for access to Clinton pardon records, represents a hard line that the government has never taken. In the past, executive privilege has been recognized for advisers who operate within the White House. Bush's lawyers say it covers officials in any part of the government who are asked for input about pardon requests.

The pardon is "a core Presidential power exclusively entrusted to, and exercised by, the President himself, and the documents generated in the process of developing and providing advice to him are squarely subject to the privilege," Assistant Attorney General Robert D. McCallum Jr. wrote in an Aug. 12 memo seeking summary dismissal of the Judicial Watch case.

A legal watchdog group that has challenged both Republican and Democratic administrations, Judicial Watch sued the Justice Department under the Freedom of Information Act (FOIA) last year for records concerning pardons granted or "considered" by Clinton in January 2001. The 177 pardons and commutations that he approved on his last day in office kicked up a storm, especially over the clemency he bestowed on fugitive financier Marc Rich, a man prominently listed on the government's international "lookout" list, and his business partner, Pincus Green.

"It's a bad-faith argument," Judicial Watch President Tom Fitton said of the government's position. "The courts have already said that executive privilege does not exist outside the White House. The Bush administration is now covering up for Bill Clinton, Marc Rich and Pinky Green."

White House spokesman Scott McClellan said: "The president has always been

REV_00232724

entitled to receive confidential advice and candid assessments from attorneys in the federal government. . . . To release such documents would have a chilling effect on the deliberative process."

In the past, even pardon recommendations sent directly to the president from the Justice Department have been routinely made public by government archivists after several years. But in response to other recent requests for historical files, separate from the Judicial Watch suit, the Justice Department under Bush is asserting the same privilege to maintain the secrecy of pardon records as far back as 75 years ago. One set being withheld on instructions from the White House deals with the clemency granted Marcus Garvey, leader of the back-to-Africa movement, who was released from prison in 1927 after his conviction for stock fraud.

Bush, himself, has yet to invoke executive privilege in the Judicial Watch case, a Justice Department spokeswoman confirmed. In the past, the courts have said he must invoke the privilege personally, but the government's pleadings do not indicate whether he intends to do so.

Thousands of documents about Clinton's final pardons are at issue in the litigation, including many "authored or solicited or received by [Justice] Department officials in the course of preparing and providing information to assist the President in the exercise of his constitutional pardon power," McCallum wrote. These would include records showing whether a government prosecutor, sentencing judge or prison warden thought clemency was warranted and what the FBI found in background investigations that are normally conducted in response to clemency applications.

McCallum invoked a broad "presidential communications privilege" for all documents. He said many of the records are also exempt under the FOIA because they are protected by a narrower subset of executive privilege, the "deliberative process" privilege, in that they reveal "advice, deliberations and recommendations comprising part of the process by which Justice Department officials assisted and advised the President in the exercise of his clemency powers."

Clinton repeatedly short-circuited the pardon process, which requires applications to the U.S. pardon attorney at the Justice Department; investigation by the FBI; consultation with interested parties, from the sentencing judge to the victim; and a report and recommendation by the pardon attorney to the president, after a review by the deputy attorney general.

In his affidavit, Thompson, the deputy attorney general, said his office was withholding from Judicial Watch documents "that are subject to executive privilege," such as memos and e-mails between his staff and the pardon attorney's office; requests for information; and summaries of selected cases, including some with handwritten notes reflecting the deputy attorney general's viewpoint. This appeared to be a reference to Clinton's deputy attorney general, Eric H. Holder Jr.

Thompson said his ability to advise the president about pardons would be "greatly impaired" if these records were "subject to public disclosure."

White House counsel Gonzales said in his affidavit that he is "aware" that Justice is withholding internal documents prepared "in the course of performing their responsibility" to the president. He said the assistance of officials and staff at Justice is "critical" to the president's exclusive authority to grant pardons.

In seeking dismissal of the case, McCallum also sought to head off congressional interest in the records. "Congress," he wrote, "has no constitutional authority to exercise oversight over the President's pardon power, or, therefore, to compel public production of records relating to the President's exercise of his pardon power."

Bush has granted no pardons or commutations since taking office. As of July 31, he had denied 508 pardon petitions and 1,346 commutation

requests.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>
Sent: 4/1/2003 4:45:08 PM
Subject: FW: Judge Confirmed

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

From: McCathran, William W.
Sent: Tuesday, April 01, 2003 4:41 PM
To: Bumatay, Patrick J.
Cc: Saunders, G. Timo
Subject: Judge Confirmed

Theresa Lazar Springmann USDJ, Northern Indiana, Confirmed last night. We understand that vice James T. Moody's retirement is not effective until 6/17/03.

Please advise.

tk,
Bill
Clerk's Office

REV_00232729

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/1/2003 4:52:48 PM
Subject: FW: LRM PTM25 - - HUD Testimony on H.R. 1276 - American Dream Downpayment Act
Attachments: HR1276- InH.pdf; HUD- ADDI- Draft.doc

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

From: Messenger, P. Thaddeus

Sent: Tuesday, April 01, 2003 4:50 PM

To: usdaocrleg@obpa.usda.gov; valm@mail.va.gov; justice.lrm@usdoj.gov

Cc: McMillin, Stephen S.; Roberson, Haley M.; Rhinesmith, Alan B.; Redburn, Francis S.; Brown, Dustin S.; Hustead, Toni S.; Hagen, Kelli A.; Erbach, Adrienne C.; Bell, Jennifer Wagner; Bloomquist, Lauren E.; McAllister, Shelly A.; Little, Attia; Lee, Sarah S.; Wittenberg, Lauren; Suarez, Aquiles F.; Halaska, Terrell L.; Ovp Lrm; Whgc Lrm; Perry, Philip J.; Schneider, Matthew J.; Wood, John F.; Rettman, Rosalyn J.; Marsh, Robert ; Dove, Stephen W.; Rossman, Elizabeth L.; Lobrano, Lauren C.; Jukes, James J.; Schroeder, Ingrid M.; Messenger, P. Thaddeus

Subject: LRM PTM25 - - HUD Testimony on H.R. 1276 - American Dream Downpayment Act

LRM ID: PTM25

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Tuesday, April 1, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: P. Thaddeus Messenger
PHONE: (202)395-7754 FAX: (202)395-6148
SUBJECT: HUD Testimony on H.R. 1276 - American Dream Downpayment Act

DEADLINE: 5:00 p.m. Thursday, April 3, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Attached for your review, please find a draft copy of HUD (Martinez) testimony H.R. 1273, for an April 8th hearing before the House Financial Services Subcommittee on Housing and Community Opportunity. For your reference, a copy of the bill is also included.

<< [HUD- ADDI- Draft.doc](#) >> (4 pp.) << [HR1276- InH.pdf](#) >> (5 pp.)

Please provide your comments by **5:00 Thursday, April 8, 2003**. If we do not receive your comments by that time, we will assume you have no objection to the document as drafted.

If you experience difficulty with this LRM, or its attachment, please contact us immediately. To ensure receipt by Agency addressees, the electronic copy of this LRM will be followed by a duplicate copy via facsimile.

Thank you.

REV_00232730

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P. Thaddeus Messenger **LRM ID:** PTM25 **SUBJECT:** HUD Testimony on H.R. 1276 - American Dream Downpayment Act

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: P. Thaddeus Messenger Phone: 395-7754 Fax: 395-6148

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT

**STATEMENT OF MEL MARTINEZ
SECRETARY
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**



**BEFORE THE
UNITED STATES HOUSE
COMMITTEE ON FINANCIAL SERVICES,
SUBCOMMITTEE ON HOUSING
AND COMMUNITY OPPORTUNITY**

APRIL 8, 2003

REV_00232733

Chairman Ney, Ranking Member Waters, Distinguished Members of the Committee:

Thank you for the invitation to join you this afternoon. I appreciate this opportunity to outline the American Dream Downpayment Initiative. The Initiative is a powerful tool for increasing homeownership, and President Bush has proposed expanding its reach in Fiscal Year 2004 by increasing funding to \$200 million.

Mr. Chairman, I applaud your leadership in calling this hearing. On a personal note, I want you to know how much I enjoyed visiting the City of Logan, Ohio, with you yesterday. Along with showing me the impressive work being done there to create new housing opportunities, you also showed me great hospitality.

I want to commend my fellow Floridian – Congresswoman Harris – for introducing H.R. 1276. Her bill has earned the support of 35 cosponsors from both sides of the political aisle, reflecting the point I often make that housing is a non-partisan issue – one that crosses the lines of politics and party.

Homeownership is a cornerstone of America, and the President and I are committed to helping more families know its many – and profound – benefits.

For families, homeownership represents the path to prosperity. Americans see a home not only as shelter, but also as a safe investment, and one that can be leveraged to finance other priorities, such as starting a business or sending a child to college. Homeownership creates stakeholders who make their communities stronger by involving themselves in local activities.

The implications of large-scale homeownership reach well beyond the benefits to individual families and communities, of course: homeownership is a powerful economic force for the entire nation.

Where many sectors of the economy have performed below expectations over the past two years, the housing market has remained extremely strong. Housing was key to bolstering our economy in the months following the terrorist attacks of September 11, 2001. Housing helped to cushion many areas of the country from recession, as home sales and refinancings pumped hundreds of billions of dollars into the economy.

As a result of the exceptionally strong housing market and the best financing conditions available in decades, more Americans own homes today than at any time in our history: 68.3 percent of all Americans are homeowners. Yet, we see a persistent and troubling gap between the homeownership rates of minorities and non-minorities. By a significant margin, minority families are less likely to own their own homes.

Eliminating the minority homeownership gap is one of this Administration's top priorities... and a responsibility fundamental to HUD's mission as the nation's housing agency.

Last year, the President set a bold goal of creating an additional 5.5 million minority homeowners by the end of this decade. HUD responded by launching our Blueprint for the American Dream Partnership, and every segment of the housing industry has joined with us to help meet the President's challenge.

The Administration and its partners are focused on removing the barriers that block too many families from achieving the American Dream of homeownership. These barriers include a lack of financing options for low-income families, a lack of information about the homebuying process, a lack of affordable housing in some communities, and the barrier we are specifically addressing through the American Dream Downpayment Initiative: high down payments and closing costs.

Coming up with enough cash to pay the upfront costs of homeownership is often the single greatest barrier to buying a home. In Fannie Mae's 2002 National Housing Survey, a high down payment was the barrier most frequently cited by those polled; 32 percent of Americans said they would have major difficulties making a down payment.

The lack of savings is a problem for lower-income and minority families. Oftentimes, the transfer of family assets from parents to their children can mean the difference in whether a family can buy a home. These intergenerational wealth transfers serve to boost homeownership by helping many younger families afford their first home.

In many cases, however, lower-income and minority families simply lack the accumulated wealth that can provide for down payment and closing costs. To help families overcome this barrier to homeownership, the Administration proposed the American Dream Downpayment Initiative for FY 2002, and is asking the Congress to boost its funding level to \$200 million for FY 2004.

The President's commitment to lifting families into homeownership through down payment assistance dates back to his 2000 campaign. The American Dream Downpayment Initiative fulfills one of his long-standing housing goals.

The Initiative is housed within the HOME Investment Partnerships program, which helps communities across the country expand the supply of decent, affordable housing. American Dream Downpayment Initiative grants will be awarded to state and local governments to assist low-income, first-time homebuyers with closing costs and down payments. To receive assistance, families must have annual incomes that do not exceed 80 percent of the area median income.

We anticipate that the Initiative will help make homeownership a reality for 40,000 families annually, providing an average subsidy of \$5,000. Although the American Dream Downpayment Initiative is not targeted specifically at minorities, we believe it will be particularly effective at reaching minority populations, based upon the history of the HOME program. Today, fully 55 percent of the families helped by HOME are minorities.

Congress appropriated \$75 million for the American Dream Downpayment Initiative for the current fiscal year. I thank the Members for doing so. As a result of your support, 14,500 families who have perhaps only dreamed of homeownership will soon have homes of their own. We expect to be completed with the rulemaking process within the next few months and have the entire \$75 million appropriation delivered by the end of Fiscal Year 2003.

The Congress now has an opportunity to build on its commitment and guide even more families toward the American Dream of homeownership. I urge the Committee to fund the American Dream Downpayment Initiative at \$200 million as requested by President Bush.

As always, I welcome your guidance as we continue our work together.

Thank you.

108TH CONGRESS
1ST SESSION

H. R. 1276

To provide downpayment assistance under the HOME Investment Partnerships Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2003

Ms. HARRIS (for herself, Mr. ROGERS of Michigan, Mr. OXLEY, Mr. NEY, Mr. DAVIS of Alabama, Mr. MURPHY, Mr. BACHUS, Mr. BAKER, Mr. BARRETT of South Carolina, Mr. BEREUTER, Mrs. BIGGERT, Mr. BOEHLERT, Mr. CASTLE, Mr. EMANUEL, Mr. GILLMOR, Mr. GREEN of Wisconsin, Ms. HART, Mr. JONES of North Carolina, Mrs. KELLY, Mr. LATOURETTE, Mr. LEACH, Mr. LEWIS of Kentucky, Mr. MANZULLO, Mr. GARY G. MILLER of California, Mrs. CAPITO, Mr. RENZI, Mr. RYUN of Kansas, Mr. SCOTT of Georgia, Mr. SHADEGG, Mr. SHAYS, Mr. TIBERI, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide downpayment assistance under the HOME Investment Partnerships Act, 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 “American Dream
5 Downpayment Act”.

1 SEC. 2. DOWNPAYMENT ASSISTANCE INITIATIVE UNDER
2 HOME PROGRAM.

3 (a) DOWNPAYMENT ASSISTANCE INITIATIVE.—Sub-
4 title E of title II of the Cranston-Gonzalez National Af-
5 fordable Housing Act (42 U.S.C. 12821) is amended to
6 read as follows:

7 **“Subtitle E—Other Assistance**

8 **“SEC. 271. DOWNPAYMENT ASSISTANCE INITIATIVE.**

9 “(a) GRANT AUTHORITY.—The Secretary may make
10 grants to participating jurisdictions to assist low-income
11 families to achieve homeownership, in accordance with this
12 section.

13 “(b) ELIGIBLE ACTIVITIES.—Amounts made avail-
14 able under this section may be used only for downpayment
15 assistance toward the purchase of single family housing
16 by low-income families who are first-time homebuyers. For
17 purposes of this title, the term ‘downpayment assistance’
18 means assistance to help a family acquire a principal resi-
19 dence.

20 “(c) HOUSING STRATEGY.—To be eligible to receive
21 a grant under this section for a fiscal year, a participating
22 jurisdiction shall include in its comprehensive housing af-
23 fordability strategy under section 105 for such year a de-
24 scription of the use of the grant amounts.

25 “(d) FORMULA ALLOCATION.—For each fiscal year,
26 the Secretary shall allocate any amounts made available

1 for assistance under this section for the fiscal year in ac-
2 cordance with a formula, which shall be established by the
3 Secretary, that considers a participating jurisdiction's
4 need for and prior commitment to assistance to home-
5 buyers. The formula may include minimum and maximum
6 allocation amounts.

7 “(e) REALLOCATION.—If any amounts allocated to a
8 participating jurisdiction under this section become avail-
9 able for reallocation, the amounts shall be reallocated to
10 other participating jurisdictions in accordance with the
11 formula established pursuant to subsection (c), except that
12 if a local participating jurisdiction failed to receive
13 amounts allocated under this section and is located in a
14 State that is a participating jurisdiction, the funds shall
15 be reallocated to the State.

16 “(f) APPLICABILITY OF OTHER PROVISIONS.—

17 “(1) IN GENERAL.—Except as otherwise pro-
18 vided in this section, grants under this section shall
19 not be subject to the provisions of this title.

20 “(2) APPLICABLE PROVISIONS.—In addition to
21 the requirements of this section, grants under this
22 section shall be subject to the provisions of title I,
23 sections 215(b), 218, 219, 221, 223, 224, and
24 226(a) of subtitle A of this title, and subtitle F of
25 this title.

1 “(3) REFERENCES.—In applying the require-
2 ments of subtitle A referred to in paragraph (2)—

3 “(A) any references to funds under subtitle
4 A shall be considered to refer to amounts made
5 available for assistance under this section; and

6 “(B) any references to funds allocated or
7 reallocating under section 217 or 217(d) shall be
8 considered to refer to amounts allocated or re-
9 allocated under subsection (d) or (e) of this sec-
10 tion, respectively.

11 “(g) ADMINISTRATIVE COSTS.—Notwithstanding sec-
12 tion 212(c), a participating jurisdiction may use funds
13 under subtitle A for administrative and planning costs of
14 the jurisdiction in carrying out this section, and the limita-
15 tion in section 212(c) shall be based on the total amount
16 of funds available under subtitle A and this section.

17 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
18 is authorized to be appropriated to carry out this section
19 \$200,000,000 for each of fiscal years 2004 and 2005.”.

20 (b) RELOCATION ASSISTANCE AND DOWNPAYMENT
21 ASSISTANCE.—Subtitle F of title II of the Cranston-Gon-
22 zalez National Affordable Housing Act is amended by in-
23 serting after section 290 (42 U.S.C. 12840) the following
24 new section:

1 “SEC. 291. RELOCATION ASSISTANCE AND DOWNPAYMENT
2 ASSISTANCE.

3 “The Uniform Relocation Assistance and Real Prop-
4 erty Acquisition Policies Act of 1970 shall not apply to
5 downpayment assistance under this title.”.

○

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
Sent: 4/1/2003 12:59:18 PM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-APR-2003 17:59:18.00
SUBJECT:: Re:
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

36 circuit nominees
15 non-traditional (42%)
9 women (25%)
3 African-American (8%)
3 Hispanic (8%)

From: David G. Leitch/WHO/EOP@Exchange on 04/01/2003 05:53:07 PM
Record Type: Record

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

Reminder to send me the info on diversity of judges.; Thanks.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/1/2003 1:15:49 PM
Subject: : RE:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 1-APR-2003 18:15:49.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Any info on the number of Dems?

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 01, 2003 5:59 PM
To: Leitch, David G.
Subject: Re:

36 circuit nominees
15 non-traditional (42%)
9 women (25%)
3 African-American (8%)
3 Hispanic (8%)

From: David G. Leitch/WHO/EOP@Exchange on 04/01/2003 05:53:07 PM
Record Type: Record

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

Reminder to send me the info on diversity of judges. Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
CC: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 4/1/2003 1:32:46 PM
Subject: : win on executive privilege

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 1-APR-2003 18:32:46.00

SUBJECT: : win on executive privilege

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

CC: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Judge Kessler (DDC) has ruled in our favor in Judicial Watch v. DOJ, a suit seeking Clinton pardon records from DOJ. She relied on Exemption 5, which incorporates the presidential communications privilege. Opinion has (i) very good reasoning and statements on privilege applying to records of former President and (ii) expands the scope of the Presidential communications privilege beyond White House staff, a point that was left open/confused in In re Sealed Case in 1997. This is a significant and good ruling from Judge Kessler.

REV_00232746

From: Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>
To: Higginbotham, Ryan (Judiciary) <Ryan_Higginbotham@Judiciary.senate.gov>; Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benczkowski, Brian A <Brian.A.Benczkowski@usdoj.gov>; LeBon, Cherylyn (Judiciary) <Cherylyn_LeBon@Judiciary.senate.gov>; Dahl, Alex (Judiciary) <Alex_Dahl@Judiciary.senate.gov>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Theodore W. Ulylot/WHO/EOP@EOP [WHO] <Theodore W. Ulylot>; Brown, Jamie E (OLA) <Jamie.E.Brown@usdoj.gov>; Dinh, Viet <Viet.Dinh@usdoj.gov>
Sent: 4/1/2003 4:27:29 PM
Subject: : Leahy Stateemtn today
Attachments: P_3BO8F003_WHO.TXT_1.html

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##### Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ( "Delrahim,
Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [ UNKNOWN ] )
CREATION DATE/TIME: 1-APR-2003 21:27:29.00
SUBJECT: Leahy Stateemtn today
TO:"Higginbotham, Ryan (Judiciary)" <Ryan_Higginbotham@Judiciary.senate.gov> (
"Higginbotham, Ryan (Judiciary)" <Ryan_Higginbotham@Judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> (
"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [ UNKNOWN ]
)
READ:UNKNOWN
TO:Kyle Sampson ( CN=Kyle Sampson/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> ( "Benczkowski, Brian A"
<Brian.A.Benczkowski@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"LeBon, Cherylyn (Judiciary)" <Cherylyn_LeBon@Judiciary.senate.gov> ( "LeBon, Cherylyn
(Judiciary)" <Cherylyn_LeBon@Judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ( "Dahl, Alex (Judiciary)"
<Alex_Dahl@Judiciary.senate.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:Wendy J. Grubbs ( CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:Theodore W. Ulylot ( CN=Theodore W. Ulylot/OU=WHO/O=EOP@EOP [ WHO ] )
READ:UNKNOWN
TO:"Brown, Jamie E (OLA)" <Jamie.E.Brown@usdoj.gov> ( "Brown, Jamie E (OLA)"
<Jamie.E.Brown@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
TO:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ( "Dinh, Viet" <Viet.Dinh@usdoj.gov> [ UNKNOWN ] )
READ:UNKNOWN
##### End Original ARMS Header #####
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FYI - We should try to decipher and respond to attacks on WH and Hatch.

+++++

Opening Statement of Senator Patrick Leahy,
Ranking Democratic Member,
Senate Judiciary Committee
Judicial Nominations Hearing
April 1, 2003

Today we meet to consider the nomination of California Judge Carolyn
Kuhl to the United States Court of Appeals for the Ninth Circuit,

Florida Judge Cecilia Altonaga to the United States District Court for the Southern District of Florida, and Louisiana Judge Patricia Minaldi to the United States District Court for the Eastern District of Louisiana. The District Court nominees have the support of their home-state Senators, although, as I will discuss in a moment, Senators Graham and Nelson have had a most difficult time getting the White House to agree to continue the tradition of the Florida bipartisan selection commission, and have only recently come to a meeting of the minds with the White House.

The Circuit Court nominee before us today, Judge Carolyn Kuhl, however, is not supported by both of her home-state Senators. Her appearance before this Committee, despite that clearly stated opposition, is the latest in a string of transparently partisan actions taken by the Senate's new majority since the beginning of this Congress. In each of these actions - each of them unprecedented -- Republicans have done something they never did while in the majority from 1995 to 2001. Each provocative step, taken in tandem with the White House, has broken new ground in politicizing the federal judiciary. The Republican majority has shown a corrosive and raw-edged willingness to change, bend and even break the rules that they themselves followed before when the judicial nominees involved were a Democratic president's choices, instead of a Republican president's choices. Lest some observers wrongly conclude that this sudden and orchestrated series of rules changes is just 'politics as usual,' it most certainly is not.

First, in January, one hearing was held for three controversial Circuit Court nominees, scheduled to take place in the course of a very busy day in the Senate. There was no precedent for this in the years that Republicans served in the majority and a Democrat was in the White House. In six years during the Clinton Administration, never once were three Circuit Court nominees, let alone three very controversial ones, before this body in a single hearing. But in this session, it is the very first hearing that was scheduled. Why the change in practice? The only conceivable difference is that now there is a Republican in the White House.

When there was a Democratic president in the White House, circuit nominees were delayed and deferred, and vacancies on the Courts of Appeals more than doubled under Republican leadership, from 16 in January 1995, to 33 when the Democratic majority took over partway through 2001.

Under Democratic leadership we held hearings on 20 Circuit Court nominees in 17 months. Indeed, while Republicans averaged 7 confirmations to the Circuit Courts every 12 months, the Senate under Democratic leadership confirmed 17 in its 17 months in the majority - and we did so with a White House that was uncooperative in a magnitude of historic proportions.

This year with a Republican in the White House, the Republican majority has gone from idling -- the restrained pace it had said was required for Clinton nominees -- to overdrive for the most controversial of President Bush's nominees.

But that dramatic change in pace is not the only politicized action taken by the Senate's new majority this year. Next, the Republican majority supported and facilitated the re-nomination of Priscilla Owen to a seat on the U.S. Court of Appeals for the Fifth Circuit, for which she already had been rejected by this Committee. Then they brought her back for a hearing during which no new facts of any significance were introduced, but during which many leading questions were asked and accusations of unfairness made. This is a nomination that never should have been re-sent to the Senate, and which, if it succeeds, will only be because of a display of raw politics.

Now the Republican majority has scheduled this hearing for a nominee who does not have blue slips returned from both of her home-state Senators -

that is, a nominee for whom only one of her home-state Senators has indicated she agrees that a hearing should be held. Now, we will surely hear today, in defense of this hearing, a long recitation of the history of the blue slip. We will hear how it was used unfairly during the unfortunate past of the Committee, to keep the federal bench from being integrated. We will hear how other Chairmen, Senators Kennedy and Biden, modified their policies to allow for more fairness in the consideration of a more diverse federal bench. And, we will hear how the Chairman's real objection during the Clinton Administration was the so-called "lack of consultation" with Republican Senators, and how fairly and successfully President Bush's White House has consulted with obstreperous Democrats. The Chairman will tell us that he considers himself the heir to Democratic traditions, that he has always followed those policies and is only now acting consistent with his own past practice.

What I doubt we will hear from the other side of the aisle is the plain and simple truth of the two distinct practices the majority has followed. While it is true that various Chairmen of the Judiciary Committee have used the blue-slip in different ways, some to maintain unfairness, and others to attempt to remedy it, it is also true that each of those Chairmen was consistent in his application of his own policy -- that is, until now. Today is the first time that this Chairman will ever have convened a hearing for a judicial nominee who did not have two positive blue slips returned to the Committee. The first time, ever. Despite protestations that this has been the Chairman's consistent policy over time, the facts show exactly the opposite.

Without going through a dissertation-length statement on each blue slip and the policies they articulated, let me just show you examples of two different ones. These pieces of blue paper are what the Chairman uses to solicit the opinion of home-state Senators about the President's nominees. When President Clinton was in office, this was the blue slip sent to Senators, asking their consent. On the face of the form is written the following:

Please return this form as soon as possible to the nominations office. No further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home state senators.

When President Bush began his term, and Senator Hatch took over the Chairmanship at the start of the 107th Congress in late January, 2001, the blue slip sent out to Senators changed, and today says simply:

Please complete the attached blue slip form and return it as soon as possible to the Committee office.

The blue slip practice is an enforcement mechanism for consultation by the White House with Senators about nominees to their home states. This new blue slip contains no requirement that the President may have to engage in sufficiently meaningful consultation with home-state Senators in order to gain their consent, no rule that one Senator's agreement is enough to move a nominee, no distinction between District and Circuit Court nominees. All it contains is a simple, unsubtle, 180-degree turn in the direction of the policy, now that the person nominating the judges is a Republican.

I know my colleagues on the other side do not want to be reminded of what happened to so many of President Clinton's nominees, but I cannot entirely leave that part of this story out. The blue slip policy that was in effect and that was strictly enforced by the Chairman during the Clinton Administration operated as an absolute bar to the consideration of any nominee to any court unless both home-state Senators had returned positive blue slips. No time limit was set, no reason had to be articulated. Remember, before the Senate's change to Democratic majority in July of 2001, all of these decisions were being made in secret. Blue slips were not public, and they were allowed to function

as an anonymous hold on otherwise qualified nominees.

A few examples of the operation of the blue slip and how it was scrupulously honored by the Committee during the Clinton Presidency are worth remembering. Remember, in the 106th Congress alone, more than half of President Clinton's Circuit Court nominees in the 106th Congress were defeated through the operation of the blue slip or other such partisan obstruction. Perhaps the most vivid is the story of the United States Court of Appeals for the Fourth Circuit, where Senator Helms was permitted by this Committee to resist President Clinton's nominees for six years. James Beaty was first nominated to the Fourth Circuit from North Carolina by President Clinton in 1995, but no further action was taken on his nomination in 1995, 1996, 1997, or 1998. Another Fourth Circuit nominee from North Carolina, Rich Leonard, was nominated in 1995, but no further action was taken on his nomination either in 1995 or 1996. James Wynn, again a North Carolina nominee to the Fourth Circuit, sent to the Senate by President Clinton in 1999, sat without action in 1999, 2000, and early 2001, until President Bush withdrew his nomination.

Why? Because one senator from the nominees' home state objected to their moving forward. Was this right or wrong? That is a question for another day and another history lesson. But it was done by a Republican Senate to the nominee of a Democratic President, and done by the same Chairman who today sees fit to ignore the protests, for very real and substantive reasons, of a Democratic Senator to the nominee of a Republican President.

As for the red herring of consultation, again the facts speak for themselves. No doubt we will hear today that during the Clinton Administration blue slip objections had to be honored because of what will now be called, in a bit of revisionism fit for study by Sovietologists, insufficient consultation with home-state Senators. But those of us who were here then know differently. We know that the Clinton White House bent over backwards to work with Republican Senators and seek their advice on appointments to both Circuit and District Court vacancies. There were many times when the White House made nominations at the direct suggestion of Republican Senators, and there are judges sitting today on the Ninth Circuit and the Fourth Circuit, in the District Courts in Arizona, Utah, Mississippi, and many other places only because the voices of Senators in the opposite party were heeded.

In contrast, since the beginning of its time in the White House, this Bush Administration has sought to overturn traditions of bipartisan nominating commissions and to run roughshod over the advice of Democratic Senators. They changed the systems in Wisconsin, Washington, and Florida that had worked so well for so many years. They ignored the protests of Senators like Barbara Boxer and John Edwards who not only objected to the nominee proposed by the White House, but who, in attempts to reach a true compromise, also suggested their own Republican alternatives. But those overtures were flatly rejected, and today what we see is just another facet of that unfortunate policy.

Ignoring bipartisan judicial nominating commissions is just another step in the march to entirely politicizing the federal judiciary, and that is exactly what the Bush White House did to the State of Florida. Last year Senators Graham and Nelson were compelled to write in protest to the White House Counsel's flaunting of the time-honored procedures for choosing qualified candidates for the bench. A process that had worked to fill 29 District Court vacancies over ten years was bypassed by this President. I am pleased that the White House has finally agreed to the Florida Senators' proposals so that we can get on with processing the nomination of Cecilia Altonaga. I hope the White House will move to cooperate with other Democratic Senators and increase the almost non-existent level of consultation. We look forward to hearing from Judge Altonaga and Judge Minaldi today, and we welcome and congratulate them and their families.

And, although I object to this hearing being held, I will participate in the questioning of Judge Kuhl, whose nomination rightly raises concerns. Her past advocacy for aiding educational institutions which discriminate on the basis of race, as well as her work on cases involving fundamental constitutional rights, including the right to privacy, give me great concern about her willingness to follow the law, and about the extremism that is evident in her record. I look forward to hearing her answers today.

#

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_3B08F003_WHO.TXT_1>

FYI – We should try to decipher and respond to attacks on WH and Hatch.

+++++++ ++++++

**Opening Statement of Senator Patrick Leahy,
Ranking Democratic Member,
Senate Judiciary Committee
Judicial Nominations Hearing
April 1, 2003**

Today we meet to consider the nomination of California Judge Carolyn Kuhl to the United States Court of Appeals for the Ninth Circuit, Florida Judge Cecilia Altonaga to the United States District Court for the Southern District of Florida, and Louisiana Judge Patricia Minaldi to the United States District Court for the Eastern District of Louisiana. The District Court nominees have the support of their home-state Senators, although, as I will discuss in a moment, Senators Graham and Nelson have had a most difficult time getting the White House to agree to continue the tradition of the Florida bipartisan selection commission, and have only recently come to a meeting of the minds with the White House.

The Circuit Court nominee before us today, Judge Carolyn Kuhl, however, is not supported by both of her home-state Senators. Her appearance before this Committee, despite that clearly stated opposition, is the latest in a string of transparently partisan actions taken by the Senate's new majority since the beginning of this Congress. In each of these actions – each of them unprecedented -- Republicans have done something they never did while in the majority from 1995 to 2001. Each provocative step, taken in tandem with the White House, has broken new ground in politicizing the federal judiciary. The Republican majority has shown a corrosive and raw-edged willingness to change, bend and even break the rules that they themselves followed before when the judicial nominees involved were a Democratic president's choices, instead of a Republican president's choices. Lest some observers wrongly conclude that this sudden and orchestrated series of rules changes is just 'politics as usual,' it most certainly is not.

First, in January, one hearing was held for three controversial Circuit Court nominees, scheduled to take place in the course of a very busy day in the Senate. There was no precedent for this in the years that Republicans served in the majority and a Democrat was in the White House. In six years during the Clinton Administration, never once were three Circuit Court nominees, let alone three very controversial ones, before this body in a single hearing. But in this session, it is the very first hearing that was scheduled. Why the change in practice? The only conceivable difference is that now there is a Republican in the White House.

When there was a Democratic president in the White House, circuit nominees were delayed and deferred, and vacancies on the Courts of Appeals more than doubled under Republican leadership, from 16 in January 1995, to 33 when the Democratic majority took over partway through 2001.

Under Democratic leadership we held hearings on 20 Circuit Court nominees in 17 months. Indeed, while Republicans averaged 7 confirmations to the Circuit Courts every 12 months, the Senate under Democratic leadership confirmed 17 in its 17 months in the majority – and we did so with a White House that was uncooperative in a magnitude of historic proportions.

This year with a Republican in the White House, the Republican majority has gone from idling -- the restrained pace it had said was required for Clinton nominees -- to overdrive for the most controversial of President Bush's nominees.

But that dramatic change in pace is not the only politicized action taken by the Senate's new majority this year. Next, the Republican majority supported and facilitated the re-nomination of Priscilla Owen to a seat on the U.S. Court of Appeals for the Fifth Circuit, for which she already had been rejected by this Committee. Then they brought her back for a hearing during which no new facts of any significance were introduced, but during which many leading questions were asked and accusations of unfairness made. This is a nomination that never should have been re-sent to the Senate, and which, if it succeeds, will only be because of a display of raw politics.

Now the Republican majority has scheduled this hearing for a nominee who does not have blue slips returned from both of her home-state Senators – that is, a nominee for whom only one of her home-state Senators has indicated she agrees that a hearing should be held. Now, we will surely hear today, in defense of this hearing, a long recitation of the history of the blue slip. We will hear how it was used unfairly during the unfortunate past of the Committee, to keep the federal bench from being integrated. We will hear how other Chairmen, Senators Kennedy and Biden, modified their policies to allow for more fairness in the consideration of a more diverse federal bench. And, we will hear how the Chairman's real objection during the Clinton Administration was the so-called "lack of consultation" with Republican Senators, and how fairly and successfully President Bush's White House has consulted with obstreperous Democrats. The Chairman will tell us that he considers himself the heir to Democratic traditions, that he has always followed those policies and is only now acting consistent with his own past practice.

What I doubt we will hear from the other side of the aisle is the plain and simple truth of the two distinct practices the majority has followed. While it is true that various Chairmen of the Judiciary Committee have used the blue-slip in different ways, some to maintain unfairness, and others to attempt to remedy it, it is also true that each of those Chairmen was consistent in his application of his own policy -- that is, until now. Today is the first time that this Chairman will ever have convened a hearing for a judicial nominee who did not have two positive blue slips returned to the Committee. The first time, ever. Despite protestations that this has been the Chairman's consistent policy over time, the facts show exactly the opposite.

Without going through a dissertation-length statement on each blue slip and the policies they articulated, let me just show you examples of two different ones. These pieces of blue paper are what the Chairman uses to solicit the opinion of home-state Senators about the President's nominees. When President Clinton was in office, this was the blue slip sent to Senators, asking their consent. On the face of the form is written the following:

Please return this form as soon as possible to the nominations office. No further proceedings on this nominee will be scheduled until both blue slips have been returned by the nominee's home state senators.

When President Bush began his term, and Senator Hatch took over the Chairmanship at the start of the 107th Congress in late January, 2001, the blue slip sent out to Senators changed, and today says simply:

Please complete the attached blue slip form and return it as soon as possible to the Committee office.

The blue slip practice is an enforcement mechanism for consultation by the White House with Senators about nominees to their home states. This new blue slip contains no requirement that the President may have to engage in sufficiently meaningful consultation with home-state Senators in order to gain their consent, no rule that one Senator's agreement is enough to move a nominee, no distinction between District and Circuit Court nominees. All it contains is a simple, unsubtle, 180-degree turn in the direction of the policy, now that the person nominating the judges is a Republican.

I know my colleagues on the other side do not want to be reminded of what happened to so many of President Clinton's nominees, but I cannot entirely leave that part of this story out. The blue slip policy that was in effect and that was strictly enforced by the Chairman during the Clinton Administration operated as an absolute bar to

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#####

From: Greenstone, Adam F.
To: <McNally, Edward>;<Kavanaugh, Brett M.>
CC: <Gill, Faisal M.>;<Luczynski, Kimberley S.>
Sent: 4/2/2003 10:14:07 AM
Subject: FW: Steve Cooper

Please advise.

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

From: Hill, Bartholomew G.
Sent: Wednesday, April 02, 2003 9:28 AM
To: Greenstone, Adam F.
Subject: Steve Cooper

Jennifer Beverly (our government customer support rep at 1800 G St) says that Steve Cooper is refusing to relinquish possession of his WHO (OHS) PC. He wants a CD of the data burned first. When he requested the CD originally, they went to his TPO computer, but there was no data on it. It seems he was using his WHO computer for his TPO work. So now he has stated he will not give us back the WHO PC until he gets a CD burned of the data on the hard drive of the WHO computer. Jennifer has emailed Faisal since it is way past the agreed upon date, but has not heard back yet. Evidently, Cooper is putting on a lot of pressure on this issue, and Jennifer says he is getting nasty about it. We are trying to verify whether he still has a WHO laptop. Does this need WHO and OHS (HSC) counsel concurrence? Just need some guidance. Thanks. Bart

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/2/2003 12:48:09 PM
Subject: FW: LRM JAB42 - - JUSTICE; Small Business Administration Report on HR1166 To Expand and Improve Assistance Provided by SBDCs to Indian tribe members, Native Alaskans, and Native Hawaiians
Attachments: hr1166.senate.wpd; Snow letter re HR1166.doc

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

From: McMillin, Stephen S.
Sent: Wednesday, April 02, 2003 12:25 PM
To: Brown, James A.
Cc: justice.lm@usdoj.gov; ocl@ios.doi.gov; clrm@doc.gov; cla@sba.gov; Rhinesmith, Alan B.; Lyon, Randolph M.; Dennis, Yvette M.; Rasetti, Lorenzo; Lefkowitz, Jay P.; Whgc Lrm; Addington, David S.; Perry, Philip J.; Schneider, Matthew J.; Joseffer, Daryl L.; Rostker, David; Cea Lrm; Nec Lrm; Heath, Daniel D.; Reardon, Brian; Jukes, James J.; Green, Richard E.; Lobrano, Lauren C.
Subject: Re: LRM JAB42 - - JUSTICE; Small Business Administration Report on HR1166 To Expand and Improve Assistance Provided by SBDCs to Indian tribe members, Native Alaskans, and Native Hawaiians

SBA letter should reference that DOJ has additional concerns to be communicated separately, and should correct the spelling of Snowe's name.

From: James A. Brown on 04/02/2003 11:13:47 AM
Record Type: Record

To: justice.lrm@usdoj.gov, ocl@ios.doi.gov, CLRM@doc.gov, cla@sba.gov @ inet
cc: See the distribution list at the bottom of this message
Subject: LRM JAB42 - - JUSTICE; Small Business Administration Report on HR1166 To Expand and Improve Assistance Provided by SBDCs to Indian tribe members, Native Alaskans, and Native Hawaiians

- hr1166.senate.wpd << [hr1166.senate.wpd](#) >> Justice letter
[Snow letter re HR1166.doc](#) >> SBA letter

- Snow letter re HR1166.doc <<

LRM ID: JAB42

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Wednesday, April 2, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109

REV_00232796

SUBJECT: JUSTICE; Small Business Administration Report on HR1166 To Expand and Improve Assistance Provided by SBDCs to Indian tribe members, Native Alaskans, and Native Hawaiians

DEADLINE: 10:00 A.M. Friday, April 4, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: This bill passed the House on March 31st and has been referred to the Senate Small Business Committee for consideration. Since the Senate Small Business Committee favorably considered similar legislation in the last Congress, Committee action on the bill (if any) may occur rapidly. We therefore need to clear these proposed letters at the deadline.

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- 025-COMMERCE - Michael A. Levitt - (202) 482-3151
- 107-Small Business Administration - Richard Spence - (202) 205-6700

EOP:

- Stephen S. McMillin
- Alan B. Rhinesmith
- Randolph M. Lyon
- Yvette M. Dennis
- Lorenzo Rasetti
- Jay P. Lefkowitz
- WHGC LRM
- David S. Addington
- Philip J. Perry
- Matthew J. Schneider
- Daryl L. Joseffer
- David Rostker
- CEA LRM
- NEC LRM
- Daniel D. Heath
- Brian Reardon
- James J. Jukes
- Richard E. Green

Lauren C. Lobrano LRM ID: JAB42 **SUBJECT:** JUSTICE; Small Business Administration Report on HR1166 To Expand and Improve Assistance Provided by SBDCs to Indian tribe members, Native Alaskans, and Native Hawaiians

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or**
- (2) faxing us a memo or letter.**

The Honorable
United States Senate
Washington, D.C. 20210

Dear Mr. _____ :

The Department of Justice has reviewed H.R. 1166, a bill which would amend the Small Business Act to expand and improve the assistance provided by Small Business Development Centers to Indian tribe members, Native Alaskans, and Native Hawaiians. Upon completion of our review, we found that this legislation raises significant constitutional concerns as stated below.

H.R. 1166 would amend section 21(a) of the Small Business Act to authorize grants that would be used to provide services and assistance for the "development[] and enhancement on Indian lands of small business startups and expansions owned by Indian tribe members, Native Alaskans, and Native Hawaiians." To the extent that these grants would provide benefits to members of federally recognized Indian tribes and Alaska Native villages or corporations, courts would likely uphold them as constitutional under *Morton v. Mancari*, 417 U.S. 535 (1974). To the extent, however, that the bill could be viewed as authorizing the award of government benefits on the basis of racial or ethnic criteria, rather than tribal affiliation, the deferential *Mancari* standard would not apply and the grants would be subject to strict scrutiny under *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 235 (1995).

In particular, Congress has not recognized any group of Native Hawaiians as an Indian tribe, and there is a substantial, unresolved question "whether Congress may treat the native Hawaiians as it does the Indian tribes." *Rice v. Cayetano*, 528 U.S. 495, 518 (2000). This Department has on a number of occasions expressed concerns as to whether the Supreme Court would hold that any group of Native Hawaiians constitutes "a distinctly Indian communit[y]." See *United States v. Sandoval*, 231 U.S. 28, 45-46 (1913). In the absence of findings demonstrating that the bill's authorization of benefits for Native Hawaiians is narrowly tailored to serve a compelling governmental interest, we recommend that the term "Native Hawaiians" be deleted. (We further note that the bill in its current form makes little sense, as we are unaware of any Hawaiian lands that would satisfy the definition of "Indian lands" in the bill.)

Moreover, to the extent that the term "Native Alaskans" includes individuals who are not affiliated with any federally recognized Alaska Native village or corporation, the use of government funds to benefit such individuals would also be subject to strict scrutiny. Since the bill's definition of "Indian tribe" already includes recognized Alaska Native villages and corporations, we recommend that the term "Native Alaskans" also be stricken from the bill.

Thank you for the consideration of our views. If we can be of further assistance in this matter, please do not hesitate to contact us. The Office of Management and Budget has advised that there is no objection to this report from the standpoint of the Administration's program.

Sincerely,

Jamie E. Brown
Acting Assistant Attorney General

cc:

The Honorable Olympia J. Snow
Chair, Committee on Small Business
and Entrepreneurship
United States Senate
Washington, DC 20510

Dear Madam Chairman:

This letter is to express the concerns of the U.S. Small Business Administration (SBA) on H.R.1166, the Native American Small Business Development Act. While SBA recognizes the need and importance of providing assistance to small businesses and helping them comply with these issues, we do not support these amendments to the Small Business Act (Act).

H.R.1166 would establish a three-year pilot program for Small Business Development Centers (SBDC) to be used for outreach, development and enhancement of startups and expansions of small businesses owned by Indian tribe members, Native Alaskans and Native Hawaiians. The SBA supports activities designed to improve opportunities for success in businesses owned by Native Americans. However, SBA believes the funding and authority currently made available to SBDCs is sufficient to provide the services contemplated for the Native American, Native Hawaiian and Native Alaskan populations. In addition the bill does not address the major barriers relating to legal infrastructure, government operations, economics, physical and financial infrastructure and educational and cultural issues. Furthermore, SBA has a Native American initiative and the proposed program is duplicative of the Department of Treasury's Community Development Financial Institution Fund, Native American Program.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's Programs.

Thank you for the opportunity to express our concerns regarding these proposed amendments to the Small Business Act.

Sincerely,

Hector V. Barreto
Administrator

From: Kavanaugh, Brett M.
To: <Lefkowitz, Jay P.>;<Kavanaugh, Brett M.>
Sent: 4/2/2003 10:47:48 PM
Subject: Re: Michigan

No. Struck down but with oconnor articulating a rationale that allows race to be a factor so long as limited in duration.

.

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

From: Jay P. Lefkowitz/OPD/EOP@Exchange

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

Cc:

Date: 04/02/2003 09:19:22 PM

Subject: Michigan

Did you mean to suggest that you think Mich programs are upheld?

.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
CC: <Bartolomucci, H. Christopher>
Sent: 4/3/2003 9:00:37 AM
Subject: FW: TIME SENSITIVE -- LRM JAB43 - - TRANSPORTATION Report on Stevens Amendment (Citizenship Qualifications for Air Carriers Contracting With Defense Department) to Defense Supplemental, FY 2003
Attachments: Frist.doc.1; Frist.doc.1

This is for Brett, just a cc to Bart since he covers the Supplemental

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

From: Brown, James A.
Sent: Thursday, April 03, 2003 8:58 AM
To: Addington, David S.; Whgc Lrm; Perry, Philip J.; Schneider, Matthew J.; Wood, John F.; Joseffer, Daryl L.
Subject: TIME SENSITIVE -- LRM JAB43 - - TRANSPORTATION Report on Stevens Amendment (Citizenship Qualifications for Air Carriers Contracting With Defense Department) to Defense Supplemental, FY 2003

----- Forwarded by James A. Brown/OMB/EOP on 04/03/2003 08:58 AM -----

From: James A. Brown on 04/03/2003 08:49:14 AM
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: TIME SENSITIVE -- LRM JAB43 - - TRANSPORTATION Report on Stevens Amendment (Citizenship Qualifications for Air Carriers Contracting With Defense Department) to Defense Supplemental, FY 2003

- Frist.doc << [Frist.doc](#) >>

The Senate is expected to vote on this amendment today, so we need to hear from you no later than the deadline. If you disagree with the Department's proposed position, please notify me immediately so that appropriate policy level discussions can be arranged.

The text of the Stevens amendment is as follows: "None of the funds in this Act or any other Act may be obligated or expended to pay for transportation described in section 41106 of title 49, United States Code, to be performed by any air carrier that is not effectively controlled by citizens of the United States. For purposes of

that title, an air carrier shall not be considered to be effectively controlled by the citizens of the United States if the air carrier receives 50 percent or more of its operating revenues from a person not a citizen of the United States and such person, directly or indirectly, either owns a voting interest in the air carrier or is owned by an agency or

instrumentality of a foreign state. This prohibition applies to transportation performed under any contract awarded or re-awarded after the date of enactment of this Act."

According to DOT, this amendment is designed to reverse a DOT decision that DHL qualifies as an "air carrier" (thus a "U.S. citizen") for regulatory purposes.

LRM ID: JAB43

EXECUTIVE OFFICE OF THE PRESIDENT

REV_00232854

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Thursday, April 3, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: **TRANSPORTATION Report on S762 Making Supplemental Appropriations to Support Department of Defense Operations in Iraq, Department of Homeland Security, and Related Efforts, FY 2003**

DEADLINE: **12:00 NOON TODAY Thursday, April 3, 2003**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

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128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755

EOP:

Elizabeth M. Robinson
Elizabeth L. Rossman
Stephen S. McMillin
Robin Cleveland
Kathleen Peroff
Robert H. Goldberg
Ricardo A. Aguilera
Cameron M. Leuthy
Alexander J. McClelland

Rodney G. Bent
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Kenneth L. Schwartz
Steven M. Mertens
Brian P. Doherty
Meredith G. Benson
James J. Jukes
Lauren C. Lobrano
Richard E. Green
Sean B. O'Hollaren

Amy L. Call **LRM ID: JAB43** **SUBJECT: TRANSPORTATION** Report on S762 Making Supplemental Appropriations to Support Department of Defense Operations in Iraq, Department of Homeland Security, and Related Efforts, FY 2003

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

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(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur
_____ No Objection
_____ No Comment
_____ See proposed edits on pages _____

Other: _____

FAX RETURN of _____ pages, attached to this response sheet

Message Sent To: _____

dodlrs@osdgc.osd.mil @ inet
justice.lrm@usdoj.gov @ inet
state-lrm@state.gov @ inet
NSC LRM
llr@do.treas.gov @ inet
CLRM@doc.gov @ inet
laffairs@ustr.gov @ inet

Message Copied To: _____

Elizabeth M. Robinson/OMB/EOP@EOP
Elizabeth L. Rossman/OMB/EOP@EOP
Stephen S. McMillin/OMB/EOP@EOP
Robin Cleveland/OMB/EOP@EOP
Kathleen Peroff/OMB/EOP@EOP
Robert H. Goldberg/OMB/EOP@EOP
Ricardo A. Aguilera/OMB/EOP@EOP
Cameron M. Leuthy/OMB/EOP@EOP
Alexander J. McClelland/OMB/EOP@EOP
Rodney G. Bent/OMB/EOP@EOP
Michael Casella/OMB/EOP@EOP
Jacqueline Strasser/OMB/EOP@EOP
Elizabeth S. Dougherty/OPD/EOP@EOP
Jess Sharp/OPD/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Steven M. Mertens/OMB/EOP@EOP
Brian P. Doherty/OA/EOP@Exchange@EOP
Meredith G. Benson/OMB/EOP@EOP
James J. Jukes/OMB/EOP@EOP
Lauren C. Lobrano/OMB/EOP@EOP
Richard E. Green/OMB/EOP@EOP
Sean B. O'Hollaren/WHO/EOP@Exchange@EOP
Amy L. Call/OMB/EOP@EOP

The Honorable William [Bill] Frist
Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. Majority Leader:

I would like to advise you of the Department of Transportation's (DOT) significant concerns over a pending amendment to the Defense Supplemental measure now before the Senate. We oppose its inclusion in this legislation.

The troubling proposal would prohibit DOD from acquiring air services from any air carrier "not effectively controlled" by U.S. citizens as that term is newly defined in this legislation. This significant, new statutory limitation would eliminate DOD's access to the aircraft of air carriers currently licensed by DOT who may not meet the new standard. While DOD is in the middle of a major effort to move troops and materiel to the Persian Gulf region in support of the war effort, this provision could have an immediate and adverse effect on the Nation's airlift capabilities.

This amendment could potentially apply to a number of U.S. carriers (including those engaged in code-sharing with foreign carriers) because the revenue earned from code-sharing would count toward the determination of non-U.S. control, and because alliances between U.S. and foreign carriers may include equity investment that also could determine non-U.S. control. If that were the case, more than just the two carriers apparently targeted by this amendment would be affected.

Although perhaps not intended by the drafting, the provision would do more than bar services to DOD; it would likely require DOT to revoke overall authority to operate as a U.S. air carrier in some cases because the provision undermines the Department's determination that a described carrier is a U.S. citizen.

The provision would prevent U.S. air carriers from accepting certain types of business under a variety of circumstances. For example, if a cargo air carrier that is owned entirely by U.S. citizens were to enter into a major contract with a foreign government (e.g., Britain or Canada) and the portion of the operating revenues represented by that contract exceeded the 50% standard, which could fluctuate quickly or temporarily depending on the period of time reviewed, the carrier could be subject to having its certificate revoked.

Sincerely yours,

Norman Y. Mineta

From: CN=Holly T. Moore/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/3/2003 12:26:46 PM
Subject: : Re: state points

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP [NSC])
CREATION DATE/TIME: 3-APR-2003 17:26:46.00
SUBJECT:: Re: state points
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

having passed omb clearance on points to state, they will now send the points to the hill. i have encouraged them to look into getting state principals to call folks and will let you know what i hear. anything from addington? thanks, htm

Brett M. Kavanaugh
04/03/2003 04:10:38 PM
Record Type: Record

To: Holly T. Moore/NSC/EOP@EOP
cc:
bcc:
Subject: Re: state points

I think he should just say "Administration opposes." Relevant players at State, NSC, and WH have examined.

Holly T. Moore
04/03/2003 04:09:34 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: state points

mike andricos said that he would look into getting an omb clearance on the points so that it could say the Administration, but he is very worried about the timing. do you know to whom in omb i can take them to for a quick clearance? (i'm sorry. i feel like at some point i will get down the players here and how to move things quickly, but i don't feel like i have it down yet) thanks, htm

From: CN=Holly T. Moore/OU=NSC/O=EOP [NSC]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
CC: John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>; Brett M. Kavanaugh/WHO
/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/3/2003 10:40:58 AM
Subject: : Allen, Harkin, Hollings Amendment related to causes of action against state sponsors of terrorism

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP [NSC])
CREATION DATE/TIME: 3-APR-2003 15:40:58.00
SUBJECT:: Allen, Harkin, Hollings Amendment related to causes of action against state sponsors of terrorism
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
CC:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

David --

John Bellinger asked me to look at the amendment that you brought to his attention, which we have now learned that Allen plans to take to the floor this afternoon. The amendment would permit suits against certain States -- those on the terrorism list -- even though such suits may be barred by an international agreement. The immediate practical effect of the amendment is to provide the Iran hostages a cause of action and result in a violation by the United States of its Algiers Accords obligations. John suggested that I ask you whether you have any thoughts on how we can best go about keeping this out. Many thanks, htm

From: Caramanica, Jessica (Judiciary) <Jessica_Caramanica@Judiciary.senate.gov>
To: Dahl, Alex (Judiciary) <Alex_Dahl@Judiciary.senate.gov>;Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>;Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>;Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>;Smith, William (Judiciary) <William_Smith@Judiciary.senate.gov>;Vogel, Alex (Frist) <Alex_Vogel@frist.senate.gov>;Monica.goodling@usdoj.gov [UNKNOWN] <Monica.goodling@usdoj.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>;viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>;Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>;Ledeen, Barbara (Republican-Conf) <Barbara_Ledeen@src.senate.gov>;Gumerson, Katie (RPC) <Katie_Gumerson@rpc.senate.gov>;Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>;Abegg, John (McConnell) <John_Abegg@mccconnell.senate.gov>;Galyean, James (L. Graham) <James_Galyean@graham.senate.gov>;ashley_m._snee@who.eop.gov [UNKNOWN] <ashley_m._snee@who.eop.gov>;adam.charnes@usdoj.gov [UNKNOWN] <adam.charnes@usdoj.gov>;brian.a.benczkowski@usdoj.gov [UNKNOWN] <brian.a.benczkowski@usdoj.gov>;Jamie.E.Brown@usdoj.gov [UNKNOWN] <Jamie.E.Brown@usdoj.gov>
Sent: 4/3/2003 10:41:39 AM
Subject: : Meeting Friday at 10:30 a.m.
Attachments: P_6W8BF003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> ("Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME: 3-APR-2003 15:41:39.00

SUBJECT:: Meeting Friday at 10:30 a.m.

TO:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ("Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Smith, William (Judiciary)" <William_Smith@Judiciary.senate.gov> ("Smith, William (Judiciary)" <William_Smith@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Vogel, Alex (Frist)" <Alex_Vogel@frist.senate.gov> ("Vogel, Alex (Frist)" <Alex_Vogel@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Monica.goodling@usdoj.gov (Monica.goodling@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:viet.dinh@usdoj.gov (viet.dinh@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> ("Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Gumerson, Katie (RPC)" <Katie_Gumerson@rpc.senate.gov> ("Gumerson, Katie (RPC)"
<Katie_Gumerson@rpc.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)"
<James_Ho@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> ("Abegg, John (McConnell)"
<John_Abegg@mccconnell.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Galyean, James (L. Graham)" <James_Galyean@lgraham.senate.gov> ("Galyean, James (L.
Graham)" <James_Galyean@lgraham.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:ashley_m._snee@who.eop.gov (ashley_m._snee@who.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:adam.charnes@usdoj.gov (adam.charnes@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:brian.a.benczkowski@usdoj.gov (brian.a.benczkowski@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Jamie.E.Brown@usdoj.gov (Jamie.E.Brown@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

On Friday at 10:30 a.m., there will be a meeting in Makan's office
(SD-145) to discuss judicial nominations. Hope you can make it.

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and
confidential information intended only for the use of the individuals or
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not the intended recipient, you are hereby notified that any
dissemination, distribution, publication, or copying of this message is
strictly prohibited. If you have received this message in error, please
forgive the inconvenience, immediately notify the sender, and delete the
original message without keeping a copy.

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6W8BF003_WHO.TXT_1>

On Friday at 10:30 a.m. , there will be a meeting in Makan's office (SD-145) to discuss judicial nominations. Hope you can make it.< /span>

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees. If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited. If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy.

From: CN=Holly T. Moore/OU=NSC/O=EOP [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/3/2003 11:17:47 AM
Subject: : state points

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP [NSC])
CREATION DATE/TIME: 3-APR-2003 16:17:47.00
SUBJECT:: state points
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

mike andricos said that he would look into getting an omb clearance on the points so that it could say the Administration, but he is very worried about the timing. do you know to whom in omb i can take them to for a quick clearance? (i'm sorry. i feel like at some point i will get down the players here and how to move things quickly, but i don't feel like i have it down yet) thanks, htm

From: Loy, Carrie B.
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>;<Koch, Matthew>;<Pfeifer, Sarah>;<Montgomery, Brian D.>;<Ingle, Edward>;<Troy, Tevi>
Sent: 4/3/2003 3:31:15 PM
Subject: Agency FOIA Requests
Attachments: FOIA 4-03-03.doc

<< [FOIA 4-03-03.doc](#) >>

AGENCY FOIA REQUESTS

DOC

Received 3/21/03 from **Colleen Freeman, Friends of the Earth**, requesting daily agendas of Deputy Secretary Bodman and Under Secretary Aldonas, from 1/1/02-3/6/03; communications between DOC and the Office of Government Ethics re: ethics compliance or violations, including written and verbal recusal agreements or any ethics agreements for Bodman and Aldonas; and resumes and bio info for Bodman and Aldonas.

Received 3/24/03 from **Pete Yost, The Associated Press**, requesting copies of briefing papers, drafts, handwritten notes, e-mails or other information created in connection with contact between the Secretary of Commerce and: Sir John Browne on February 22, 2001; Chevron on August 2, 2001; Ernest Cockrell and Forrest Hoglund on May 2, 2002; Lod Cook on June 27, 2001; Dynegy on December 11, 2001; energy executives regarding Argentina on March 14, 2002; Steve Friedman on October 3, 2002; Wayne Gibbens on June 25, 2001; Ed Gillespie on February 13, 2001 and March 19, 2001; Goldman Sachs on July 8, 2002; Henry Groppe and Spencer Abraham on February 12, 2001; Forrest Hoglund on September 25, 2002; Holly Corp. and Navajo Refining Co. on March 12, 2002; Ray Hunt on June 11, 2002; Carl Lindner on July 31, 2001 and November 5, 2001; JP Morgan on July 18, 2001 and November 6, 2001; Jim Langdon on March 12, 2002; Dr. Laurance on May 31, 2001; Robert Mosbacher on January 26, 2001 and June 7, 2001; Jim Mulva on June 11, 2002; David O'Reilly on October 15, 2002; Henry Paulson on October 24, 2001; Governor Racicot on January 24, 2001 and May 25, 2001; Lee Raymond on July 18, 2001, December 3, 2001, and July 29, 2002; Russian oil and gas representatives on May 23, 2003; Warren Tichenor on September 10, 2002; Union Pacific on July 25, 2002; and Philip Watts on May 17, 2002.

EPA

During the week of March 24-28, 2003, the Agency received 230 FOIA requests. Of the total, 38 were received in Headquarters. Year-to-date totals are 1180 for Headquarters and 6237 Agency-wide. Significant FOIA requests received this week include:

- (1) **Carol Iancu of the Commonwealth of Massachusetts, Office of the Attorney General**, has requested all records related to EPA=s role in the preparation of the Climate Action Report, EPA=s coordination with other U.S. global change research program agencies and with the U.S. Climate Change Science Program related to the preparation and submittal to the U.N. of this report, records provided in response to requests from the Competitive Enterprise Institute, and the Cooler Heads Coalition, and all records related to EPA=s position on whether carbon dioxide is an Air pollutant@ under the CAA;
- (4) **Erik Olson of the Natural Resources Defense Council** has requested all records reflecting any contacts or communications in which perchlorate is mentioned, any

information on the toxicity or health effects of perchlorate, information about its occurrence in ground water, surface water, and any known releases;

- (5) **Kristen Setera of Fox 25 News** has requested documents comparing and/or reviewing the Massachusetts vehicle inspection and maintenance program, and records regarding concerns with the Massachusetts program since it began in 1999;
- (6) **Michelle Alvarez of the Natural Resources Defense Council** has requested documents related to permitting, enforcement actions, and inspections at a DuPont chemical plant in Waynesboro, VA and mercury levels in the environment around the site;
- (7) **Robin Cooley of Earthjustice** has requested documents related to certain abandoned mines on Forest Service lands in Colorado and water quality permits for these sites;
- (8) **Dan Zacharek of WXYZ-TV in Michigan** has requested groundwater information regarding the former Milford Sanitary Landfill in Oakland County, Michigan.

DOJ

Michael Ravnitzky, of American Lawyer Media, has requested "a copy of the diversity plan described by Deputy Attorney General Larry D. Thompson before the Congressional Black Caucus on Friday, September 28, 2001."

Michael Ravnitzky, of American Lawyer Media, has requested copies of all e-mail in the Office of the Deputy Attorney General that reference attorney workforce diversity at the Department of Justice between December 1, 2002 and the present.

DOT

NHTSA has received the following FOIA request: **The Boston Globe** has requested copies of "any and all correspondence, or records of communications, with or concerning Senator John F. Kerry of Massachusetts and/or any member of his staff." The agency's response is due by April 16, 2003.

DOL

Jim Hopkins, Reporter, USA Today, San Francisco, California, is seeking:

Public documents showing the history of 100 closed fatality cases. Mr. Hopkins believes that these documents are stored in OSHA's Integrated Management Information Systems database.

Benjamin Jones, Democratic Senatorial Campaign Committee, is seeking:

correspondence concerning Senators Bennett, Bond, Brownback and Gregg. (Note: this was a DOL-wide request).

HHS

4/7/03 (Tentative)

CMS High Visibility FOIA Request - On March 10, **Susan Jaffe, a reporter from The Plain Dealer in Ohio**, submitted a FOIA request to CMS. The request asked for all correspondence, e-mail, or memorandum to and from the State of Ohio regarding Medicaid drug pricing policies and the state's drug discount card for seniors.

4/14/03 (Tentative)

CMS High Visibility FOIA Request - On February 20, **John Farrell, the Washington Editor of The Boston Globe**, submitted a FOIA request to CMS. The request asked for all correspondence or records of communication with Senator John F. Kerry of Massachusetts and any member of his staff.

4/17/03

News Media Request - **U.S. Medicine** requested rosters of physicians, pharmacists, physician assistants, and nurse practitioners currently employed full-time by the Public Health Service.

4/20/03 (Tentative)

CMS High Visibility FOIA Request - On February 26, **Benjamin Jones, a research director from the Democratic Senatorial Campaign Committee**, submitted a FOIA request to CMS. The request asked for all correspondence pertaining to the following current and former members of the House of Representatives and U.S. Senate between the dates listed: Senator Christopher Bond (1/1/87 to Present), Senator Ben Nighthorse Campbell (1/1/88 to Present), Senator Judd Gregg (1/1/82 to 12/31/89 and 1/1/93 to Present), Senator John McCain (1/1/86 to Present), and Senator Lisa Murkowski (1/1/03 to Present).

DoED

Howard University. David Morton, representing the Washington City Paper, has submitted a Freedom of Information Act Request for access to all documents pertaining to Howard University from 1998 to the present.

Senator John F. Kerry. John A. Farrell, representing The Boston Globe, has submitted a Freedom of Information Act Request for access to documents for Senator John F. Kerry and his staff.

DOI

Jeff Ruch, From PEER. Seeks documents in connection with a National Park Service proposed rulemaking of January 2001 to allow members of the Hopi Tribe to take live eagles from Wupatki National Monument, Arizona. PEER seeks copies of all communications concerning this proposed rulemaking between the National Park Service, Director Mainella's office, or the National Park Service Office of American Indian Liaison, and officials, religious representatives

and members of the Hopi Tribe or their legal counsel beginning on January 22, 2001, to the date of this request.

Sean Smith From the Bluewater Network. Bluewater requests all records generated by, or reviewed by, Secretary of Interior Gale Norton, Assistant Secretary for Fish, Wildlife and Parks Craig Manson, Deputy Assistant Secretary for Fish, Wildlife and Parks David Smith, Park Service Director Fran Mainella, and/or Interior Solicitor William Myers that relate to the issue of snowmobiling in National Parks, including Yellowstone National Park.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Collister W. Johnson/WHO/EOP@EOP [WHO] <Collister W. Johnson>
CC: david b. rachelson/who/eop@eop [WHO] <david b. rachelson>
Sent: 4/3/2003 12:17:41 PM
Subject: : Re: Fletcher use of POTUS letter...
Attachments: P_V9FBF003_WHO.TXT_1.doc; P_V9FBF003_WHO.TXT_2.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-APR-2003 17:17:41.00
SUBJECT:: Re: Fletcher use of POTUS letter...
TO: Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: david b. rachelson (CN=david b. rachelson/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
End Original ARMS Header

Approved.

Collister W. Johnson
04/03/2003 05:14:23 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: David B. Rachelson/WHO/EOP@EOP
Subject: Fletcher use of POTUS letter...

Bret -
attached is a mailer that Cong. Fletcher would like to send out asap,.
you'll note that he has included a copy of a letter POTUS wrote him
recently for his support on the growth package - the text of the letter is
hard to read in the mailer, so i have included a word document with the
text (attached) -
let us know?
thanks!
c

----- Forwarded by Collister W. Johnson/WHO/EOP on
04/03/2003 04:40 PM -----

Daniel Groves <daniel@fletcher2003.com>
04/03/2003 04:00:27 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP, "Cuddy Johnson (E-mail 2)"
<cjohnson@georgewbush.com>
cc:
Subject: Fletcher use of POTUS letter...

Here is a draft showing how the letter will be used. I don't know if you
can read the letter, but it was scanned exactly as we received it. We
make no presumptions of endorsement or support. Are you ok with this?
It's quite similar to the approach we offered earlier for picture and
quote use. Those were approved as you'll recall. I'd like to get this to
the printer ASAP.

REV_00233031

Thank you,

DANIEL GROVES
Campaign Manager
Fletcher for Governor
P.O. Box 910504
Lexington, KY 40591-0504
859.296.6761
859.296.2578 fax
daniel@fletcher2003.com
t

- EF Mail 1.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_V9FBF003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_V9FBF003_WHO.TXT_2>

DRAFT Letter from the President
To Congressman Ernie Fletcher (R, KY-06)
Re. Support for Jobs and Growth Package
3/26/03

Dear Ernie

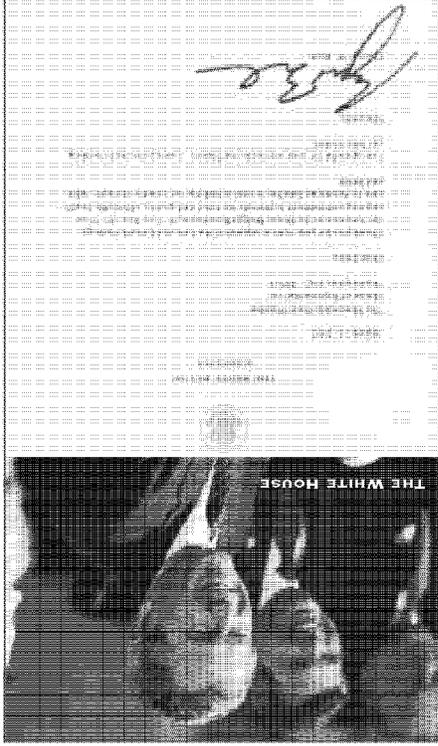
Thank you for your vote in support of the Jobs and Growth Package for America on the House Budget Resolution, H. Con. Res. 95.

Your ongoing commitment to provide tax relief and quality, affordable health care to American families is vital in making our country stronger, safer and better.

I am grateful for your service to the nation. Laura joins me in sending our best wishes.

Sincerely,

President George W. Bush



Fletcher for Governor
P.O. Box 910504
Lexington, KY 40591-0504

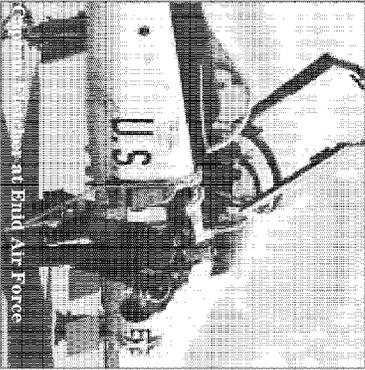
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Restoring hope
859.296.6761
www.Fletcher2003.com

Paid for by the Friends of Ernie Fletcher, P.O. Box 910504, Lexington, KY 40591-0504



Ernie Fletcher . . . a Governor who will Restore Hope!



Ernie Fletcher at Bend Air Force

MEET ERNIE FLETCHER

- Born in Mount Sterling, Montgomery County, Kentucky, 1952
- Married to Glenna Foster, Lexington, Kentucky, 1971
- Graduate of the University of Kentucky College of Engineering, 1972
- Captain, United States Air Force, F-1E fighter jet pilot, 1974
- Graduate of the University of Kentucky College of Medicine, 1984
- Respected Physician in Lexington for 12 years
- Elected Kentucky State Representative in 1994
- CEO, Saint Joseph Medical Foundation, Lexington, 1997
- Elected Member of the United States House of Representatives, serving Kentucky's Sixth Congressional District, 1998
- Father of two, Grandfather of four

"A Former Air Force Pilot, Fletcher takes a low-key approach to attaining his priorities, which have included federal funding for a career prevention center in his district. "Some people want to scream in your face, which I don't think is very effective," he said in 2001, according to The Washington Post. "I'm one who works by sitting down with people to make a consensus and compromise."

Politics in America — 2002.

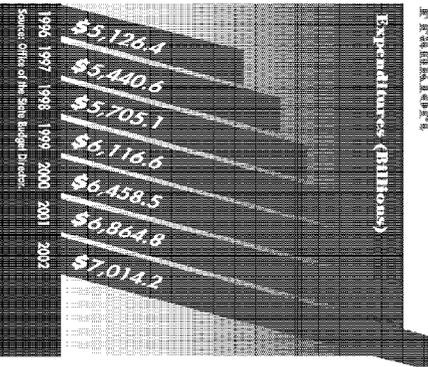
"It's Time to Clean Up the Mess in Frankfort, and Restore Hope in Kentucky!"

Business as usual with the "Good Ol' Boys" in Frankfort isn't good enough for Kentucky anymore. We have lost jobs and opportunity, and many have lost faith in our state government.

Decades of single-party control in Frankfort have led to nothing but scandals and arrogance. While they are obsessed with salvaging their political fortunes, they've done absolutely nothing as jobs leave the state, state spending explodes, the healthcare crisis worsens, and Kentucky slides to the bottom of national education rankings. **Kentucky urgently needs a sound conservative leader** who will bring jobs into the state, control spending, repair healthcare, invest in education and restore trust in our government.

Only Ernie Fletcher has the leadership, skills and life experience to create new jobs for Kentuckians . . . and restore hope to Kentucky.

Ramaway Spending in Frankfort



ERNIE FLETCHER — A Proven Leader, An Effective Conservative, A Man of Integrity

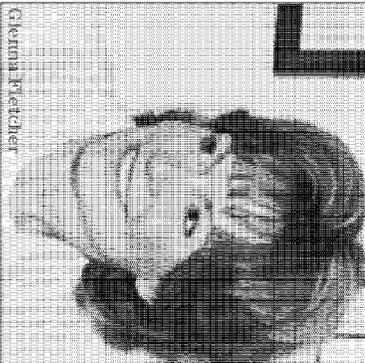
New Jobs, Low Taxes, A Commitment to Healthcare and Education Reform . . . and Renewed Integrity in Government!

■ As Governor, Ernie Fletcher will slash wasteful state spending, eliminate needless regulations, and stop tax increases to attract new businesses and jobs. As President Reagan used to say, "You can't tax yourself into prosperity." Unlike the gang in Frankfort, Ernie Fletcher knows we must keep taxes low and spending must be cut . . . and cut now . . . to create new jobs and new prosperity for Kentucky.

■ When President George W. Bush needed help in Congress to build support for his plan to protect patients' rights and make healthcare affordable, he turned to Dr. Ernie Fletcher. Ernie knows the ins-and-outs of the healthcare system . . . and he will bring the same healthcare expertise to Frankfort that he brought to Congress. **He's a doctor who can heal healthcare!**

■ Kentucky now ranks above only Mississippi in overall education. Ernie Fletcher is committed to rebuilding our schools and restoring hope to our children's future, by giving control of education back to local school boards and committing resources to keep and hire the best teachers possible.

■ Ernie Fletcher is a man of unquestioned integrity. Ernie will work with Kentuckians of all political beliefs to restore integrity to our state government and hope to our citizens!



Glenna Fletcher

For 32 years, I've been married to Ernie Fletcher. We have been together through his military years, his career as a respected physician, and now, his years of elected service to government. We've also shared in the raising of two great kids and one the grandchild of your.

When we met at high school, I saw in Ernie someone intelligent and caring. I wasn't wrong. Then, confirmation of "head and heart" that I wanted in a husband to wife. I believe, Kentucky needs in a Governor.

We can do better. And, frankly, Kentucky deserves better than we've seen lately in Frankfort.

To his eyes, I can only proudly state Ernie Fletcher is both a decent, principled man, and a dedicated public servant. But more importantly, I know, with all my heart, what in electing him, you will have a Governor in whom you can take pride.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [NSC] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Tracy Jucas/WHO/EOP@EOP [WHO] <Tracy Jucas>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Helgard C. Walker/WHO/EOP@EOP [WHO] <Helgard C. Walker>
Sent: 4/3/2003 1:22:59 PM
Subject: : Consuel Maria Callahan - ABA Ratings

Begin Original ARMS Header

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 3-APR-2003 18:22:59.00

SUBJECT:: Consuel Maria Callahan - ABA Ratings

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [NSC])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

REV_00233056

READ:UNKNOWN

TO:Helgard C. Walker (CN=Helgard C. Walker/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Consuelo Maria Callahan, US Court of Appeals, Ninth Circuit, is rated
"Well Qualified" by a substantial majority and "Qualified" by a minority of
the ABA.

;

Thanks

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 4/3/2003 2:04:25 PM
Subject: : ABA President.
Attachments: P_0EKBF003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME: 3-APR-2003 19:04:25.00
SUBJECT:: ABA President.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

From April 2003 ABA Journal:

PRESIDENT'S MESSAGE

MORE AND FASTER

The Crisis in the Federal Judiciary

BY ALFRED P. CARLTON JR.

Over the years, several partners and friends of mine have been considered for the federal bench. Some became federal judges, and some did not. All faced a

conscious decision to limit their income for life and put their practices on hold during almost always protracted and invasive nomination and confirmation

proceedings. All had to consider the reality of donning a somewhat monastic lifestyle along with judicial robes.

All had to consider the likelihood of a public life, punctuated by controversy and "no win" judicial decision-making opportunities. As I have matured as a lawyer, the decision-making has gotten closer and closer to home, and I often find myself thinking, "If it were me, what would I do?"

|

I never really have answered the question but, instead, find myself admiring those who say yes to the sacrifice. And admiring those who say no to the toughest career decision they will ever make. What would you do?

The decision isn't getting any easier. And for those who say yes, life is not getting any easier. In fact, it has become a life that starts with a searing political process, followed by a lifetime of hard work for less pay.

DANGER TO DEMOCRACY

As Chief Justice William H. Rehnquist has said in no uncertain terms to the last three Congresses: There is a crisis in our federal judiciary, constituting a clear and present danger to the uniquely American foundation of our tripartite democracy: an independent judiciary.

The crisis has a dual modality to it, and as the chief has noted in very explicit language, it can only be remedied if the accountable parties - the other two branches - cooperatively and responsibly respond to twin imperatives: expeditious nomination and confirmation, and adequate judicial pay.

As this page is being written, the spectacle of the Miguel Estrada "filibuster" grinds on - a living testament to the inability of both sides to cooperatively fulfill the grave constitutional duty entrusted to them. But it is illustrative of what can happen to a judicial nominee who gets caught in bare-knuckled partisan kickboxing. This is to say nothing of the secondary effect current intramural disputes will have on a legion of other nominees - all awaiting hearings or confirmation, many for months or even years at a time, having all put professional careers and private lives on hold.

For those who have made it through the process - who put on their robes every day, and go competently and quietly about the business of dispensing American

Justice - paydays provide a constant reminder of an empty promise made by the American people in Article III, Section 1 of the Constitution: That their pay

"shall not be diminished during their continuance in office." cf: Williams v. U.S., 240 F.3d 1019 (D.C. 2001), petition for cert. denied, 535 U.S. 911

(2002) (Breyer, J., dissenting).

|

THE FACTS ARE PLAIN

It is a fact that the purchasing power of judicial pay has diminished by 25 percent during the past three decades. It is a fact that more federal judges have quit the bench before qualifying for retirement in the last decade than in the preceding 40 years. It is a fact that the National Commission on the Public Service, headed by former Federal Reserve Chairman Paul Volcker, cited federal judicial pay as "the most egregious example of the failure of federal compensation policies." The facts are that the members of the new national accounting industry oversight board will be paid \$450,000 per year - and that U.S. district judges make \$154,700 a year. Facts aside, it is an outrage.

I have great admiration and sympathy for my friends, each of whom I am sure made the right decision in saying yes or no. But under similar circumstances, I am almost sure that I would have said to myself, "All of that for what?"

We have told Chief Justice Rehnquist that, at the very least, we at the ABA are listening to him and will do everything we can to rectify this outrageous state of affairs. We lawyers must speak up for our brothers and sisters at the bar who have accepted the challenge. They sacrifice daily to make our third branch the envy of the world. They earn our respect and admiration every day. They deserve our unswerving loyalty and support.

They need to be nominated and confirmed faster. They need to be paid more. And they need more and they need faster - now.

Sean Rushton

Executive Director

Committee for Justice

1275 Pennsylvania Avenue, NW

Tenth Floor

Washington, DC 20004

202-481-6850 phone

PRA 6 mobile

www.committeeforjustice.org

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_0EKBF003_WHO.TXT_1>

We have told Chief Justice Rehnquist that, at the very least, we at the ABA are listening to him and will do everything we can to rectify this outrageous state of affairs. We lawyers must speak up for our brothers and sisters at the bar who have accepted the challenge. They sacrifice daily to make our third branch the envy of the world. They earn our respect and admiration every day. They deserve our unswerving loyalty and support.

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Sean Rushton
Executive Director
Committee for Justice
1275 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC 20004
202-481-6850 phone
PRA 6 mobile
www.committeeforjustice.org

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Katherine M. Walters/WHO/EOP@EOP [WHO] <Katherine M. Walters>
Sent: 4/4/2003 9:29:51 AM
Subject: : Re: meeting request for Ken

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-APR-2003 14:29:51.00
SUBJECT:: Re: meeting request for Ken
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Ken should not meet with them. These guys should talk to folks at doj about their issues.

.

----- Original Message -----
From:Katherine M. Walters/WHO/EOP
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 04/04/2003 02:18:07 PM
Subject: meeting request for Ken

hi Brett. These folks keep calling. Should Ken decline? thanks
----- Forwarded by Katherine M. Walters/WHO/EOP on
04/04/2003 02:17 PM -----

Katherine M. Walters
03/28/2003 10:50:21 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Leonard B. Rodriguez/WHO/EOP@EOP
Subject: meeting request for Ken

Jeff Eisenach and Jim Miller of Howrey & Simon law firm have requested a meeting with Ken to discuss Garcia vs. Veneman. I believe it is a group of Hispanic farmers who are suing USDA due to discrimination. They believe it has political repercussions. My guess is that Ken should not meet with them, but I wanted to go ahead and send to you.

thanks

From: CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>
Sent: 4/4/2003 10:29:35 AM
Subject: : RE: DID YOU SEE THIS AND SEND ON?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Penny G. Douglas (CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 4-APR-2003 15:29:35.00
SUBJECT:: RE: DID YOU SEE THIS AND SEND ON?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I just received a call from Dawn Perkerson at VOLPAC.; She confirmed that it is a 527 (e) organization.

;-----Original Message-----
From: ; Douglas, Penny G.;
Sent;;; Thursday, April 03, 2003 9:00 AM
To:;;; Everson, Nanette; Kavanaugh, Brett M.
Subject:;;;;;; RE: DID YOU SEE THIS AND SEND ON?

I called VOLPAC to see if they are a 527(e) organization.; I'll let you know as soon as I hear back from them.

;-----Original Message-----
From: ; Everson, Nanette;
Sent;;; Wednesday, April 02, 2003 3:40 PM
To:;;; Kavanaugh, Brett M.
Cc:;;; Douglas, Penny G.
Subject:;;;;;; DID YOU SEE THIS AND SEND ON?

What are your thoughts?; Attached below are the thoughts of our shop.

----- Forwarded by Nanette Everson/WHO/EOP on 04/02/2003 03:40 PM -----

;<< OLE Object: Picture (Device Independent Bitmap) >>
Emory Rounds
04/02/2003 03:37:42 PM
Record Type;;; Record

To:;;; Nanette Everson/WHO/EOP@EOP
cc:;;;
Subject:;;;;;; DID YOU SEE THIS AND SEND ON?

----- Forwarded by Emory Rounds/WHO/EOP on 04/02/2003 03:36 PM -----

;<< OLE Object: Picture (Device Independent Bitmap) >>
Emory Rounds
03/25/2003 03:13:45 PM
Record Type;;; Record

To:;;; Nanette Everson/WHO/EOP@EOP
cc:;;;
Subject:;;;;;; VOLPAC Invitation

This responds to your e-mail request for advice, below.; In addition, is this a matter for consideration also by Brett Kavanaugh, given the Hatch Act issues?

Penny Douglas is an Executive Assistant in the Office of Legislative Affairs, and is not a commissioned officer.; She plans to participate in VOLPAC events scheduled for April 25 to 27, 2003, in Nashville, Tennessee, and asks whether she may accept VOLPAC,s offer to pay her airfare to and from Nashville, so that she may attend the event.

Ms. Douglas explains that VOLPAC is the political action committee of Senator Bill Frist.; She also advises that she has, in the past, volunteered to assist VOLPAC with the logistics of its annual Spring weekend event.;

The Office of Special Counsel,s web-site notes that an employee may attend and be active at political rallies and meetings; join and be an active member of a political party or club; and, hold office in political clubs or parties.

If this event is a fundraiser, the Office of Special Counsel,s web-site also notes that, among other permissible activities, an employee may attend political fundraising functions and is allowed to organize a fundraiser, as long as she does not personally solicit, accept, or receive contributions.; She may even give a speech or keynote address at a political fundraiser, as long as she is not on duty, and does not solicit political contributions.; However, her name may not be shown on an invitation to such a fundraiser as a sponsor or point of contact.

Regarding the VOLPAC offer of travel expenses, ethics regulations provide that an employee who may take an active part in political management or in political campaigns under the Hatch Act, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e).; See 5 C.F.R. ̈ 2635.204(f).

ú;;;;; The term 'political organization' in 26 U.S.C. 527(e) means &a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.8;

ú;;;;; The term 'exempt function' in 26 U.S.C. 527(e) means & the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).8

ú;;;;; The term &political management8 is not otherwise defined.

It is not precisely clear from its web-site (<http://www.volpac.com/index.html> <<http://www.volpac.com/index.html>>) whether VOLPAC is actually a &527(e)8 organization, although that most likely is the case considering its mission and purpose statements.;

If Ms. Douglas ascertains that VOLPAC is such an organization, then she may accept the gift of free airfare, as well as any meals, lodgings, other transportation, and other benefits, from that group in connection with her participation in the event.; However, the event apparently begins on a Friday and, if she travels to or attends the event during her normal duty hours, she should be in a leave status during those hours.

----- Forwarded by Emory Rounds/WHO/EOP on 03/25/2003
03:05 PM -----

; << OLE Object: Picture (Device Independent Bitmap) >>
Nanette Everson
03/25/2003 12:09:51 PM
Record Type:;;; Record

To:;;; Emory Rounds/WHO/EOP@EOP
cc:;;;
Subject:;;;;;; VOLPAC Invitation

please advise

----- Forwarded by Nanette Everson/WHO/EOP on 03/25/2003
12:14 PM -----

From:;; Penny G. Douglas/WHO/EOP@Exchange on 03/25/2003 11:37:37
AM
Record Type:;;; Record

To:;;; Nanette Everson/WHO/EOP@EOP
cc:;;;
Subject:;;;;;; VOLPAC Invitation

Hi Nanette -

;
Last week, I spoke to you briefly at the New Employees' Ethics Briefing regarding my invitation to participate in the VOLPAC events on April 25-27, 2003. VOLPAC is the political action committee of Senator Bill Frist of TN. Each year VOLPAC hosts a Spring Meeting in Nashville, TN for its members. In the past, I have volunteered to assist with the logistics of each event i.e transportation. ;

;
VOLPAC has offered to pay my airfare to/from Nashville. Do you see any problem with accepting this? Please let me know if I need to provide you with more information.

;
Thank you -
;
Penny Douglas
Office of Legislative Affairs
6-2230

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 4/4/2003 11:18:02 AM
Subject: Please call me re: CA/4th Circuit letter

From: ClodfeMA@ms.state.gov [UNKNOWN]
To: Joseph G. Pipan/OMB/EOP@EOP [OMB] <Joseph G. Pipan>
CC: StoneCR@ms.state.gov [UNKNOWN] <StoneCR@ms.state.gov>;GROSHLJ@ms.state.gov [UNKNOWN] <GROSHLJ@ms.state.gov>;Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;John B. Wiegmann/NSC/EOP@EOP [NSC] <John B. Wiegmann>;Ely-RaphelNH@ms.state.gov [UNKNOWN] <Ely-RaphelNH@ms.state.gov>;BETTAUERRJ@ms.state.gov [UNKNOWN] <BETTAUERRJ@ms.state.gov>;Robert L. Wilkie/NSC/EOP@EOP [NSC] <Robert L. Wilkie>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2003 12:33:51 PM
Subject: : RE: Allen, Hollings, Harkin amendment

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:ClodfeMA@ms.state.gov (ClodfeMA@ms.state.gov [UNKNOWN])
CREATION DATE/TIME: 4-APR-2003 17:33:51.00
SUBJECT:: RE: Allen, Hollings, Harkin amendment
TO:Joseph G. Pipan (CN=Joseph G. Pipan/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:StoneCR@ms.state.gov (StoneCR@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:GROSHLJ@ms.state.gov (GROSHLJ@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:John B. Wiegmann (CN=John B. Wiegmann/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Ely-RaphelNH@ms.state.gov (Ely-RaphelNH@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:BETTAUERRJ@ms.state.gov (BETTAUERRJ@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:Robert L. Wilkie (CN=Robert L. Wilkie/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Joe, thanks for faxing the amendment as adopted. As Holly mentioned, the final version requires some changes to your draft to account for the fact that it creates a cause of action in such cases generally but, unlike the earlier versions, abrogates only one international agreement, namely the Algiers Accords, that applies to only one category of such actions, namely the former Tehran embassy hostages. The mark-up below attempts to address both aspects of the amendment as adopted.

The Administration strongly opposes Section xxx of S. 762 that seeks to amend the Foreign Sovereign Immunities Act. The provision would permit suits against Iran by the former Tehran embassy hostages certain States even though such suits may be expressly barred by the Algiers Accords, an the international agreement that achieved their release . This language provision would undermines the President's ability to negotiate future international agreements, would call into question the reliability of U.S. commitments to in such agreements and is contrary to the United States' national interests. Because the U.S. would remain bound under international law by the international agreements that bar such suits including the Algiers Accords, and because the Iran-United States Claims Tribunal can issue binding damage awards for breaches of the Accords, the U.S.

could be exposed to significant liability for any breach of the agreement. In addition, the U.S. would be subject to reciprocal legal action worldwide as other countries follow our lead and could withdraw U.S. immunity from suit, citing our action. [Moreover, creating a cause of action to allow claims against other countries to be pursued in U.S. courts is not the best way to provide compensation to victims of terrorism. While the Administration is very sympathetic to the suffering experienced by citizens that would be affected by this change in law, compensation should be addressed using the Administration's principles on the compensation to victims of international terrorism.]

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

From: Holly T. Moore@nsc.eop.gov
[mailto:Holly_T._Moore@nsc.eop.gov]
Sent: Friday, April 04, 2003 5:07 PM
To: Joseph G. Pipan@omb.eop.gov
Cc: Clodfelter, Mark A (Internet); Brett M. Kavanaugh@who.eop.gov;
John B. Wiegmann@nsc.eop.gov; Robert L. Wilkie@nsc.eop.gov
Subject: Re: Allen, Hollings, Harkin amendment

joe --
if the recently faxed text of the amendment stands -- limiting to algiers accords, it is still a problem. but, the language below for a conference letter would need to be tweaked accordingly -- new language appears to go only to algiers accords so language would need to reflect that. mark clodfelter offered to mark-up and email you by reply to my email. htm

Joseph G. Pipan
04/04/2003 09:52:31 AM

Record Type: Record

To: Elizabeth L. Rossman/OMB/EOP@EOP

cc: Holly T. Moore/NSC/EOP@EOP, GroshLJ@ms.state.gov @ inet, James M. Kulikowski/OMB/EOP@EOP
Subject: Allen, Hollings, Harkin amendment

Here are a few sentences for the conference letter (probably a little long).

We may not want to include the last sentence as we have not submitted legislation the Hill has requested on victims compensation. I will also fax you the talking points that came from State yesterday.

The Administration strongly opposes Section xxx of S. 762 that seeks to amend the Foreign Sovereign Immunities Act. The provision would permit suits against certain States even though such suits may be barred by an international agreement. This language undermines the President's ability to negotiate future international agreements, would call into question the reliability of U.S. commitments to such agreements and is contrary to the United States' national interests. Because the U.S. would remain bound under

REV_00233108

international

law

by the international agreements that bar such suits including the Algiers Accords, the U.S. could be exposed to significant liability for any breach of

the agreement. In addition, the U.S. would be subject to reciprocal legal action worldwide as other countries could withdraw U.S. immunity from suit, citing our action. [While the Administration is very sympathetic to the suffering experienced by citizens that would be affected by this change in law,

compensation should be addressed using the Administration's principles on the

compensation to victims of international terrorism.]

From: ClodfeMA@ms.state.gov [UNKNOWN]
To: Joseph G. Pipan/OMB/EOP@EOP [OMB] <Joseph G. Pipan>
CC: StoneCR@ms.state.gov [UNKNOWN] <StoneCR@ms.state.gov>;GROSHLJ@ms.state.gov [UNKNOWN] <GROSHLJ@ms.state.gov>;Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;John B. Wiegmann/NSC/EOP@EOP [NSC] <John B. Wiegmann>;Ely-RaphelNH@ms.state.gov [UNKNOWN] <Ely-RaphelNH@ms.state.gov>;BETTAUERRJ@ms.state.gov [UNKNOWN] <BETTAUERRJ@ms.state.gov>;Robert L. Wilkie/NSC/EOP@EOP [NSC] <Robert L. Wilkie>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2003 12:34:21 PM
Subject: : RE: Allen, Hollings, Harkin amendment

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:ClodfeMA@ms.state.gov (ClodfeMA@ms.state.gov [UNKNOWN])
CREATION DATE/TIME: 4-APR-2003 17:34:21.00
SUBJECT:: RE: Allen, Hollings, Harkin amendment
TO:Joseph G. Pipan (CN=Joseph G. Pipan/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:StoneCR@ms.state.gov (StoneCR@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:GROSHLJ@ms.state.gov (GROSHLJ@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:John B. Wiegmann (CN=John B. Wiegmann/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Ely-RaphelNH@ms.state.gov (Ely-RaphelNH@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:BETTAUERRJ@ms.state.gov (BETTAUERRJ@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:Robert L. Wilkie (CN=Robert L. Wilkie/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Joe, thanks for faxing the amendment as adopted. As Holly mentioned, the final version requires some changes to your draft to account for the fact that it creates a cause of action in such cases generally but, unlike the earlier versions, abrogates only one international agreement, namely the Algiers Accords, that applies to only one category of such actions, namely the former Tehran embassy hostages. The mark-up below attempts to address both aspects of the amendment as adopted.

The Administration strongly opposes Section xxx of S. 762 that seeks to amend the Foreign Sovereign Immunities Act. The provision would permit suits against Iran by the former Tehran embassy hostages certain States even though such suits may be expressly barred by the Algiers Accords, an the international agreement that achieved their release . This language provision would undermines the President's ability to negotiate future international agreements, would call into question the reliability of U.S. commitments to in such agreements and is contrary to the United States' national interests. Because the U.S. would remain bound under international law by the international agreements that bar such suits including the Algiers Accords, and because the Iran-United States Claims Tribunal can issue binding damage awards for breaches of the Accords, the U.S.

could be exposed to significant liability for any breach of the agreement. In addition, the U.S. would be subject to reciprocal legal action worldwide as other countries follow our lead and could withdraw U.S. immunity from suit, citing our action. [Moreover, creating a cause of action to allow claims against other countries to be pursued in U.S. courts is not the best way to provide compensation to victims of terrorism. While the Administration is very sympathetic to the suffering experienced by citizens that would be affected by this change in law, compensation should be addressed using the Administration's principles on the compensation to victims of international terrorism.]

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

From: Holly T. Moore@nsc.eop.gov
[mailto:Holly_T._Moore@nsc.eop.gov]
Sent: Friday, April 04, 2003 5:07 PM
To: Joseph G. Pipan@omb.eop.gov
Cc: Clodfelter, Mark A (Internet); Brett M. Kavanaugh@who.eop.gov;
John B. Wiegmann@nsc.eop.gov; Robert L. Wilkie@nsc.eop.gov
Subject: Re: Allen, Hollings, Harkin amendment

joe --
if the recently faxed text of the amendment stands -- limiting to algiers accords, it is still a problem. but, the language below for a conference letter would need to be tweaked accordingly -- new language appears to go only to algiers accords so language would need to reflect that. mark clodfelter offered to mark-up and email you by reply to my email. htm

Joseph G. Pipan
04/04/2003 09:52:31 AM

Record Type: Record

To: Elizabeth L. Rossman/OMB/EOP@EOP

cc: Holly T. Moore/NSC/EOP@EOP, GroshLJ@ms.state.gov @ inet, James M. Kulikowski/OMB/EOP@EOP
Subject: Allen, Hollings, Harkin amendment

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We may not want to include the last sentence as we have not submitted legislation the Hill has requested on victims compensation. I will also fax you the talking points that came from State yesterday.

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REV_00233111

international

law

by the international agreements that bar such suits including the Algiers Accords, the U.S. could be exposed to significant liability for any breach of

the agreement. In addition, the U.S. would be subject to reciprocal legal action worldwide as other countries could withdraw U.S. immunity from suit, citing our action. [While the Administration is very sympathetic to the suffering experienced by citizens that would be affected by this change in law,

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From: ClodfeMA@ms.state.gov [UNKNOWN]
To: Joseph G. Pipan/OMB/EOP@EOP [OMB] <Joseph G. Pipan>
CC: StoneCR@ms.state.gov [UNKNOWN] <StoneCR@ms.state.gov>;GROSHLJ@ms.state.gov [UNKNOWN] <GROSHLJ@ms.state.gov>;Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;John B. Wiegmann/NSC/EOP@EOP [NSC] <John B. Wiegmann>;Ely-RapheINH@ms.state.gov [UNKNOWN] <Ely-RapheINH@ms.state.gov>;BETTAUERRJ@ms.state.gov [UNKNOWN] <BETTAUERRJ@ms.state.gov>;Robert L. Wilkie/NSC/EOP@EOP [NSC] <Robert L. Wilkie>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2003 12:44:21 PM
Subject: : RE: Allen, Hollings, Harkin amendment

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:ClodfeMA@ms.state.gov (ClodfeMA@ms.state.gov [UNKNOWN])
CREATION DATE/TIME: 4-APR-2003 17:44:21.00
SUBJECT:: RE: Allen, Hollings, Harkin amendment
TO:Joseph G. Pipan (CN=Joseph G. Pipan/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:StoneCR@ms.state.gov (StoneCR@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:GROSHLJ@ms.state.gov (GROSHLJ@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:John B. Wiegmann (CN=John B. Wiegmann/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Ely-RapheINH@ms.state.gov (Ely-RapheINH@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:BETTAUERRJ@ms.state.gov (BETTAUERRJ@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:Robert L. Wilkie (CN=Robert L. Wilkie/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Joe, for some reason my strike-outs and underlinings do not show in the version I sent you; I don't know why. Here is a clean version with my suggested changes incorporated.

The Administration strongly opposes Section xxx of S. 762 that seeks to amend the Foreign Sovereign Immunities Act. The provision would permit suits against Iran by the former Tehran embassy hostages even though such suits are expressly barred by the Algiers Accords, the international agreement that achieved their release . This provision would undermine the President's ability to negotiate future international agreements, would call into question the reliability of U.S. commitments in such agreements and is contrary to the United States' national interests. Because the U.S. would remain bound under international law by the Algiers Accords, and because the Iran-United States Claims Tribunal can issue binding damage awards for breaches of the Accords, the U.S. could be exposed to significant liability. In addition, the U.S. would be subject to reciprocal legal action worldwide as other countries follow our lead and withdraw U.S. immunity from suit, citing our action. [Moreover, creating a cause of action to allow claims

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

From: Clodfelter, Mark A (Internet)
Sent: Friday, April 04, 2003 5:35 PM
To: Joseph_G._Pipan@omb.eop.gov
Cc: Brett_M._Kavanaugh@who.eop.gov; John_B._Wiegmann@nsc.eop.gov;
Robert_L._Wilkie@nsc.eop.gov; 'Holly_T._Moore@nsc.eop.gov'; Bettauer, Ronald
J (Internet); Grosh, Lisa J (Internet); Ely-Raphel, Nancy H(L-CID); Stone, Corin R (Internet)
Subject: RE: Allen, Hollings, Harkin amendment

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

From: Holly_T._Moore@nsc.eop.gov
[mailto:Holly_T._Moore@nsc.eop.gov]

REV_00233114

Sent: Friday, April 04, 2003 5:07 PM
To: Joseph_G._Pipan@omb.eop.gov
Cc: Clodfelter, Mark A (Internet); Brett_M._Kavanaugh@who.eop.gov;
John_B._Wiegmann@nsc.eop.gov; Robert_L._Wilkie@nsc.eop.gov
Subject: Re: Allen, Hollings, Harkin amendment

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accords, it is still a problem. but, the language below for a conference
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Record Type: Record

To: Elizabeth L. Rossman/OMB/EOP@EOP

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suffering experienced by citizens that would be affected by this change in
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REV_00233115

compensation to victims of international terrorism.]

From: Kate Walters <kate@georgewbush.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2003 12:59:11 PM
Subject: : FW: May 22 regional fundraiser for ken in Columbus
Attachments: P_PPVCF003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kate Walters <kate@georgewbush.com> (Kate Walters <kate@georgewbush.com> [UNKNOWN])
CREATION DATE/TIME: 4-APR-2003 17:59:11.00
SUBJECT:: FW: May 22 regional fundraiser for ken in Columbus
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Re: May 22 regional fundraiser in ColumbusAre you fine?

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

From: Charles Spies - Legal [mailto:CSpies@rnchq.org]
Sent: Tuesday, April 01, 2003 9:37 AM
To: Cuddy Johnson; Kate Walters
Subject: RE: May 22 regional fundraiser for ken in Columbus

From a campaign finance law perspective, there is no problem with Ken being the "featured guest" or "guest speaker" at a state party fundraising event (even if it raises non-federal "soft" dollars). As always, he should not be involved in the solicitation of funds for the event.

- Charlie

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

From: Cuddy Johnson
Sent: Monday, March 31, 2003 7:08 PM
To: Kate Walters
Cc: Charles Spies - Legal
Subject: Re: May 22 regional fundraiser for ken in Columbus

Kate - my understanding is that so long as ken is a featured guest, and not soliciting funds, he can attend state party and state (soft) dollar fundraisers. I have cc'd Charlie here to get his guidance. The poor guy has gotten like 5 emails from me today with questions....

Charlie - Ken has been invited to be the star at the May 22 Finance Luncheon for the state party... they want to bring in their biggest donors... is this something he can do? thanks for all your help on this stuff - very grateful -

c

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

From: Kate Walters
To: Cuddy Johnson
Sent: Monday, March 31, 2003 7:02 PM
Subject: RE: May 22 regional fundraiser in Columbus

Would Counsel approve? (if there is soft money involved)

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

From: Cuddy Johnson [mailto:cjohnson@georgewbush.com]
Sent: Friday, March 28, 2003 3:00 PM
To: Kate Walters

Cc: Ken Mehlman; David Rachelson
Subject: Fw: May 22 regional fundraiser in Columbus

Kate -

The Ohio GOP is holding their biggest fundraiser of '03 in May 22 in Columbus with all their \$25K plus donors...

their request is for Ken to be there, with a possible call-in from

karl -

let me know your thoughts as you begin to schedule May -

c

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_PPVCF003_WHO.TXT_1>

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let me know your thoughts as you begin to schedule May -

c

From: CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>
Sent: 4/4/2003 10:29:28 AM
Subject: : RE: DID YOU SEE THIS AND SEND ON?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Penny G. Douglas (CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 4-APR-2003 15:29:28.00
SUBJECT:: RE: DID YOU SEE THIS AND SEND ON?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I just received a call from Dawn Perkerson at VOLPAC. She confirmed that it is a 527 (e) organization.

-----Original Message-----
From: Douglas, Penny G.
Sent: Thursday, April 03, 2003 9:00 AM
To: Everson, Nanette; Kavanaugh, Brett M.
Subject: RE: DID YOU SEE THIS AND SEND ON?

I called VOLPAC to see if they are a 527(e) organization. I'll let you know as soon as I hear back from them.

-----Original Message-----
From: Everson, Nanette
Sent: Wednesday, April 02, 2003 3:40 PM
To: Kavanaugh, Brett M.
Cc: Douglas, Penny G.
Subject: DID YOU SEE THIS AND SEND ON?

What are your thoughts? Attached below are the thoughts of our shop.
----- Forwarded by Nanette Everson/WHO/EOP on 04/02/2003
03:40 PM -----

<< OLE Object: Picture (Device Independent Bitmap) >>
Emory Rounds
04/02/2003 03:37:42 PM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
Subject: DID YOU SEE THIS AND SEND ON?

----- Forwarded by Emory Rounds/WHO/EOP on 04/02/2003
03:36 PM -----

<< OLE Object: Picture (Device Independent Bitmap) >>
Emory Rounds
03/25/2003 03:13:45 PM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
Subject: VOLPAC Invitation

This responds to your e-mail request for advice, below. In addition, is this a matter for consideration also by Brett Kavanaugh, given the Hatch Act issues?

Penny Douglas is an Executive Assistant in the Office of Legislative Affairs, and is not a commissioned officer. She plans to participate in VOLPAC events scheduled for April 25 to 27, 2003, in Nashville, Tennessee, and asks whether she may accept VOLPAC's offer to pay her airfare to and from Nashville, so that she may attend the event.

Ms. Douglas explains that VOLPAC is the political action committee of Senator Bill Frist. She also advises that she has, in the past, volunteered to assist VOLPAC with the logistics of its annual Spring weekend event.

The Office of Special Counsel's web-site notes that an employee may attend and be active at political rallies and meetings; join and be an active member of a political party or club; and, hold office in political clubs or parties.

If this event is a fundraiser, the Office of Special Counsel's web-site also notes that, among other permissible activities, an employee may attend political fundraising functions and is allowed to organize a fundraiser, as long as she does not personally solicit, accept, or receive contributions. She may even give a speech or keynote address at a political fundraiser, as long as she is not on duty, and does not solicit political contributions. However, her name may not be shown on an invitation to such a fundraiser as a sponsor or point of contact.

Regarding the VOLPAC offer of travel expenses, ethics regulations provide that an employee who may take an active part in political management or in political campaigns under the Hatch Act, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). See 5 C.F.R. § 2635.204(f).

ú The term "political organization" in 26 U.S.C. 527(e) means &a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.8

ú The term "exempt function" in 26 U.S.C. 527(e) means &the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).8

ú The term &political management8 is not otherwise defined.

It is not precisely clear from its web-site (<http://www.volpac.com/index.html> <<http://www.volpac.com/index.html>>) whether VOLPAC is actually a &527(e)8 organization, although that most likely is the case considering its mission and purpose statements.

If Ms. Douglas ascertains that VOLPAC is such an organization, then she may accept the gift of free airfare, as well as any meals, lodgings, other transportation, and other benefits, from that group in connection with her participation in the event. However, the event apparently begins on a Friday and, if she travels to or attends the event during her normal duty hours, she should be in a leave status during those hours.

----- Forwarded by Emory Rounds/WHO/EOP on 03/25/2003
03:05 PM -----

<< OLE Object: Picture (Device Independent Bitmap) >>
Nanette Everson
03/25/2003 12:09:51 PM
Record Type: Record

To: Emory Rounds/WHO/EOP@EOP
cc:
Subject: VOLPAC Invitation

please advise

----- Forwarded by Nanette Everson/WHO/EOP on 03/25/2003
12:14 PM -----

From: Penny G. Douglas/WHO/EOP@Exchange on 03/25/2003 11:37:37 AM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
Subject: VOLPAC Invitation

Hi Nanette -

Last week, I spoke to you briefly at the New Employees' Ethics Briefing regarding my invitation to participate in the VOLPAC events on April 25-27, 2003. VOLPAC is the political action committee of Senator Bill Frist of TN. Each year VOLPAC hosts a Spring Meeting in Nashville, TN for its members. In the past, I have volunteered to assist with the logistics of each event i.e transportation.

VOLPAC has offered to pay my airfare to/from Nashville. Do you see any problem with accepting this? Please let me know if I need to provide you with more information.

Thank you -

Penny Douglas
Office of Legislative Affairs
6-2230

From: ClodfeMA@ms.state.gov [UNKNOWN]
To: Joseph G. Pipan/OMB/EOP@EOP [OMB] <Joseph G. Pipan>
CC: StoneCR@ms.state.gov [UNKNOWN] <StoneCR@ms.state.gov>;GROSHLJ@ms.state.gov [UNKNOWN] <GROSHLJ@ms.state.gov>;Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;John B. Wiegmann/NSC/EOP@EOP [NSC] <John B. Wiegmann>;Ely-RaphelNH@ms.state.gov [UNKNOWN] <Ely-RaphelNH@ms.state.gov>;BETTAUERRJ@ms.state.gov [UNKNOWN] <BETTAUERRJ@ms.state.gov>;Robert L. Wilkie/NSC/EOP@EOP [NSC] <Robert L. Wilkie>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2003 12:33:51 PM
Subject: : RE: Allen, Hollings, Harkin amendment

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:ClodfeMA@ms.state.gov (ClodfeMA@ms.state.gov [UNKNOWN])
CREATION DATE/TIME: 4-APR-2003 17:33:51.00
SUBJECT:: RE: Allen, Hollings, Harkin amendment
TO:Joseph G. Pipan (CN=Joseph G. Pipan/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:StoneCR@ms.state.gov (StoneCR@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:GROSHLJ@ms.state.gov (GROSHLJ@ms.state.gov [UNKNOWN])
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READ:UNKNOWN
End Original ARMS Header

Joe, thanks for faxing the amendment as adopted. As Holly mentioned, the final version requires some changes to your draft to account for the fact that it creates a cause of action in such cases generally but, unlike the earlier versions, abrogates only one international agreement, namely the Algiers Accords, that applies to only one category of such actions, namely the former Tehran embassy hostages. The mark-up below attempts to address both aspects of the amendment as adopted.

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could be exposed to significant liability for any breach of the agreement. In addition, the U.S. would be subject to reciprocal legal action worldwide as other countries follow our lead and could withdraw U.S. immunity from suit, citing our action. [Moreover, creating a cause of action to allow claims against other countries to be pursued in U.S. courts is not the best way to provide compensation to victims of terrorism. While the Administration is very sympathetic to the suffering experienced by citizens that would be affected by this change in law, compensation should be addressed using the Administration's principles on the compensation to victims of international terrorism.]

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

From: Holly T. Moore@nsc.eop.gov
[mailto:Holly_T._Moore@nsc.eop.gov]
Sent: Friday, April 04, 2003 5:07 PM
To: Joseph G. Pipan@omb.eop.gov
Cc: Clodfelter, Mark A (Internet); Brett M. Kavanaugh@who.eop.gov;
John B. Wiegmann@nsc.eop.gov; Robert L. Wilkie@nsc.eop.gov
Subject: Re: Allen, Hollings, Harkin amendment

joe --
if the recently faxed text of the amendment stands -- limiting to algiers accords, it is still a problem. but, the language below for a conference letter would need to be tweaked accordingly -- new language appears to go only to algiers accords so language would need to reflect that. mark clodfelter offered to mark-up and email you by reply to my email. htm

Joseph G. Pipan
04/04/2003 09:52:31 AM

Record Type: Record

To: Elizabeth L. Rossman/OMB/EOP@EOP

cc: Holly T. Moore/NSC/EOP@EOP, GroshLJ@ms.state.gov @ inet, James M. Kulikowski/OMB/EOP@EOP
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REV_00233179

international

law

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compensation to victims of international terrorism.]

From: ClodfeMA@ms.state.gov [UNKNOWN]
To: Joseph G. Pipan/OMB/EOP@EOP [OMB] <Joseph G. Pipan>
CC: StoneCR@ms.state.gov [UNKNOWN] <StoneCR@ms.state.gov>;GROSHLJ@ms.state.gov [UNKNOWN] <GROSHLJ@ms.state.gov>;Holly T. Moore/NSC/EOP@EOP [NSC] <Holly T. Moore>;John B. Wiegmann/NSC/EOP@EOP [NSC] <John B. Wiegmann>;Ely-RaphelNH@ms.state.gov [UNKNOWN] <Ely-RaphelNH@ms.state.gov>;BETTAUERRJ@ms.state.gov [UNKNOWN] <BETTAUERRJ@ms.state.gov>;Robert L. Wilkie/NSC/EOP@EOP [NSC] <Robert L. Wilkie>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/4/2003 12:34:40 PM
Subject: : RE: Allen, Hollings, Harkin amendment

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:ClodfeMA@ms.state.gov (ClodfeMA@ms.state.gov [UNKNOWN])
CREATION DATE/TIME: 4-APR-2003 17:34:40.00
SUBJECT:: RE: Allen, Hollings, Harkin amendment
TO:Joseph G. Pipan (CN=Joseph G. Pipan/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:StoneCR@ms.state.gov (StoneCR@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:GROSHLJ@ms.state.gov (GROSHLJ@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:Holly T. Moore (CN=Holly T. Moore/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:John B. Wiegmann (CN=John B. Wiegmann/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Ely-RaphelNH@ms.state.gov (Ely-RaphelNH@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:BETTAUERRJ@ms.state.gov (BETTAUERRJ@ms.state.gov [UNKNOWN])
READ:UNKNOWN
CC:Robert L. Wilkie (CN=Robert L. Wilkie/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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REV_00233182

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compensation should be addressed using the Administration's principles on the

compensation to victims of international terrorism.]

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/4/2003 5:08:56 PM
Subject: please call

Makan c: 228-2026
re: returning your email

From: Reynolds, Tim
To: <Kavanaugh, Brett M.>
Sent: 4/4/2003 6:14:45 PM
Subject: FW: Brett Kavanaugh

I sent Joe an email and left a message...

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

From: Reynolds, Tim
Sent: Friday, April 04, 2003 6:14 PM
To: Hagin, Joseph W
Subject: Brett Kavanaugh

Joe, please call Brett on his cell phone. He has an update for you.

PRA 6

- Tim

From: Litkenhaus, Colleen
To: <Kavanaugh, Brett M.>
Sent: 4/6/2003 1:39:20 PM
Subject: FW: Des Moines Travel

Can I talk with you about this stuff on Monday? Ben Powell is deferring to you on this one.

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

From: Taylor, Sara M.
Sent: Wednesday, April 02, 2003 10:25 AM
To: Litkenhaus, Colleen
Cc: Schlapp, Matthew A.
Subject: Re: Des Moines Travel

Colleen - Can you help us on travel? Because the RNC pays for our travel there are lots of extra steps involved for us to book flights. As a result, usually by the time the approval comes through, the original flight is booked or much more expensive causing us to start the process all over. We are often forced to choose between making the RNC spend several hundred more dollars for our flights (as I will now do next Friday - in order to get a reasonably priced flight, I'm leaving at 10:30 am on Friday for a Saturday morning speech).

Perhaps I'm doing something wrong, but DT and others here have the same frustration with the travel office/process for approval. What can I do to help fix this - would it be easier if I wrote up a memo with examples?

Sara

----- Forwarded by Sara M. Taylor/WHO/EOP on 04/02/2003 10:25 AM -----

<<...>>
Lauren C. Barnett
04/02/2003 10:14:55 AM
Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP
cc:
Subject: Re: Des Moines Travel <<...>>

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From: CN=Nanette Everson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 7:26:57 AM
Subject: : Could you give me your edits? Thanks
Attachments: P_L8YDF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 11:26:57.00
SUBJECT:: Could you give me your edits? Thanks
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I'd like to use this tomorrow in briefings. Sorry for the short bounce.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_L8YDF003_WHO.TXT_1>

HATCH ACT ADVISORY (nre reviewed: 4/7/03)

This Hatch Act Advisory provides general guidance for you as a White House staff person on what you can and cannot do in regards to political activity. **For purposes of this guidance:**

White House staff person is defined as all Commissioned Officers, Schedule C's and all other White House staff who are appointed under 3 U.S.C. Section 105(a) and who also have duties and responsibilities that continue outside the normal duty hours and while away from the normal duty post. The President can determine the normal duty hours and post for White House staff.

Solicit is defined as expressly requesting of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan group.

Political activity is defined as an activity directed toward the success or failure of a political party, candidate, or partisan group.

May a White House staff person participate in political activity while on duty?

Yes. You may participate in political activity while on duty so long as it does not interfere with your official duties.

May a White House staff person host a political fundraiser?

No. However, your spouse may host a fundraiser even in the home shared with the White House staff person. If your spouse hosts a political fundraiser:

- Your name cannot appear on invitations or announcements.
- You may wear a personal nametag (with no reference to your government title).
- You may meet and greet guests.
- You may make a speech in your personal capacity but may not ask for contributions or services.
- You may not accept, solicit or receive contributions or services.

May a White House Staff person participate in a political fundraiser in an official capacity?

No. You may never participate in a political fundraiser in your official capacity, although:

- You may attend a political fundraiser in your personal capacity.
- You may speak at a fundraiser in your personal capacity and support a candidate so long as you do not solicit, accept or receive contributions of funds or services or allow yourself to be introduced using solely your White House title.

May a White House Staff person solicit, accept or receive political contributions?

No. You may not solicit, accept or receive political contributions at any time.

- You may give money to a campaign (following, of course, campaign finance laws).
- You may not participate in a phone bank asking for contributions (even anonymously).
- You may stuff envelopes with literature asking for contributions but your name may not appear on the literature or envelope.
- You may manage a fundraising activity so long as you adhere to the restrictions concerning solicitation.

May a White House Staff person use government equipment while participating in political activity?

Yes. You may use phones, e-mails, computers, faxes, blackberries, copiers and televisions screens for political activity.

- The appropriate political entity should reimburse the government if there are increased incremental costs that would not have been incurred but for the political activity.
- Your use of the equipment must not interfere with government operations or official duties.

May a White House staff person, use a government vehicle for political activity?

No. White House policy prohibits the use of White House vehicles for political activity.

Can an administrative support person who is not authorized to participate in political activity assist me in participating in political activity?

Yes with limitations:

- An administrative support staff person can perform his or her normal clerical duties in assisting with arranging political travel, meetings teleconferences and appearances.
- An administrative support staff person, who normally travels with you to events to lend routine assistance in the course of performing your official duties, can attend a political event with you provided he or she does not participate in the event or lend assistance to the organizer.

From: Kavanaugh, Brett M.
To: <Litkenhaus, Colleen>
Sent: 4/7/2003 8:35:30 AM
Subject: Re: FW: Des Moines Travel

For political flights, it seems to me they should book the flights when they can, then get the ta form approved. When there are problems with approval, they can cancel or re-scheduled flight. Does that solve the problem?

From: Colleen Litkenhaus/WHO/EOP@Exchange on 04/06/2003 01:39:20 PM

Record Type: Record

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

cc:

Subject: FW: Des Moines Travel

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

From: Taylor, Sara M.

Sent: Wednesday, April 02, 2003 10:25 AM

To: Litkenhaus, Colleen

Cc: Schlapp, Matthew A.

Subject: Re: Des Moines Travel

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Sara

----- Forwarded by Sara M. Taylor/WHO/EOP on 04/02/2003 10:25 AM -----

<<...>>

Lauren C. Barnett

REV_00233224

04/02/2003 10:14:55 AM

Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP

cc:

Subject: Re: Des Moines Travel <<...>> \objattph

We had a flight reservation on Northwest....the travel authorization didn't come until yesterday afternoon, and by that point, the Northwest flight was ridiculous. So, I looked into Midwest Express, which if you are willing to leave early on Friday, would be great. This isn't a problem...provided the new flight is in the same price ballpark as the Northwest flight (\$588).

REV_00233225

From: Litkenhaus, Colleen
To: <Kavanaugh, Brett M.>
Sent: 4/7/2003 8:37:47 AM
Subject: RE: FW: Des Moines Travel

Yes! As long as, the ta form is approved before they get on the flight. Sounds like a great plan!

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

From: Kavanaugh, Brett M.
Sent: Monday, April 07, 2003 8:36 AM
To: Litkenhaus, Colleen
Subject: Re: FW: Des Moines Travel

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cc:
Subject: FW: Des Moines Travel

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Cc: Schlapp, Matthew A.
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----- Forwarded by Sara M. Taylor/WHO/EOP on 04/02/2003 10:25 AM -----

<< OLE Object: Picture (Device Independent Bitmap) >>

REV_00233226

Lauren C. Barnett
04/02/2003 10:14:55 AM
Record Type: Record

To: Sara M. Taylor/WHO/EOP@EOP
cc:
Subject: Re: Des Moines Travel << OLE Object: StdOleLink >> \objattph

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From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 4:44:57 AM
Subject: : RE: rate?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 7-APR-2003 08:44:57.00
SUBJECT:: RE: rate?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

How many of the 6 circuits pending on the floor are judicial emergencies?

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, April 07, 2003 8:32 AM
To: Miranda, Manuel (Frist)
Subject: Re: rate?

14 % in regional appeals courts (that is, excluding the Federal Circuit, which handles patent and trademark appeals)

(Embedded
image moved "Miranda, Manuel (Frist)"
to file: <Manuel_Miranda@frist.senate.gov>
pic29475.pcx) 04/07/2003 08:30:17 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: rate?

What is the current vacancy rate for Circuits? I know Districts is 5.9%

From: CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 5:09:17 AM
Subject: : RE: FW: Des Moines Travel

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 09:09:17.00
SUBJECT:: RE: FW: Des Moines Travel
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

no.

Brett M. Kavanaugh
04/07/2003 08:48:43 AM
Record Type: Record

To: Benjamin A. Powell/WHO/EOP@EOP
cc:
Subject: RE: FW: Des Moines Travel

does my solution pose any problems from your end?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
04/07/2003 08:48 AM -----

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From: Gambatesa, Linda M.
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>
CC: <Litkenhaus, Colleen>
Sent: 4/7/2003 10:51:43 AM
Subject: Easter Egg Roll Reception

If the President and/or Mrs. Bush's schedules preclude them from being here to host the Easter Egg Roll Breakfast Reception on the State Floor for the sponsors of the event, and if Mrs. Cheney has been asked to do so in their stead and is able to, is there any reason why the breakfast cannot be paid for out of the Residence budget as would be the case if the President and/or Mrs. Bush were in attendance?

Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>
Sent: 4/7/2003 7:39:12 AM
Subject: : Re: Could you give me your edits? Thanks
Attachments: P_Y3ZDF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 11:39:12.00
SUBJECT:: Re: Could you give me your edits? Thanks
TO: Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

to which unit?

Nanette Everson
04/07/2003 11:26:46 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Could you give me your edits? Thanks

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Y3ZDF003_WHO.TXT_1>

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- You may meet and greet guests.
- You may make a speech in your personal capacity but may not ask for contributions or services.
- You may not accept, solicit or receive contributions or services.

May a White House Staff person participate in a political fundraiser in an official capacity?

No. You may never participate in a political fundraiser in your official capacity, although:

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- You may speak at a fundraiser in your personal capacity and support a candidate so long as you do not solicit, accept or receive contributions of funds or services or allow yourself to be introduced using solely your White House title.

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Yes. You may use phones, e-mails, computers, faxes, blackberries, copiers and television screens for political activity.

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No. White House policy prohibits the use of White House vehicles for political activity.

Can an administrative support person who is not authorized to participate in political activity assist me in participating in political activity?

Yes with limitations:

- An administrative support staff person can perform his or her normal clerical duties in assisting with arranging political travel, meetings teleconferences and appearances.
- An administrative support staff person, who normally travels with you to events to lend routine assistance in the course of performing your official duties, can attend a political event with you provided he or she does not participate in the event or lend assistance to the organizer.

From: CN=Nanette Everson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 7:41:53 AM
Subject: : Re: Could you give me your edits? Thanks
Attachments: P_PAZDF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 11:41:53.00
SUBJECT:: Re: Could you give me your edits? Thanks
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Tomorrow is DPC and PPO; Lezlee was originally scheduled for Wednesday at 2:30 but she has asked for another time because of a meeting scheduled with POTUS for that slot and I have suggested tomorrow's briefs at 10 and 11 respectively. 10 is also the scheduled general briefing on the memo I sent out a few weeks ago.

Brett M. Kavanaugh
04/07/2003 11:39:02 AM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Could you give me your edits? Thanks

to which unit?

Nanette Everson
04/07/2003 11:26:46 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Could you give me your edits? Thanks

I'd like to use this tomorrow in briefings. Sorry for the short bounce.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PAZDF003_WHO.TXT_1>

HATCH ACT ADVISORY (nre reviewed: 4/7/03)

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From: Washington, Tracy T <Tracy.T.Washington@usdoj.gov>
To: Adam Charnes <Adam.Charnes@usdoj.gov>; Andrew Schauder <Andrew.Schauder2@usdoj.gov>; Brian Benczkowski <Brian.A.Benczkowski@usdoj.gov>; Dan Bryant <Dan.Bryant@usdoj.gov>; Don Willett <Don.Willett@usdoj.gov>; Heather Cutchens <Heather.Cutchens@usdoj.gov>; Jamie Brown <Jamie.E.Brown@usdoj.gov>; Kristi Remington <Kristi.L.Remington@usdoj.gov>; Lizette Benedi <Lizette.D.Benedi@usdoj.gov>; Lori SharpeDay <Lori.SharpeDay@usdoj.gov>; Monica Goodling <Monica.Goodling@usdoj.gov>; Nancy Scottfinan <Nancy.Scottfinan@usdoj.gov>; Nathan Sales <Nathan.Sales@usdoj.gov>; Pat O'Brien <Pat.O'Brien@usdoj.gov>; Sheila Joy <Sheila.Joy@usdoj.gov>; Steve Koebele <Steve.Koebele@usdoj.gov>; Viet Dinh <Viet.Dinh@usdoj.gov>; William Hall <William.Hall2@usdoj.gov>; alex_dahl@judiciary.senate.gov <alex_dahl@judiciary.senate.gov>; alex_vogel@frist.senate.gov <alex_vogel@frist.senate.gov>; alex_vogel@frist.senate.gov <Snee, Ashley>; alex_vogel@frist.senate.gov <Kavanaugh, Brett M.>; alex_vogel@frist.senate.gov <Bartolomucci, H. Christopher>; Heather_Wingate@who.eop.gov <Heather_Wingate@who.eop.gov>; john_abegg@mcconnell.senate.gov <john_abegg@mcconnell.senate.gov>; joschal@att.net <joschal@att.net>; joschal@att.net <Sampson, Kyle>; makan_delrahim@judiciary.senate.gov <makan_delrahim@judiciary.senate.gov>; Manuel_Miranda@frist.senate.gov <Manuel_Miranda@frist.senate.gov>; Margarita_Tapia@judiciary.senate.gov <Margarita_Tapia@judiciary.senate.gov>; Margarita_Tapia@judiciary.senate.gov <Smith, Matthew E.>; Rena_Johnson_Comisac@judiciary.senate.gov <Rena_Johnson_Comisac@judiciary.senate.gov>; SRushton@CommitteeforJustice.org <SRushton@CommitteeforJustice.org>; SRushton@CommitteeforJustice.org <Grubbs, Wendy J.>
Sent: 4/7/2003 12:13:06 PM
Subject: 4:00pm Judicial Working Group Conference Call is CANCELLED.

Tracy T. Washington
U.S. Department of Justice
Office of Legal Policy
Main Building, Room 4234
(202) 514-2737

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>
Sent: 4/7/2003 12:17:11 PM
Subject: : Re:
Attachments: P_WPFEF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 16:17:11.00
SUBJECT: : Re:
TO: Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I think the official capacity/personal capacity distinction in question 3 confuses more than it clarifies. When Karl et al go to fundraisers, they speak about the President's agenda etc. which is fine. I thus think it's best just to say that they cannot solicit and cannot use official title when they speak at fundraisers.

I would remind everyone that they should consult with OPA and WHC before engaging in political activity, esp political activity that could receive public attention.

Thanks!

Nanette Everson
04/07/2003 04:03:08 PM
Record Type: Record

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

Take a last look; I've left in the answers to the specific questions that I have received because non-lawyers don't know how to interpret "so long as you adhere to the restrictions concerning solicitation."

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_WPFEF003_WHO.TXT_1>

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- You may not accept, solicit or receive contributions or services.

Additionally, always keep in mind that what is legal may not be wise from a public relations perspective.

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From: Kavanaugh, Brett M.
To: <Gilbert, Alan>;<Lefkowitz, Jay P.>;<Silverberg, Kristen>;<Schacht, Diana L.>
Sent: 4/7/2003 1:33:41 PM
Subject: significant section of Supreme Court opinion today

"[F]ew awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. . . . [R]atios greater than those we have previously upheld may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages. . . . The converse is also true, however. When compensatory damages are substantial, then a lesser ratio, **perhaps only equal to compensatory damages**, can reach the outermost limit of the due process guarantee." The Court later concludes that the \$1 million compensatory award in that case was "substantial."

All of this suggests that a 1-to-1 punitive-to-compensatory damages ratio may now be constitutionally mandated when the compensatory award is considered "substantial." Important development.

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 9:45:46 AM
Subject: : RE: significant section of Supreme Court opinion today

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME: 7-APR-2003 13:45:46.00
SUBJECT:: RE: significant section of Supreme Court opinion today
TO: Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ: UNKNOWN
TO: Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP@EOP [OPD])
READ: UNKNOWN
TO: Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

How many Justices signed this portion of the opinion?

;-----Original Message-----

From: ; Kavanaugh, Brett M.;
Sent:;; Monday, April 07, 2003 1:34 PM
To:;;; Gilbert, Alan; Lefkowitz, Jay P.; Silverberg, Kristen; Schacht,
Diana L.
Subject:;;;;;; significant section of Supreme Court opinion today

"[F]ew awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. . . .; [R]atios greater than those we have previously upheld may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages. . . .; The converse is also true, however.; When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee."; The Court later concludes that the \$1 million compensatory award in that case was "substantial."

;All of this suggests that a 1-to-1 punitive-to-compensatory damages ratio may now be constitutionally mandated when the compensatory award is considered "substantial."; Important development.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Francisco, Noel J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>;<Addington, David S.>
Sent: 4/7/2003 1:57:47 PM
Subject: significant section of Supreme Court opinion today

from Kennedy opinion for 6 Justices: "[F]ew awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. . . . [R]atios greater than those we have previously upheld may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages. . . . The converse is also true, however. When compensatory damages are substantial, then a lesser ratio, **perhaps only equal to compensatory damages**, can reach the outermost limit of the due process guarantee."

The Court later concludes that the \$1 million compensatory award in that case was "substantial."

All of this suggests that a 1-to-1 punitive-to-compensatory damages ratio may now be constitutionally mandated when the compensatory award is considered "substantial." Very important development.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Grubbs, Wendy J.>;<Snee, Ashley>
Sent: 4/7/2003 2:03:16 PM
Subject: editorial on blue slip -- if only . . .

Pink slip for blue slip

Star-Telegram

When Senate Judiciary Committee Chairman Orrin Hatch convened a hearing for an appellate court nominee opposed by both her home-state senators, it was a significant step away from the tradition of the "blue slip."

The blue slip is a form that is sent to a judicial nominee's home-state senators asking whether they approve of or object to the nomination.

Through this form of senatorial courtesy, individual senators have been able to block consideration of nominees for years simply by returning a negative blue slip or not sending it back at all. The reason for opposition can be substantive or silly -- and it need not be made public.

Theoretically, the blue slip enables senators to persuade the president to consult them on nominees, thus avoiding political showdowns.

But too often the mechanism has put far too much of the Senate's "advice and consent" power into the hands of a single senator.

By diluting that concentration of power, Hatch has done the right thing.

The decision by the Utah Republican, who also was Judiciary Committee chairman under President Clinton, came on a controversial nominee: Carolyn Kuhl, who's strongly backed by the Bush White House and opposed by California's Democratic senators, Barbara Boxer and Dianne Feinstein.

Eliminating the blue slip removes one means of warping the judicial selection process. The challenge remains for senators and the president to avoid other divisiveness that threatens an independent judiciary.

From: CN=Nanette Everson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 11:19:02 AM
Subject: : Re: Could you give me your edits? Thanks
Attachments: P_0ECEF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 15:19:02.00
SUBJECT:: Re: Could you give me your edits? Thanks
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

These were the specific questions, including spouses hosting fundraisers,
that I was asked to address.

Brett M. Kavanaugh
04/07/2003 11:53:31 AM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
Subject: Re: Could you give me your edits? Thanks

edits incorporated into attached. I streamlined and eliminated a couple
of things I thought were unnecessary for this general guidance (e.g.,
spouse hosting rules, which seem to invite a problem, and admin support
personnel rules, which do not really apply here unlike in the departments
since the admin support folks here fall within same rules).

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0ECEF003_WHO.TXT_1>

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>
Sent: 4/7/2003 11:22:05 AM
Subject: : Re: Could you give me your edits? Thanks
Attachments: P_NKCEF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 15:22:05.00
SUBJECT:: Re: Could you give me your edits? Thanks
TO: Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I would just add a single bullet then that spouses legally can host them, but please add that such fundraisers invariably will raise public and media questions that really should be avoided absent some truly compelling justification.

Nanette Everson
04/07/2003 03:18:51 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Could you give me your edits? Thanks

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Brett M. Kavanaugh
04/07/2003 11:53:31 AM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
Subject: Re: Could you give me your edits? Thanks

edits incorporated into attached. I streamlined and eliminated a couple of things I thought were unnecessary for this general guidance (e.g., spouse hosting rules, which seem to invite a problem, and admin support personnel rules, which do not really apply here unlike in the departments since the admin support folks here fall within same rules).

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NKCEF003_WHO.TXT_1>

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From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 11:39:03 AM
Subject: : Tech service switched my email

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 7-APR-2003 15:39:03.00
SUBJECT:: Tech service switched my email
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

and I cannot retrieve old docs (for the moment) so please resend Leahy
letter. I have to return Bruce's charming call.

From: Grubbs, Wendy J.
To: <Kavanaugh, Brett M.>
Sent: 4/7/2003 3:45:33 PM
Subject: FW: ADA Watch on Sutton debate

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

From: Comisac, RenaJohnson (Judiciary) [mailto:Rena_Johnson_Comisac@Judiciary.senate.gov]
Sent: Monday, April 07, 2003 11:09 AM
To: Brown, Jamie E (OLA); Grubbs, Wendy J.; Benczkowski, Brian A
Subject: FW: ADA Watch on Sutton debate

FYI

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

From: Higginbotham, Ryan (Judiciary)
Sent: Monday, April 07, 2003 9:50 AM
To: Dahl, Alex (Judiciary); Comisac, RenaJohnson (Judiciary); Haywood, Amy (Judiciary)
Subject: ADA Watch on Sutton debate

Action Alert: Sutton Debate Next Week

National Coalition for Disability Rights' ADA WATCH

CAMPAIGN FOR FAIR JUDGES www.ADAwatch.org

4-4-03 NOTICE:

THE REPUBLICAN LEADERSHIP ANNOUNCED TODAY THAT THEY WILL SEEK TO START SENATE FLOOR DEBATE ON JEFFREY SUTTON, JUDICIAL NOMINEE TO THE SIXTH CIRCUIT COURT OF APPEALS, AS EARLY AS 5PM NEXT MONDAY, APRIL 7.

The Democrats are resisting entering into a time agreement which means we can delay the actual vote for as long as Senators agree to speak on the issues. Disability rights and the ADA, of course, are not partisan issues, but we cannot stop Sutton's confirmation without the same leadership Democrats have been exhibiting on other nominees such as Estrada, Pickering, etc.

Sen. Feinstein's vote for Sutton in the Judiciary Committee has made our job so much harder. While she was using a vote for Sutton to try to illustrate that she is not an "obstructionist," she only succeeded in telling us that our rights don't count as much as others. We need her to join her colleagues who are outraged that an ideologue like Sutton may win confirmation to a powerful, lifetime position on the Federal court.

We need to be united as a community and call on Senators to speak out against Sutton and his aggressive activism steeped in Federalism, "States' Rights," and the undermining of the authority of Congress to protect the civil rights of people with disabilities.

ACTION NEEDED:

Phone calls and Faxes Monday and all week long to your Senators as well as the Senate offices listed below. Even though we have been at this for almost two years now, many Senators are just starting to pay attention to Sutton's nomination.

NOW WE NEED TO WORK INTENSLY TO FINISH OUR JOB!

As a community, we have done an amazing job on Sutton. We have made thousands of calls, faxed hundreds of letters of organizations opposed to his confirmation, had hundreds of individuals march to the White House, protest Sutton's hearing, and speak to the media. We have had letters to the editor,

REV_00233297

Op-Eds in major newspapers, and events led by Sen. Harkin, Pat Garrett and others. We have been having meetings with Senators and their staff who all indicate that they are hearing from members of the disability community. We need to finish what we have started with a resounding "Stop Sutton!"

Please call. Please send a Fax. Please Fax your organization's letter of opposition - EVEN IF YOU HAVE ALREADY DONE SO!

MESSAGE:

Speak out against Sutton during extended debate on the Senate Floor. Delay the vote and educate the public about Sutton's extremist ideology. Vote "NO" on Sutton when there is a vote.

Sutton is opposed by more than 400 nonpartisan disability, civil rights, women's, environmental, and other groups. He has been the leader of the "states' rights" and Federalism movement which has led to the weakening of the ADA. He fought against us in Olmstead. His arguments have led the dismantling of civil rights laws including the Age Discrimination Act, Violence Against Women Act, and the rights of Medicaid recipients to sue for appropriate medical care. Not only as an attorney in controversial cases, but in his private speeches and interviews, Sutton has led the effort to undo Federal civil rights legislation and the authority of Congress to respond to the petition of American citizens.

CONTACT:

Call and Fax your Senators first and use information from www.adawatch.org to make your case. We are asking for a lot but we cannot win this campaign without your efforts.

Contact Sen. Tom Harkin at V: 202-224-3254 and F: 202-224-9369. Thank him for his leadership on Sutton and ask him to aggressively lead the effort to delay any vote on Sutton's confirmation.

Contact Sen. Feinstein at V: 202-224-3841 and F: 202-224-3841. Respectfully ask her to vote against Sutton on the floor.

In addition, contact the following members of the Democratic leadership and ask them to speak out against Sutton in their Caucus and at length during the extended Senate debate.

Sen. Tom Daschle V: 224-2321 F: 224-6603
Sen. Harry Reid V: 224-3542 F: 224-7327
Sen. Barbara Mikulski V: 224-4654 F: 224-8858
Sen. John Breaux V: 224-4623 F: 224-2577
Sen. Byron Dorgan V: 224-2551 F: 224-1193
Sen. Hillary Clinton V: 224-4451 F: 228-0282
Sen. Dick Durbin V: 224-2152 F: 228-0400
Sen. John Corzine V: 224-4744 F: 228-2197
Sen. Debbie Stabnow V: 224-4822 F: 224-0325
Sen. Barbara Boxer V: 202-224-3553 F: 415-956-6701

Ryan Higginbotham
Senate Committee on the Judiciary
(202) 224-9680

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees. If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited. If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy.

Thank you.

From: CN=Nanette Everson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 12:17:10 PM
Subject: :
Attachments: P_ROFEF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 16:17:10.00
SUBJECT: :
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Take a last look; I've left in the answers to the specific questions that I have received because non-lawyers don't know how to interpret "so long as you adhere to the restrictions concerning solicitation."

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ROFEF003_WHO.TXT_1>

HATCH ACT ADVISORY

This Hatch Act Advisory provides general guidance for you as a White House staff person on what you can and cannot do in regards to political activity. **For purposes of this guidance:**

White House staff person is defined as all Commissioned Officers, Schedule C's and all other White House staff who are appointed under 3 U.S.C. Section 105(a) and who also have duties and responsibilities that continue outside the normal duty hours and while away from the normal duty post. The President can determine the normal duty hours and post for White House staff.

Solicit is defined as expressly requesting of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan group.

Political activity is defined as an activity directed toward the success or failure of a political party, candidate, or partisan group.

May a White House staff person participate in political activity while on duty?

Yes. You may participate in political activity while on duty so long as it does not interfere with your official duties.

May a White House staff person host a political fundraiser?

No. However, your spouse may host a fundraiser even in the home shared with the White House staff person. If your spouse hosts a political fundraiser:

- Your name cannot appear on invitations or announcements.
- You may wear a personal nametag (with no reference to your government title).
- You may meet and greet guests.
- You may make a speech in your personal capacity but may not ask for contributions or services.
- You may not accept, solicit or receive contributions or services.

Additionally, always keep in mind that what is legal may not be wise from a public relations perspective.

May a White House Staff person participate in a political fundraiser in an official capacity?

No. You may never participate in a political fundraiser in your official capacity, although:

- You may attend a political fundraiser in your personal capacity.
- You may speak at a fundraiser in your personal capacity and support a candidate so long as you do not solicit, accept or receive contributions of funds or services or allow yourself to be introduced using solely your White House title.

May a White House Staff person solicit, accept or receive political contributions?

No. You may not solicit, accept or receive political contributions at any time.

- You may give money to a campaign (following, of course, campaign finance laws).
- You may not participate in a phone bank asking for contributions (even anonymously).
- You may stuff envelopes with literature asking for contributions but your name may not appear on the literature or envelope.
- You may manage a fundraising activity so long as you adhere to the restrictions concerning solicitation.

May a White House Staff person use government equipment while participating in political activity?

Yes. You may use phones, e-mails, computers, faxes, blackberries, copiers and televisions screens for political activity.

- The appropriate political entity should reimburse the government if there are increased non-incident costs that would not have been incurred but for the political activity.
- Your use of the equipment must not interfere with government operations or official duties.

May a White House staff person, use a government vehicle for political activity?

No. White House policy prohibits the use of White House vehicles for political activity.

From: CN=Nanette Everson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/7/2003 12:17:12 PM
Subject: : Re:
Attachments: P_LQFEF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 16:17:12.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I will concede this is a very fuzzy line for any senior administration official, but as you know Cabinet Officers rely heavily on this distinction during the election cycles and as POTUS surrogates; we don't want to say the distinction is invalid.

Brett M. Kavanaugh
04/07/2003 04:13:16 PM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

I think the official capacity/personal capacity distinction in question 3 confuses more than it clarifies. When Karl et al go to fundraisers, they speak about the President's agenda etc. which is fine. I thus think it's best just to say that they cannot solicit and cannot use official title when they speak at fundraisers.

I would remind everyone that they should consult with OPA and WHC before engaging in political activity, esp political activity that could receive public attention.

Thanks!

Nanette Everson
04/07/2003 04:03:08 PM
Record Type: Record

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

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LQFEF003_WHO.TXT_1>

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From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 4/7/2003 12:51:27 PM
Subject: : Off Site

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 16:51:27.00
SUBJECT:: Off Site
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Per Dab, as of 8:00 a.m. tomorrow, we are standing down until further notice. I'll continue to circulate schedules so that we are ready if we need to resume staffing off site.

Here's the remainder of the current schedule and the next schedule.

Apr. 7-9: Brett
Apr. 9-11: Noel

Apr. 14-16: Jen
Apr. 16-18: Kyle
Apr. 21-23: Ben
Apr. 23-25: Brett
Apr. 28-30: Bart
Apr. 30-May 2: Noel

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
Sent: 4/7/2003 2:17:11 PM
Subject: : RE: Owen debate on floor now

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-APR-2003 18:17:11.00
SUBJECT:: RE: Owen debate on floor now
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

No. They plan on debating for 2 days and try to obtain time/vote agreement.

From: David G. Leitch/WHO/EOP@Exchange on 04/07/2003 05:57:58 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: Owen debate on floor now

Under what procedure? UC???

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

From: Kavanaugh, Brett M.
Sent: Monday, April 07, 2003 5:54 PM
To: Gonzales, Alberto R.; Leitch, David G.; Brosnahan, Jennifer R.;
Newstead, Jennifer G.; Bartolomucci, H. Christopher; Sampson, Kyle;
Francisco, Noel J.; Powell, Benjamin A.; Ulliot, Theodore W.
Subject: Owen debate on floor now

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2003 8:07:30 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 8-APR-2003 12:07:30.00
SUBJECT: :
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Now the shoe's on the other foot.; I had a conversation with the Judge re
CA4 and would like to get your thoughts when you have a minute.;

From: Grubbs, Wendy J.
To: <Kavanaugh, Brett M.>
Sent: 4/8/2003 10:11:17 AM
Subject: RE: What time is Owen arriving today?

Nelson wants to move her to earlier in the day, so I will change that now and let you know.

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 08, 2003 10:05 AM
To: Grubbs, Wendy J.
Subject: Re: What time is Owen arriving today?

She arrives early evening tonight.

I would book her with all targets who will meet with her. She will stay as long as it takes. Recall the below list of targets based on prior votes for Shedd, Tymkovich, Smith, and Estrada -- which I think is probably a good guide.

All 4 nominees (2)

Zell Miller
Ben Nelson

3 of the 4 nominees (3)

Breaux
Lincoln
Pryor (voted for Tymkovich; was not yet in Senate for Smith and Shedd, but assume he would have voted with Lincoln)

2 of the 4 nominees (5)

Bayh
Byrd
Bob Graham
Hollings
Bill Nelson

1 of the 4 nominees (8)

Biden (Smith)
Carper (Smith)
Conrad (Tymkovich)
Dorgan (Smith)
Edwards (Smith)
Inouye (Shedd)
Kohl (Smith)
Landrieu (Smith)

From: Wendy J. Grubbs/WHO/EOP@Exchange on 04/08/2003 09:58:59 AM
Record Type: Record

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

REV_00233387

Subject: What time is Owen arriving today?

Is she aware of her Ben Nelson appt? I am inclined to try to book her with all targets, you?

From: Bumatay, Patrick J.
To: <Powell, Benjamin A.>;<Ullyot, Theodore W.>;<Sampson, Kyle>;<Kavanaugh, Brett M.>
Sent: 4/8/2003 10:37:53 AM
Subject: nominations tomorrow

Folks,

The following nominations are being sent to the Senate tomorrow. I will need their supporter contact list by tomorrow morning.

Thanks, Patrick

Carlos Bea CA9 Cal

Bill Pryor CA11 Ala

Ronnie Greer ED Tenn

Tom Hardiman WD PA

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>
CC: kyle sampson/who/eop@eop [WHO] <kyle sampson>;benjamin a. powell/who/eop@eop [WHO] <benjamin a. powell>;theodore w. ullyot/who/eop@eop [WHO] <theodore w. ullyot>;patrick j. bumatay/who/eop@exchange [WHO] <patrick j. bumatay>
Sent: 4/8/2003 7:53:01 AM
Subject: : Re: nominations tomorrow

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-APR-2003 11:53:01.00
SUBJECT:: Re: nominations tomorrow
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: kyle sampson (CN=kyle sampson/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: benjamin a. powell (CN=benjamin a. powell/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: theodore w. ullyot (CN=theodore w. ullyot/OU=who/O=eop@eop [WHO])
READ: UNKNOWN
CC: patrick j. bumatay (CN=patrick j. bumatay/OU=who/O=eop@exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

Right, and that's what we will do.

Benjamin A. Powell
04/08/2003 11:52:23 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: patrick j. bumatay/who/eop@exchange, benjamin a. powell/who/eop@eop, theodore w. ullyot/who/eop@eop, kyle sampson/who/eop@eop
bcc:
Subject: Re: nominations tomorrow

If we are not announcing before 11 tomorrow, that will be a problem as we have committed to announce in the morning.

Brett M. Kavanaugh
04/08/2003 10:40:12 AM
Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@Exchange
cc: benjamin a. powell/who/eop@eop, theodore w. ullyot/who/eop@eop, kyle sampson/who/eop@eop
bcc:
Subject: Re: nominations tomorrow

Let's try to get all ready to go tonight because we are announcing before 11 tomorrow, I believe

From: Patrick J. Bumatay/WHO/EOP@Exchange on 04/08/2003 10:37:53 AM
Record Type: Record

To: Benjamin A. Powell/WHO/EOP@EOP, Theodore W. Ulliot/WHO/EOP@EOP,
Kyle Sampson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: nominations tomorrow

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will need their supporter contact list by tomorrow morning.

Thanks, Patrick

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Carlos Bea CA9 Cal

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Tom Hardiman WD PA

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;

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>
Sent: 4/8/2003 8:17:28 AM
Subject: : Re: nominations tomorrow

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-APR-2003 12:17:28.00
SUBJECT:: Re: nominations tomorrow
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

You probably should have talkers ready for press and media affairs on Pryor. Assume that's done anyway.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 04/08/2003 10:37:53 AM
Record Type: Record

To: Benjamin A. Powell/WHO/EOP@EOP, Theodore W. Ulliyot/WHO/EOP@EOP,
Kyle Sampson/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: nominations tomorrow

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Thanks, Patrick

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Carlos Bea CA9 Cal

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Ronnie Greer ED Tenn

Tom Hardiman WD PA

;

;

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2003 2:06:05 PM
Subject: : please call

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 8-APR-2003 18:06:05.00
SUBJECT:: please call
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Carmen Mallon

PRA 6

re: FOIA referral

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2003 11:16:40 AM
Subject: : Re: important

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 8-APR-2003 15:16:40.00
SUBJECT:: Re: important
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I can check, but not sure I trust that he will keep under wraps.

.

From: Wood, Robert (HHS/OS) <Robert.Wood@hhs.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2003 11:34:05 AM
Subject: : Out of Office AutoReply: Algiers

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Wood, Robert (HHS/OS)" <Robert.Wood@hhs.gov> ("Wood, Robert (HHS/OS)"
<Robert.Wood@hhs.gov> [UNKNOWN])
CREATION DATE/TIME: 8-APR-2003 15:34:05.00
SUBJECT:: Out of Office AutoReply: Algiers
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I am currently out of the office. I will respond to e-mails upon return tomorrow. If you have an urgent matter please contact Eileen Conover at 690-8157.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2003 11:40:30 AM
Subject: : Re: important

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 8-APR-2003 15:40:30.00
SUBJECT:: Re: important
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

So do u want to risk this? If df objects, then what?

.

From: CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2003 11:56:46 AM
Subject: : FW: Meeting re. Algiers Accords

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 8-APR-2003 15:56:46.00
SUBJECT:: FW: Meeting re. Algiers Accords
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Does David need to go to this?; This is the first I've heard of it.

;
;

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

From: Vestewig, Lauren J.
Sent: Tuesday, April 08, 2003 3:53 PM
To: Perry, Philip J.; Wood, John F.; Leitch, David G.; Kavanaugh, Brett M.; Keniry, Daniel ; Kirk, Matthew ; Cox, Christopher C.; Silverberg, Kristen
Cc: Lefkowitz, Jay P.; Stone, Carla B.; Montiel, Charlotte L.
Subject: Meeting re. Algiers Accords

There will be a meeting tomorrow at 8:00 in Jay's office re.;the Algiers; Accords issue.; Will Taft will also join.; I'm sorry for any inconvenience the early time may cause, but it was the only time we could get everyone together in the morning.; Please let me know if you can make it.; Thanks very much.;

From: CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2003 12:01:50 PM
Subject: : FW: Meeting re. Algiers Accords

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 8-APR-2003 16:01:50.00
SUBJECT:: FW: Meeting re. Algiers Accords
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Never mind, David is not going.; Can you cover the meeting for our shop?

;
Charlotte
;

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

From: Vestewig, Lauren J.
Sent: Tuesday, April 08, 2003 3:53 PM
To: Perry, Philip J.; Wood, John F.; Leitch, David G.; Kavanaugh, Brett M.; Keniry, Daniel ; Kirk, Matthew ; Cox, Christopher C.; Silverberg, Kristen
Cc: Lefkowitz, Jay P.; Stone, Carla B.; Montiel, Charlotte L.
Subject: Meeting re. Algiers Accords

There will be a meeting tomorrow at 8:00 in Jay's office re.;the Algiers; Accords issue.; Will Taft will also join.; I'm sorry for any inconvenience the early time may cause, but it was the only time we could get everyone together in the morning.; Please let me know if you can make it.; Thanks very much.;

From: Kavanaugh, Brett M.
To: <Montiel, Charlotte L.>
Sent: 4/8/2003 4:07:03 PM
Subject: Re: FW: Meeting re. Algiers Accords

i am on the email

From: Charlotte L. Montiel/WHO/EOP@Exchange on 04/08/2003 04:01:55 PM

Record Type: Record

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

cc:

Subject: FW: Meeting re. Algiers Accords

Never mind, David is not going. Can you cover the meeting for our shop?

Charlotte

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

From: Vestewig, Lauren J.

Sent: Tuesday, April 08, 2003 3:53 PM

To: Perry, Philip J.; Wood, John F.; Leitch, David G.; Kavanaugh, Brett M.; Keniry, Daniel ; Kirk, Matthew ; Cox, Christopher C.; Silverberg, Kristen

Cc: Lefkowitz, Jay P.; Stone, Carla B.; Montiel, Charlotte L.

Subject: Meeting re. Algiers Accords

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REV_00233492

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>
Sent: 4/8/2003 1:26:15 PM
Subject: : MATERIALS RECEIVED
Attachments: P_YCQFF003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-APR-2003 17:26:15.00
SUBJECT:: MATERIALS RECEIVED
TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

----- Forwarded by H. Christopher Bartolomucci/WHO/EOP on
04/08/2003 05:26 PM -----

"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
04/08/2003 05:21:53 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: MATERIALS RECEIVED

MATERIALS RECEIVED: Tuesday, April 08, 2003

Nominations

Robert D. McCallum, Jr., of Georgia, to be Associate Attorney General.

Richard James O'Connell, of Arkansas, to be United States Marshal for the Western District of Arkansas for the term of four years.

ABA

REV_00233503

Michael Chertoff, of New Jersey, to be United States Circuit Judge for the Third Circuit.

Unan WQ

Swen Prior

Nominations Clerk

Senate Judiciary Committee

(202) 224-5225

CONFIDENTIALITY NOTE: The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees. If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited. If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy. Thank you.

- att1.htm

Message Sent

To: _____
"Wikner, Brian (Judiciary)" <Brian_Wikner@Judiciary.senate.gov>
"Arfa, Rachel (Judiciary)" <Rachel_Arfa@Judiciary.senate.gov>
"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov>
"Carroll, Kurt (Judiciary)" <Kurt_Carroll@Judiciary.senate.gov>
"Cohen, Bruce (Judiciary)" <Bruce_Cohen@Judiciary.senate.gov>
"Comisac, RenaJohnson (Judiciary)"
<Rena_Johnson_Comisac@Judiciary.senate.gov>
"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov>
"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov>
"DeOreo, Mary (Judiciary)" <Mary_DeOreo@Judiciary.senate.gov>
"Eichner, Leesa (Judiciary)" <Leesa_Eichner@Judiciary.senate.gov>
"Graves, Lisa (Judiciary)" <Lisa_Graves@Judiciary.senate.gov>
"Greenfeld, Helaine (Judiciary)" <Helaine_Greenfeld@Judiciary.senate.gov>
"Haywood, Amy (Judiciary)" <Amy_Haywood@Judiciary.senate.gov>
"Lucius, Kristine (Judiciary)" <Kristine_Lucius@Judiciary.senate.gov>
"Lundell, Jason (Judiciary)" <Jason_Lundell@Judiciary.senate.gov>
Phil toomajian <Phil_Toomajian@Judiciary.senate.gov>
"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
"Snell, BethAnn (Judiciary)" <BethAnn_Snell@Judiciary.senate.gov>
"Stahl, Katie (Judiciary)" <Katie_Stahl@Judiciary.senate.gov>
"Tapia, Margarita (Judiciary)" <Margarita_Tapia@Judiciary.senate.gov>
H. Christopher Bartolomucci/WHO/EOP@EOP
nathan.sales@usdoj.gov
nancy.scottfinan@usdoj.gov

ATT CREATION TIME/DATE: 0 00:00:00.00

REV_00233504

File attachment <P_YCQFF003_WHO.TXT_1>

MATERIAL S RECEIVED: Tuesday, April 08, 2003

Nominati ons

Robert D. McCallum, Jr., of Georgia, to be Associate Attorney General.

Richard James O'Connell, of <
/font>Arkansas, to be United States Marshal for th
e Western District of Arkansas for the term of four years.

ABA

Michael Chertoff, of <
/font>New Jersey, to be United States Circuit Judge
for the Third Circuit.

Unan WQ

Swen Prior
Nominations Clerk
Senate Judiciary Committee
(202) 224-5225

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REV_00233506

From: Carlos Bea [PRA 6]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/8/2003 3:38:50 PM
Subject: : Re: List OK?
Attachments: P_M7VFF003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Carlos Bea [PRA 6] (Carlos Bea [PRA 6] [UNKNOWN])
CREATION DATE/TIME: 8-APR-2003 19:38:50.00
SUBJECT:: Re: List OK?
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

List: fine

there is a picture attached to your last e-mail. I couldn't open it.
Should I be able to open it and see it? Can you send it in WORD format or
WORD PERFECT or ACROBAT or REALPLAYER?

I can open those.

Cheers,

Carlos Bea

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

From: Brett_M._Kavanaugh@who.eop.gov

To: Carlos Bea

Sent: Tuesday, April 08, 2003 3:06 PM

Subject: Re: List OK?

it's perfect; thanks

(Embedded

image moved Carlos Bea [PRA 6]

to file: 04/08/2003 06:05:39 PM

pic09064.pcx)

Record Type: Record

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

cc:

Subject: List OK?

Brett:

Did you get my list?

REV_00233536

Is it OK as far as balance and breadth?

Do you want any non-lawyer, non-judges?

Carlos Bea

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_M7VFF003_WHO.TXT_1>

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO/EOP@Exchange [WHO] <Kristen Silverberg>
Sent: 4/9/2003 3:53:36 AM
Subject: : Mtg this am

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME: 9-APR-2003 07:53:36.00
SUBJECT:: Mtg this am
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Can you start mtg.

I will be there as soon as staff mtg breaks. Thx

.

From: Kirk Blalock <kblalock@fierce-isakowitz.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kevin Warsh/OPD /EOP@EOP [OPD] <Kevin Warsh>;Kristen Silverberg/WHO/EOP@EOP [WHO] <Kristen Silverberg>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
Sent: 4/9/2003 4:53:56 AM
Subject: : WSJ Editorial - Asbestos Games - Today
Attachments: P_HRBGF003_OPD.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kirk Blalock <kblalock@fierce-isakowitz.com> (Kirk Blalock <kblalock@fierce-isakowitz.com> [UNKNOWN])
CREATION DATE/TIME: 9-APR-2003 08:53:56.00
SUBJECT:: WSJ Editorial - Asbestos Games - Today
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

WSJ - Asbestos Games - A12

Miracles do happen, even in Washington. The latest is that Congress is finally getting serious about solving the asbestos litigation mess. The worry now is that the perfect will become the enemy of the better.

Senate Judiciary Chairman Orrin Hatch has promised asbestos reform this year, and his committee already has a promising bill from Republican Senator Don Nickles. But just as things were chugging along, the business community split and Big Labor and the tort bar made new demands. So Mr. Hatch (who'd like a bipartisan solution) is now engaged in the Hans Blixian search for perfection while the window of political opportunity closes.

The problem is urgent enough. To date, asbestos lawsuits have driven 67 companies into bankruptcy and another 8,400 to court. Tens of thousands of workers have lost their jobs or seen their 401(k) plans implode. Meanwhile, the truly sick can't get compensation because claims by the healthy are clogging the courts.

The Nickles solution would cut through the court overload by setting medical standards for who can sue. His approach was gaining momentum until the unions and several asbestos companies resurrected a plan to set up a national asbestos trust fund. We're told Senator Hatch now wants to do it all - that is, set medical standards, create a new "asbestos court" and establish two trust funds (one financed by asbestos firms and one by insurers).

We have nothing in theory against either a special court or a trust fund. We like a trust fund when it was the only reform on the table because it envisioned strong medical standards and provided asbestos companies with

finality. That's why some companies still prefer a fund.

The problem is that the fund concept is now being used as a poison pill to kill reform. Unions and liberal Senators want a fund in lieu of any real medical standards, meaning it would become a kind of permanent legal slush fund. Such class-action specialists as Fred Baron are also demanding an opt-out clause in case payoffs aren't large enough to keep them in new yachts. Mr. Hatch may find that in wooing these holdouts he will so gut reform that he loses Republicans and kills its chances in this Congress.

Senator Nickles's simple bill is attractive enough. It gives anyone with an asbestos-related cancer the automatic right to sue. Anyone with "non-malignant" diseases - asbestosis, pleural thickening - or other complaints would have to fit an American Medical Association definition of "impairment" to sue. If they don't meet that definition now, they can always sue later when they do.

The Nickles's bill would still allow the terminally ill to forum shop and it gives the tort bar its share of the lucre. It walks a fine enough political line to satisfy much of the business community. And medical standards have the support of both the American Bar Association and that part of the tort bar that still has a conscience. The bill therefore has a chance to win enough Democratic votes to defeat a filibuster.

Mr. Hatch's latest trust fund detour has had the effect of causing some of these Democrats to walk away from reforms they earlier endorsed. After more than a decade of waiting for some relief from the asbestos scourge, both the economy and truly sick need a real solution, not more political games.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_HRBGF003_OPD.TXT_1>

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From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 4/9/2003 9:36:08 AM
Subject: FW: MESSAGE MEETING REMINDER

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

From: Ritacco, Krista L.

Sent: Wednesday, April 09, 2003 8:58 AM

To: Yunker, Jacob H.; Allgood, Lauren K.; Ball, Andrea G.; Barrales, Ruben S.; Bennett, Melissa S.; Besanceney, Brian R.; Buchan, Claire ; Burkhart, Shannon; Campbell, Anne E.; Christie, Ronald I.; Ciafardini, Andrew D.; Conde, Roberta L.; Cooper, Rory S.; DeFrancis, Suzy; Devenish, Nicolle; Douglas, Penny G.; Duffy, Trent D.; Ellison, Kimberly; Eskew, Tucker A.; Figg, Kara G.; Gerdelman, Sue H.; Gillmor, Eleanor L.; Grant, Britt; Gray, Adrian G.; Gray, Ann ; Healy, Erin E.; Hennessey, Keith; Hernandez, Israel; Hughes, A. Merrill; Hughes, Taylor A.; Ingle, Edward; Jackson, Barry S.; Kaplan, Joel; Kozberg, Lindsey C.; Kyle, Ross M.; Lefkowitz, Jay P.; Lineberry, Stephen M.; Litkenhaus, Colleen; Mallea, Jose; Martin, Catherine J.; McClellan, Scott ; McDonald, Rebekah; McQuade, Vickie A.; Mehlman, Ken; Middlemas, A. Morgan; Millerwise, Jennifer; Montiel, Charlotte L.; Nelson, Carolyn; Nipper, Wendy L.; Parell, Christie; Pelletier, Eric C.; Perez, Anna M.; Ralston, Susan B.; Reese, Shelley; Riecke, January M.; Riepenhoff, Allison L.; Rodriguez, Noelia ; Rogers, Edwina C.; Rust, Kathryn E.; Ryun, Catharine A.; Sforza, Scott N.; Silverberg, Kristen; Smith, Heidi M.; Snee, Ashley; Spagnoli, Deborah A.; Torgerson, Karin B.; Towey, Jim; Vestewig, Lauren J.; Walters, Katherine M.; Wehner, Peter H.; Westine, Lezlee J.; Williams, Mary C.; Wozniak, Natalie S.

Subject: MESSAGE MEETING REMINDER

There will be a message meeting today at noon in the Roosevelt Room.

From: CN=Lauren C. Lobrano/OU=OMB/O=EOP [OMB]
To: Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>;Adam B. Goldman/WHO /EOP@EOP [WHO] <Adam B. Goldman>;Penny G. Douglas/WHO/EOP@Exchange [WHO] <Penny G. Douglas>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Robert L. Wilkie/NSC/EOP@EOP [NSC] <Robert L. Wilkie>;sara_nokes@vp.senate.gov@SMTP@Exchange [UNKNOWN] <sara_nokes@vp.senate.gov@SMTP@Exchange>;Elizabeth L. Rossman/OMB/EOP@EOP [OMB] <Elizabeth L. Rossman>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Julie L. Nichols/OVP/EOP@EOP [OVP] <Julie L. Nichols>;Daniel McCarthy/WHO /EOP@Exchange [UNKNOWN] <Daniel McCarthy>;Brooke H. Manning/WHO/EOP@EOP [WHO] <Brooke H. Manning>;Lauren C. Lobrano/OMB/EOP@EOP [OMB] <Lauren C. Lobrano>;Lindley Kratovil/OVP/EOP@EOP [OVP] <Lindley Kratovil>;Daniel Keniry/WHO /EOP@Exchange [UNKNOWN] <Daniel Keniry>;Amy Jensen/WHO/EOP@Exchange [WHO] <Amy Jensen>;David F. Holt/WHO/EOP@Exchange [WHO] <David F. Holt>;Grubbs, Wendy J. <wgrubbs@WHO.eop.gov>;Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Christopher C. Cox/WHO/EOP@Exchange [WHO] <Christopher C. Cox>;Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>;Christina L. Burrell/NSC /EOP@EOP [NSC] <Christina L. Burrell>;Frank Bonner/WHO/EOP@EOP [WHO] <Frank Bonner>;George M. Andricos/NSC/EOP@EOP [NSC] <George M. Andricos>;Candida P. Wolff/OVP/EOP@EOP [OVP] <Candida P. Wolff>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;John Oxford/OMB/EOP@EOP [OMB] <John Oxford>;Adam B. Ingols/WHO/EOP@Exchange [WHO] <Adam B. Ingols>;Christal R. West/WHO/EOP@Exchange [WHO] <Christal R. West>;Peter M. Rowan/OVP/EOP@EOP [OVP] <Peter M. Rowan>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Maureen R. O'Brien/OSTP/EOP@EOP [OSTP] <Maureen R. O'Brien>;Christine E. Morden/ONDCP/EOP@EOP [ONDCP] <Christine E. Morden>;Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>;Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>;Alison Jones/WHO/EOP@Exchange [WHO] <Alison Jones>;Ashley Holbrook/WHO/EOP@Exchange [WHO] <Ashley Holbrook>;Leah J. Harrelson/WHO/EOP@Exchange [WHO] <Leah J. Harrelson>;Lavin Gartland/ONDCP /EOP@EOP [ONDCP] <Lavin Gartland>;Stephen W. Dove/OMB/EOP@EOP [OMB] <Stephen W. Dove>;Thais C. Conway/WHO/EOP@EOP [WHO] <Thais C. Conway>;Amy L. Call/OMB /EOP@EOP [OMB] <Amy L. Call>;Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>;Chelsey Atkin/WHO/EOP@Exchange [WHO] <Chelsey Atkin>;Michael Allen/WHO/EOP@EOP [WHO] <Michael Allen>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>
Sent: 4/9/2003 8:59:19 AM
Subject: : SAP Release - H.R. 1036, Protection of Lawful Commerce in Arms Act
Attachments: P_PMUGF003_OPD.TXT_1

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lauren C. Lobrano (CN=Lauren C. Lobrano/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME: 9-APR-2003 12:59:19.00
SUBJECT:: SAP Release - H.R. 1036, Protection of Lawful Commerce in Arms Act
TO:Garry Malphrus (CN=Garry Malphrus/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Penny G. Douglas (CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Robert L. Wilkie (CN=Robert L. Wilkie/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:sara_nokes@vp.senate.gov@SMTP@Exchange (sara_nokes@vp.senate.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Elizabeth L. Rossman (CN=Elizabeth L. Rossman/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN
TO:Julie L. Nichols (CN=Julie L. Nichols/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Daniel McCarthy (CN=Daniel McCarthy/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Brooke H. Manning (CN=Brooke H. Manning/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lauren C. Lobrano (CN=Lauren C. Lobrano/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lindley Kratovil (CN=Lindley Kratovil/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Daniel Keniry (CN=Daniel Keniry/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Amy Jensen (CN=Amy Jensen/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:David F. Holt (CN=David F. Holt/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:"Grubbs, Wendy J." <wgrubbs@WHO.eop.gov>@SMTP@Exchange ("Grubbs, Wendy J."
<wgrubbs@WHO.eop.gov>@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Christopher C. Cox (CN=Christopher C. Cox/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kirsten Chadwick (CN=Kirsten Chadwick/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Christina L. Burrell (CN=Christina L. Burrell/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Frank Bonner (CN=Frank Bonner/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:George M. Andricos (CN=George M. Andricos/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:John Oxford (CN=John Oxford/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Adam B. Ingols (CN=Adam B. Ingols/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Maureen R. O'Brien (CN=Maureen R. O'Brien/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:Christine E. Morden (CN=Christine E. Morden/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN
TO:Robert Marsh (CN=Robert Marsh/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Elan Liang (CN=Elan Liang/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ashley Holbrook (CN=Ashley Holbrook/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Leah J. Harrelson (CN=Leah J. Harrelson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Lavin Gartland (CN=Lavin Gartland/OU=ONDCP/O=EOP@EOP [ONDCP])
READ:UNKNOWN

TO:Stephen W. Dove (CN=Stephen W. Dove/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Thais C. Conway (CN=Thais C. Conway/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Amy L. Call (CN=Amy L. Call/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Chelsey Atkin (CN=Chelsey Atkin/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Michael Allen (CN=Michael Allen/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

April 9, 2003

(House Floor)
STATEMENT OF ADMINISTRATION POLICY
(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)
H.R. 1036 - Protection of Lawful Commerce in Arms Act
(Rep. Stearns (R) Florida and 251 cosponsors)

The Administration strongly supports House passage of H.R. 1036. The manufacturer or seller of a legal, non-defective product should not be held liable for the criminal or unlawful misuse of that product by others. H.R. 1036 would help prevent abuse of the legal system and help curb the growing problem of frivolous lawsuits in the United States. At the same time, the legislation would carefully preserve the right of individuals to have their day in court with civil liability actions. These civil actions are enumerated in the bill and respect the traditional role of the States in our Federal system with regard to such actions.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PMUGF003_OPD.TXT_1>



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 9, 2003
(House Floor)

STATEMENT OF ADMINISTRATION POLICY

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(Rep. Stearns (R) Florida and 251 cosponsors)

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Hardiman, Thomas M. <THardiman@ReedSmith.com>
Sent: 4/9/2003 8:59:02 AM
Subject: : Press release

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-APR-2003 12:59:02.00
SUBJECT:: Press release
TO: "Hardiman, Thomas M." <THardiman@ReedSmith.com> ("Hardiman, Thomas M."
<THardiman@ReedSmith.com> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Nominations Sent to the Senate
NOMINATIONS SENT TO THE SENATE:
J. Ronnie Greer, of Tennessee, to be United States District Judge for the
Eastern District of Tennessee, vice Thomas G. Hull, retired.
Thomas M. Hardiman, of Pennsylvania, to be United States District Judge
for the Western District of Pennsylvania, vice William L. Standish,
retired.
James J. Jochum, of Virginia, to be an Assistant Secretary of Commerce,
vice Faryar Shirzad.
William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for
the Eleventh Circuit, vice Emmett Ripley Cox, retired.

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 4/9/2003 1:44:31 PM
Subject: : Confirmed Today

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-APR-2003 17:44:31.00
SUBJECT:: Confirmed Today
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Confirmed today:

Dee Drell, U.S. District Judge for the Western District of Louisiana, by a vote of 99-0; and
Richard Bennett, U.S. District Judge for the District of Maryland, by a vote of 99-0.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>
Sent: 4/9/2003 9:51:02 AM
Subject: : Re: WAVES Meeting Tomorrow

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-APR-2003 13:51:02.00
SUBJECT:: Re: WAVES Meeting Tomorrow
TO: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

I am bird-dogging some deputies over there now. Sorry for delay.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 04/09/2003 01:50:08 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: WAVES Meeting Tomorrow

Thanks Brett

-----Original Message-----
From: Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
To: Litkenhaus, Colleen <Colleen_Litkenhaus@who.eop.gov>
Sent: Wed Apr 09 13:22:07 2003
Subject: Re: FW: WAVES Meeting Tomorrow

;;;;;;;; ;;;;;;;;; I left a voice mail yesterday for the general counsel of
USSS with my thoughts; he has not returned it yet.; I just left him
another.

;;;;;;;; From;;; Colleen Litkenhaus/WHO/EOP@Exchange on 04/09/2003 11:15:22
AM

;;;;;;;; Record Type;;; Record

;;;;;;;; To;;; Brett M. Kavanaugh/WHO/EOP@EOP
;;;;;;;; cc;;; ;
;;;;;;;; Subject;;;;;;;;; FW: WAVES Meeting Tomorrow

;;;;;;;; fyi

;;;;;;;; -----Original Message-----
;;;;;;;; From: ; Litkenhaus, Colleen;
;;;;;;;; Sent;;; Wednesday, April 09, 2003 11:15 AM
;;;;;;;; To;;; ;
;;;;;;;; Cc;;; ;
;;;;;;;; Subject:;;;;;;;;; RE: WAVES Meeting Tomorrow

PRA 6

;;;;;;;; Great.; I have WH Counsel looking into it as well.; I think they
had planned on reaching out to USSS Counsel to discuss.; I passed on your
name on to them as well.; See you tomorrow.

Original Message

From: PRA 6
mailto: PRA 6

Sent: Wednesday, April 09, 2003 11:10 AM
To: Litkenhaus, Colleen; Thompson, Jeffrey G.
Cc: Ronald Sprinkle; Michael Novak; Francis Larkin
Subject: WAVES Meeting Tomorrow

Colleen,

I wanted to throw this out to you for your interest in attending tomorrow,s WAVES meeting or maybe sending a representative.; I spoke with you some time last week about the VPR utilizing the White House WAVES system for appointments to the VPR.; Tomorrow at 10:30am, a working group is meeting in the EEOB 5th Floor EEOC which is adjacent to the JOC.; I spoke with John Gossel (VP IT) from Clair O,Donnell,s (VP Management) and he advised that David Addington (VP Counsel) is on board with this project from the VP side.; I still have some concerns that may have more to do with the EOP side of the house and therefore would like to invite you or someone from your staff.; John Gossel will attend this meeting tomorrow.; Please give me a call at your convenience (395-4325).; You or your representative could meet me in Room 23 (EEOB) at 10:15am tomorrow and then proceed to the EEOC.;

Jeff,

I left you a message as well and would like to invite you or a representative from EOP Security.;

Thanks; - PRA 6 (Room 23)

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>
Sent: 4/9/2003 8:54:16 PM
Subject: Re:

ok, onto Plan B.

From: Alberto R. Gonzales/WHO/EOP@Exchange on 04/09/2003 08:54:25 PM

Record Type: Record

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

cc:

Subject: Re:

I think this is not going to work.

From: Cox, Christopher C.
To: daniel j. keniry/who/eop <Kavanaugh, Brett M.>;daniel j. keniry/who/eop <Wood, John F.>
CC: <Lefkowitz, Jay P.>;<Silverberg, Kristen>;<Dorn, Nancy>;<Perry, Philip J.>;<Hobbs, David W.>;<Gonzales, Alberto R.>;daniel j. keniry/who/eop <daniel.j.keniry@eop>
Sent: 4/9/2003 10:24:31 PM
Subject: Re: Algiers accord

Brett did a good job tonight bringing Speaker staff up to speed on the potential exposure facing the US govt as a result of a breach of the Algiers Accords. While this issue is seen by many as an easy "political win", our hope is that when push comes to shove, they will not put our govt in the position of breaking an Executive Agreement. I am not certain that we need to signal a deal yet. Let's keep our powder dry and give us in the leg shop time in the am to determine how successful our education effort tonight has been received, then we will regroup midday.

From: CN=David S. Addington/OU=OVP/O=EOP [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 7:00:01 AM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME:10-APR-2003 11:00:01.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Shannen tells me that Greg Katsas is arguing the Judicial Watch v. NEPDG appeal -- do you know him to be a good oral advocate?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>
Sent: 4/10/2003 7:13:05 AM
Subject: : did you talk to FBI about need for speed on certain files?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-APR-2003 11:13:05.00
SUBJECT:: did you talk to FBI about need for speed on certain files?
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

From: Bumatay, Patrick J.
To: <Francisco, Noel J.>;<Kavanaugh, Brett M.>
Sent: 4/10/2003 11:41:28 AM
Subject: FW: 2 Judges Confirmed

Ok to appoint?

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

From: McCathran, William W.
Sent: Thursday, April 10, 2003 11:21 AM
To: Bumatay, Patrick J.
Cc: Saunders, G. Timo; Kalbaugh, David E.
Subject: 2 Judges Confirmed

Dee D. Drell and Richard D. Bennett, USDJs for W. Dist. of Louisiana and Dist. of Maryland, respectively, were confirmed by the Senate on 4/9/03. OK to appoint?

tk,
Bill

From: Caramanica, Jessica (Judiciary) <Jessica_Caramanica@Judiciary.senate.gov>
To: Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>; Ledeen, Barbara (Republican-Conf) <Barbara_Ledeen@src.senate.gov>; Gumerson, Katie (RPC) <Katie_Gumerson@rpc.senate.gov>; Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>; Abegg, John (McConnell) <John_Abegg@mccconnell.senate.gov>; Galyean, James (L. Graham) <James_Galyean@lgraham.senate.gov>; ashley_m._snee@who.eop.gov [UNKNOWN] <ashley_m._snee@who.eop.gov>; adam.charnes@usdoj.gov [UNKNOWN] <adam.charnes@usdoj.gov>; brian.a.benczkowski@usdoj.gov [UNKNOWN] <brian.a.benczkowski@usdoj.gov>; Jamie.E.Brown@usdoj.gov [UNKNOWN] <Jamie.E.Brown@usdoj.gov>; Dahl, Alex (Judiciary) <Alex_Dahl@Judiciary.senate.gov>; Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>; Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>; Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>; Smith, William (Judiciary) <William_Smith@Judiciary.senate.gov>; Vogel, Alex (Frist) <Alex_Vogel@frist.senate.gov>; Monica.goodling@usdoj.gov [UNKNOWN] <Monica.goodling@usdoj.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>; Caramanica, Jessica (Judiciary) <Jessica_Caramanica@Judiciary.senate.gov>
Sent: 4/10/2003 9:12:33 AM
Subject: : Meeting Friday at 10:30 a.m.
Attachments: P_GMEIF003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> ("Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME:10-APR-2003 13:12:33.00

SUBJECT:: Meeting Friday at 10:30 a.m.

TO:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> ("Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Gumerson, Katie (RPC)" <Katie_Gumerson@rpc.senate.gov> ("Gumerson, Katie (RPC)" <Katie_Gumerson@rpc.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> ("Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Galyean, James (L. Graham)" <James_Galyean@lgraham.senate.gov> ("Galyean, James (L. Graham)" <James_Galyean@lgraham.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:ashley_m._snee@who.eop.gov (ashley_m._snee@who.eop.gov [UNKNOWN])

READ:UNKNOWN

TO:adam.charnes@usdoj.gov (adam.charnes@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:brian.a.benczkowski@usdoj.gov (brian.a.benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Jamie.E.Brown@usdoj.gov (Jamie.E.Brown@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ("Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

REV_00233773

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)"
<Manuel_Miranda@frist.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)"
<Steven_Duffield@rpc.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Smith, William (Judiciary)" <William_Smith@Judiciary.senate.gov> ("Smith, William
(Judiciary)" <William_Smith@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Vogel, Alex (Frist)" <Alex_Vogel@frist.senate.gov> ("Vogel, Alex (Frist)"
<Alex_Vogel@frist.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Monica.goodling@usdoj.gov (Monica.goodling@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:viet.dinh@usdoj.gov (viet.dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> (
"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

On Friday at 10:30 a.m., there will be a meeting in Makan's office
(SD-145) to discuss judicial nominations. Hope you can make it.

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- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_GMEIF003_WHO.TXT_1>

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From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 11:32:19 AM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-APR-2003 15:32:19.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

yes

tsg

Brett M. Kavanaugh
04/10/2003 09:02:06 AM
Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP
cc:
Subject:

Manny thinks we need a coalitions call with at least RNC, Kay, Jennifer, Sean Rushton perhaps on Friday at 10. What do you think?

From: Kavanaugh, Brett M.
To: <Lefkowitz, Jay P.>
Sent: 4/10/2003 4:14:39 PM
Subject: Re: algiers

No substantive edits.

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/10/2003 02:13:15 PM

Record Type: Record

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

cc:

Subject: algiers

if you have any substantive edits to the talking points based on your learning last night, can you pls update them so we have a final set in case the VP or others need it?

thanks

From: Gottesman, Blake
To: <Kavanaugh, Brett M.>
Sent: 4/10/2003 4:25:02 PM
Subject: guidance, pls.

there is currently no mechanism or process in place to capture the president's activities aboard af1 for transmittal to the diarist. on the flights to and from belfast, i asked the flight attendants to keep a very basic log of his activities - similar to the one maintained by the camp personnel on the weekends (e.g., when he ate, whether he watched a movie, etc.) ... just as a trial run to see whether it might be helpful / appropriate information for us to have, and whether it would be a burden for the af1 crew.

the crew said they are happy to help. so, that's not an issue.

i just faxed you a copy of what they collected for you to review. when you get a chance, pls let me know whether this is a process we should continue.

IF you suggest that we continue this practice and move forward, there are a couple of things worth pointing out:

- 1) there were several mistakes on the flight attendant's logs (i wrote notes beside them). i would likely review the logs w/ the attendant at the end of the flight - or soon afterward, which would give me an opportunity to redact any information which is strictly personal and should not be included - there is an example of that in the logs which i faxed over.
- 2) i would come up w/ a standardized form (like the milaides use for the ranch and for camp), and i would give them better, more specific direction on what kind of info to record
- 3) any logs would still go to the judge for review before they go to the diarist

thanks,
blake

From: CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 12:27:16 PM
Subject: : guidance, pls.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:10-APR-2003 16:27:16.00
SUBJECT:: guidance, pls.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

there is currently no mechanism or process in place to capture the president's activities aboard afl for transmittal to the diarist.; on the flights to and from belfast, i asked the flight attendants to keep a very basic log of his activities - similar to the one maintained by the camp personnel on the weekends (e.g., when he ate, whether he watched a movie, etc.) ... just as a trial run; to see whether it might be helpful / appropriate information for us to have, and whether it would be a burden for the afl crew.

;
the crew said they are happy to help.; so, that's not an issue.

;
i just faxed you a copy of what they collected for you to review.; when you get a chance, pls let me know whether this is a process we should continue.

;
IF; you suggest that we continue this practice and move forward, there are a couple of things worth pointing out:

1) there were several mistakes on the flight attendant's logs (i wrote notes beside them).; i; would likely review the logs w/ the attendant at the end of the flight - or soon afterward, which would give me an opportunity to redact any information which is strictly personal and should not be included - there is an example of that in the logs which i faxed over.

2); i would come up w/ a standardized form (like the milaides use for the ranch and for camp), and i would give them better, more specific direction on what kind of info to record

3) any logs would still go to the judge for review before they go to the diarist

;
thanks,
blake

From: CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 12:32:13 PM
Subject: : Re: Brooks Smith

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-APR-2003 16:32:13.00
SUBJECT:: Re: Brooks Smith
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thx will do and don't mean to be asking you for basic research -- I just figured you might have it on the top of your head.

Brett M. Kavanaugh
04/10/2003 04:13:53 PM
Record Type: Record

To: Theodore W. Ullyot/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Brooks Smith

not sure; probably can check on nexis

Theodore W. Ullyot
04/10/2003 04:12:59 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Brooks Smith

When did he go on to CA3 -- 02? What month? I am trying to get real solid on the reversal stats, and I have district-specific "weighted filings per judgeship" stats for every year going way back.

From: CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 12:32:15 PM
Subject: : Brooks Smith

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-APR-2003 16:32:15.00
SUBJECT:: Brooks Smith
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

When did he go on to CA3 -- 02? What month? I am trying to get real solid on the reversal stats, and I have district-specific "weighted filings per judgeship" stats for every year going way back.

From: Loy, Carrie B.
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>;<Koch, Matthew>;<Pfeifer, Sarah>;<Montgomery, Brian D.>;<Ingle, Edward>;<Troy, Tevi>
Sent: 4/10/2003 4:38:47 PM
Subject: Agency FOIA Requests
Attachments: FOIA 4-10-03.doc

<>

AGENCY FOIA REQUESTS

DOC

Received 3/31/03 from **Rob Evans, the Guardian (London)**, requesting documents relating to alleged corruption and bribery involved in the Czech Republic's decision to award a contract to BAE Systems and SAAB for Gripen planes.

Received 4/2/03 from **Henry A. Waxman, United States House of Representatives**, requesting information about: any contacts since January 2001 between DOC officials and the tobacco industry on any issue related to the trade of tobacco products, including dates and times of meetings or phone conversations, names of participants, and information that was exchanged; a list of all actions taken by employees of DOC since January 2001 related to the trade in tobacco products; and information about enforcement of the Doggett amendment since January 2001, including the number of times that questions of compliance were raised, the process used to review those questions, and the outcome of those reviews.

Received 04/02/03 from **Brent Plater, Center for Biological Diversity**, requesting records regarding the February 20, 2002, *Federal Register* notice denying critical habitat designation for the North Pacific Right Whale.

EPA

During the week of March 31-April 4, 2003, the Agency received 260 FOIA requests. Of the total, 36 were received in Headquarters. Year-to-date totals are 1232 for Headquarters and 6510 agency-wide. Significant FOIA requests received this week include:

- (1) **Doug Obey of *Inside EPA*** has requested all A60-day reports prepared for EPA over the past 24 months by the Department of Justice's Environmental & Natural Resources Division regarding federal civil enforcement actions under federal environmental statutes, pursuant to the 1977 memorandum of understanding between DOJ and EPA;
- (4) **Jay Feldman of *Beyond Pesticides*** has requested a list of FIFRA Section 18 Emergency Exemption pesticide applications for the years 2000 through 2002, and up to present date in 2003;
- (5) **Steve Gibb of *Inside EPA's Risk Policy Report*** has requested correspondence between EPA's Office of Prevention, Pesticides & Toxic Substances and DuPont, and internal EPA documents and correspondence regarding the compound C-8 (perfluorooctanic acids [PFOA] or ammonium perfluorooctanate [APFO]) from October 2001 to present;
- (6) **Rachel Urdan of *Inside EPA*** has requested all documents and correspondence regarding EPA grants and contracts awarded to the National Environmental Policy Institute (NEPI)

for use by the news organization Inside Washington Publishers;

- (7) **Elizabeth Rowbotham** of the Ministry of Attorney General of the Province of British Columbia, Canada, has requested records from all ten EPA Regions regarding the migration of creosote contamination between 1975 and 1990 on Koppers Company, Inc. properties;
- (8) **Gabriel Baird of the Capital News Service** has requested EPA Region III=s significant non-compliance list for the most recent quarter for preparation of news articles;
- (9) In three separate letters, **Gabriel Baird of the Capital News Service** has also requested EPA Region III=s (a) Compliance Schedule information, (b) Enforcement Action information, and (c) Facility Inspection information for the most recent two years for preparation of news articles;
- (10) **David Slade of The Morning Call** has requested data on the recent soil testing conducted on public and private properties in 2002-2003 in the Palmerton Superfund Site in Palmerton Borough and Lower Towamensing Township in Pennsylvania;
- (11) **Andrew Hanson of Midwest Environmental Advocates, Inc.** has requested information regarding the final decision of Wisconsin=s 303(d) list under the Clean Water Act; and
- (12) **Daniel Zacharek of WXYZ-TV in Michigan** has requested the 1985 preliminary assessment report and the 1987 site inspection report for the Milford Landfill in Michigan.

DOT

NHTSA has received the following FOIA request: Fox 25 News in Boston has requested copies of "all complaints regarding seat belts unlatching during the past 3 years." The agency's response is due by April 25, 2003.

DOL

Jess Kilby, Staff Writer, The Portland Phoenix, Portland, MA, is seeking:

All documents submitted to the U.S. Department of Labor by Cianbro Corporation that pertain to the company's attempt to clarify its request for 60 H-2B.

Tom FitzGerald, Director, Kentucky Resources Council, Inc., Frankfort, KY, is seeking:

Information regarding breakthroughs from active mines into abandoned underground coal mines within the Pikeville, KY, Coal Mine Safety and Health District. Specifically, Mr. FitzGerald asked for documents reflecting the civil or criminal penalties assessed and the penalties collected for orders or citations issued by MSHA to the following companies:

- *Clintwood Elkhorn Mining Company (Dad's Coal)*
- *Leslie Mountain Processing, Incorporation*
- *Altec Energy, Incorporation*
- *Solid Energy Mining Company*
- *McCoy Elkhorn Coal Corporation*
- *Branham & Baker Underground Corporation*

FitzGerald also asked for documents reflecting any referral by MSHA to appropriate engineering licensure boards of the names of engineers whose certification of inaccurate maps caused or contributed to the breakthroughs into these abandoned mines.

HHS

4/14/03 (Tentative)

CMS High Visibility FOIA Request - On February 20, **John Farrell, the Washington Editor of The Boston Globe**, submitted a FOIA request to CMS. The request asked for all correspondence or records of communication with Senator John F. Kerry of Massachusetts and any member of his staff.

4/20/03 (Tentative)

CMS High Visibility FOIA Request - On February 26, **Benjamin Jones, a research director from the Democratic Senatorial Campaign Committee**, submitted a FOIA request to CMS. The request asked for all correspondence pertaining to the following current and former members of the House of Representatives and U.S. Senate between the dates listed: Senator Christopher Bond (1/1/87 to Present), Senator Ben Nighthorse Campbell (1/1/88 to Present), Senator Judd Gregg (1/1/82 to 12/31/89 and 1/1/93 to Present), Senator John McCain (1/1/86 to Present), and Senator Lisa Murkowski (1/1/03 to Present).

4/25/03 (Tentative)

CMS High Visibility FOIA Request - On March 26, **Melody Petersen of The New York Times** submitted a FOIA request to CMS. The request asked for all correspondence to or from the CMS Administrator (since the administration began in 2001) that relates to HealthSouth, a large hospital company.

DoED

Senator John F. Kerry. John A. Farrell, representing The Boston Globe, has submitted a Freedom of Information Act Request for access to documents for Senator John F. Kerry and his staff.

Senators Mike DeWine, Christopher Dodd, and Patty Murray. J.J. Smith, representing CD Publications, has submitted a Freedom of Information Act Request for access to documents sent to Secretary Paige from Senators DeWine, Dodd, and Murray.

DOJ

Michael Ravnitzky of American Lawyer Media has requested: (1) all e-mail in the Office of the Attorney General that concern "the topic of attorney workforce diversity, and/or the attorney workforce diversity study conducted under contract to DOJ in 2002 by BearingPoint, Inc. and Taylor Cox Associates" between November 1, 2001 and the present; and (2) all e-mail in the Office of the Attorney General that concern the "Freedom of Information Act (FOIA) and/or its implementation in the Justice Department" between January 1, 2001 and the present.

Michael Ravnitzky of American Lawyer Media has requested: (1) copies of memoranda and e-mail in the Office of Public Affairs that "mention public access to, or the releasability of, the DOJ Attorney Workforce Diversity Study" between December 1, 2002 and March 28, 2003; and (2) memoranda in the Office of Public Affairs that discuss or concern "attorney workforce diversity or workforce diversity policies, plans or studies at the Justice Department" between January 1, 2002 and March 28, 2003.

Richard B. Schmitt of The Los Angeles Times has requested from the Criminal Division "copies of names or citations of the cases underlying the '211 criminal charges' and '108 convictions or guilty pleas' stated by U.S. Attorney General John Ashcroft in testimony before the Senate Judiciary Committee hearing "The Terrorist Threat: Working Together to Protect America."

DOI

Lynx. The Bureau of Land Management's Washington Office has received a request from The Fund for Animals for copies of records pertaining to the impact of approved trapping activities on lynx or in lynx habitat, including any kinds of trapping that have been authorized in national forests, refuges, state lands and private lands and whether lynx have been "incidentally taken" in such traps, whether killed, wounded, or otherwise affected.

David Alberswerth, from The Wilderness Society, dated March 25, 2003. Requests:
1) ALL memoranda, testimony, reports, opinions, correspondence or other records received by the DOI from members of Congress or their staff, State or local government officials, trade associations, industry groups, and individuals concerning, [a] DOI policy, guidance, regulations for or management of; designated, proposed, reviewed, recommended, potential, or study wilderness areas or other lands subject to wilderness review or assessment under the jurisdiction of the DOI, and; [b] BLM's Handbook (H-6310-1), "Wilderness Inventory and Study Procedures;" (2) ALL memoranda, testimony, reports, opinions, correspondence or other records developed, written, submitted, received or compiled in response to the documents outlined above at (1); (3) Any other memoranda, testimony, reports, opinions, correspondence or other records developed, modified or acquired by DOI relating to DOI policy, guidance, regulations for, or management of, designated, proposed, reviewed, recommended, potential, or study wilderness

areas or other lands subject to wilderness review under the jurisdiction of the DOI or BLM's Handbook (H-6310-1), "Wilderness Inventory and Study Procedures."

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 12:53:28 PM
Subject: : RE: checking on call to fbi re completing backgrounds?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:10-APR-2003 16:53:28.00
SUBJECT:: RE: checking on call to fbi re completing backgrounds?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Haven't made the call yet. Sorry. Is there some reason to think they're going to be behind or are we just being safe.

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

From: Kavanaugh, Brett M.
Sent: Thursday, April 10, 2003 4:21 PM
To: Leitch, David G.
Subject: checking on call to fbi re completing backgrounds?

From: CN=Kevin Warsh/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kristen Silverberg/WHO/EOP@Exchange@EOP [WHO] <Kristen Silverberg>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>
CC: Keith Hennessey/OPD/EOP@Exchange@EOP [OPD] <Keith Hennessey>
Sent: 4/10/2003 1:31:50 PM
Subject: : Asbestos

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:10-APR-2003 17:31:50.00
SUBJECT:: Asbestos
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
CC:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

At the President's meeting with CEOs today, the CEO of an insurance company said to the President something like: "We really need your help and the Administration's involvement on asbestos reform over the next 10 days. Senator Hatch and others say if we can't drive to a conclusion in this period, we will not get reform this year." And the President said something like "Thanks, and we'll look into in."

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Lisa J. Macecevic/OMB/EOP@EOP [OMB] <Lisa J. Macecevic>
Sent: 4/10/2003 1:54:03 PM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 10-APR-2003 17:54:03.00
SUBJECT: :
TO: Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
End Original ARMS Header

what is status of class action bill?

From: CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 3:20:48 PM
Subject: : Hardiman

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-APR-2003 19:20:48.00
SUBJECT:: Hardiman
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

His nomination is public, right? If so I will tell PC, as Hardiman is a good buddy of his.

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 6:21:09 PM
Subject: : Re: what's happening with algiers

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME:10-APR-2003 22:21:09.00
SUBJECT:: Re: what's happening with algiers
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Mitch and our Leg folks, who are handling supp, are working the issue.

talked to Mitch tonight and he said he made clear that of all the extra stuff they want to throw on the supp, this is one we will never accept. Not clear if VP will need to weigh in or whether it will end tonight.

.

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

From: Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
To: Lefkowitz, Jay P. <Jay_P.Lefkowitz@opd.eop.gov>
Sent: Thu Apr 10 22:10:11 2003
Subject: what's happening with algiers

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 4/10/2003 6:24:00 PM
Subject: : Re: what's happening with algiers

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 10-APR-2003 22:24:00.00
SUBJECT:: Re: what's happening with algiers
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
04/10/2003 10:23 PM -----

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/10/2003 10:21:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: what's happening with algiers

Mitch and our Leg folks, who are handling supp, are working the issue.

talked to Mitch tonight and he said he made clear that of all the extra stuff they want to throw on the supp, this is one we will never accept. Not clear if VP will need to weigh in or whether it will end tonight.

-----Original Message-----
From: Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
To: Lefkowitz, Jay P. <Jay_P_Lefkowitz@opd.eop.gov>
Sent: Thu Apr 10 22:10:11 2003
Subject: what's happening with algiers

From: Kavanaugh, Brett M.
To: <Lefkowitz, Jay P.>
Sent: 4/10/2003 10:26:00 PM
Subject: Re: what's happening with algiers

thx

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/10/2003 10:21:32 PM

Record Type: Record

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

cc:

Subject: Re: what's happening with algiers

Mitch and our Leg folks, who are handling supp, are working the issue.

talked to Mitch tonight and he said he made clear that of all the extra stuff they want to throw on the supp, this is one we will never accept.

Not clear if VP will need to weigh in or whether it will end tonight.

.

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

From: Kavanaugh, Brett M.

To: Lefkowitz, Jay P.

Sent: Thu Apr 10 22:10:11 2003

Subject: what's happening with algiers

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>
Sent: 4/10/2003 6:26:58 PM
Subject: : Re: what's happening with algiers

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 10-APR-2003 22:26:58.00
SUBJECT: : Re: what's happening with algiers
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ: UNKNOWN
End Original ARMS Header

456-7984

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/10/2003 10:27:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: what's happening with algiers

Where can I reach you now?

.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/10/2003 7:53:09 PM
Subject: : Re: what's going on with cook vote?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:10-APR-2003 23:53:09.00
SUBJECT:: Re: what's going on with cook vote?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

After recess now..

.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 4/10/2003 7:53:22 PM
Subject: : cook vote is after recess

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:10-APR-2003 23:53:22.00
SUBJECT:: cook vote is after recess
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: david g. leitch/who/eop@exchange@eop [WHO] <david g. leitch>
Sent: 4/11/2003 5:08:02 AM
Subject: : Re: FW: regarding the nomination

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-APR-2003 09:08:02.00
SUBJECT:: Re: FW: regarding the nomination
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:david g. leitch (CN=david g. leitch/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

excellent

H. Christopher Bartolomucci
04/11/2003 09:06:17 AM
Record Type: Record

To: David G. Leitch/WHO/EOP@Exchange@EOP, Brett M.
Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: regarding the nomination

The attached article from today's Arkansas Democrat-Gazette says:

<< A spokesman for Pryor said he would still vote to confirm Holmes. "The senator has said, 'hey, I might not agree with everything he says and believes, but I see him as a smart and accomplished lawyer, and that's what he's going on,'" said Roddell Mollineau. >>

----- Forwarded by H. Christopher Bartolomucci/WHO/EOP on
04/11/2003 09:03 AM -----

Leon Holmes <LHolmes@cgtb.com>
04/11/2003 08:54:06 AM
Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: FW: regarding the nomination

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

From: Leon Holmes
Sent: Friday, April 11, 2003 7:06 AM
To: Andrew Emrich
Cc: Leon Holmes
Subject: regarding the nomination

Forwarded article from Arkansas Online ...

Senators delay LR lawyer's judgeship confirmation BY KEVIN FREKING
ARKANSAS DEMOCRAT-GAZETTE

WASHINGTON - The confirmation of Leon Holmes as a United States district judge hit a roadblock Thursday, when a Republican senator asked that a vote be delayed so that he could study comments Holmes has made on abortion and the role of women in society.

Holmes, a Little Rock lawyer, has been an avowed opponent of abortion, but has told the committee that he would follow the law of the land on abortion issues.

Four Democratic senators on the Senate Judiciary Committee attacked some of Holmes' comments and writings as "extremist."

In particular, senators had trouble with a statement about abortion that a Democratic staff member said Holmes made in December 1980: "Concern for rape victims is a red herring, because conceptions from rape occur with the same frequency as snow in Miami."

Said Sen. Charles Schumer, D-N.Y., "According to the weather almanac we've consulted, it has snowed in Miami exactly once in the last 100 years. According to a study published in the American Journal of Obstetrics and Gynecology, over 32,000 women a year become pregnant as a result of rape or incest.

"These 32,000 women a year aren't a myth. They aren't, to use Mr. Holmes' words, a red herring. They are real women, in real pain, making traumatic decisions about whether to give birth to their tormentors' children."

Sens. Diane Feinstein, D-Calif., and Richard Durbin, D-Ill., also cited comments they attributed to Holmes in his legal writings and commentary, which had been reviewed by Judiciary Committee staff members. After the three Democratic senators had voiced their opposition to Holmes, Sen. Arlen Specter, R-Pa., said he was unaware that any controversial nominations were up for a vote Thursday and asked that more time be allowed to study Holmes' record. The committee chairman, Sen. Orrin Hatch, R-Utah, granted that request.

President Bush nominated Holmes as district judge for the Eastern District of Arkansas on the 2002 recommendation of Republican Sen. Tim Hutchinson, who lost his re-election bid to Democrat Mark Pryor.

Both Pryor and Arkansas' senior senator, Democrat Blanche Lincoln, have strongly supported Holmes, as have members of the Arkansas legal profession, including some who support abortion rights.

But Lincoln said Thursday that she needed to take a second look at the nomination. "Of course I was not aware of these public remarks at the time I met with Leon Holmes and agreed to support him," Lincoln said in a statement. "I have asked him to address them personally with me, and I will have a further statement at that time."

A spokesman for Pryor said he would still vote to confirm Holmes.

"The senator has said, 'hey, I might not agree with everything he says and believes, but I see him as a smart and accomplished lawyer, and that's what he's going on,'" said Roddell Mollineau.

Holmes said he could not comment on the day's events. He referred a reporter to a Justice Department spokesman who could not be reached late Thursday.

District Court nominations are rarely controversial. Senators usually give much more scrutiny to nominees to U.S. Courts of Appeal and the Supreme Court. It appeared that would be the case with Holmes nomination, too, because he had such strong backing from both Arkansas senators. But Thursday's events clearly has altered that momentum, a few Democratic staff members said.

Durbin, in particular, raised a concern about a comment that Holmes made in the April 12, 1997, issue of Arkansas Catholic.

In an article written with his wife, Susan, Holmes advanced the positions that "the wife is to subordinate herself to her husband" and "the woman is to place herself under the authority of the man."

Durbin said Holmes would have to adjudicate cases involving sexual discrimination, and that the committee needs to consider whether he comes to the job with a biased perspective.

Republican staff members countered the criticism by releasing several

letters from members of the Arkansas legal profession who said they endorsed Holmes' confirmation, regardless of whether he agreed with them on the issue of abortion.

"I heartily recommend Mr. Holmes to you," wrote Cathleen Compton of the Little Rock law firm of Dudley & Compton. "While he and I differ dramatically on the pro-choice, pro-life issue, I am fully confident he will do his duty as the law and facts of a given case require."

This story was published Friday, April 11, 2003

From: CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/11/2003 9:32:10 AM
Subject: : Re: Patrick: ok to SEND UP BEA NOMINATION -- alert Press and Clerk's office

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:11-APR-2003 13:32:10.00
SUBJECT:: Re: Patrick: ok to SEND UP BEA NOMINATION -- alert Press and Clerk's office
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Great.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Tiffany A. Watkins/WHO/EOP@EOP [WHO] <Tiffany A. Watkins>
CC: leonard b. rodriguez/who/eop@eop [WHO] <leonard b. rodriguez>
Sent: 4/11/2003 9:38:11 AM
Subject: : Re: African American Yearbook- Document
Attachments: P_85UJF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-APR-2003 13:38:11.00
SUBJECT:: Re: African American Yearbook- Document
TO:Tiffany A. Watkins (CN=Tiffany A. Watkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:leonard b. rodriguez (CN=leonard b. rodriguez/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

This is approved from here. Sorry for delay.

Tiffany A. Watkins
04/07/2003 06:02:35 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Leonard B. Rodriguez/WHO/EOP@EOP
Subject: African American Yearbook- Document

Brett,

I am attaching the African American Yearbook Congratulations from the President to be placed in the front of the yearbook. The African American Yearbook is a compilation of African American information. The author of the African American Yearbook is the same person that compiles the Hispanic Yearbook. Please review the language in this Congratulations letter from a legal perspective and then once approved, political affairs will send the letter over to the Staff Secretary for final approval. Your immediate attention is required because they are printing this yearbook shortly.

Thanks again,

Tiffany
x6-7811

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_85UJF003_WHO.TXT_1>

REV_00233876

April 4, 2003

Dear Readers,

I am pleased to send greetings and congratulations to all whose efforts produced the 2003 edition of the African-American Yearbook. It is essential to have a consolidated place of information on African-Americans contributions to the American community. This contribution has an immeasurable impact on our community and our nation and has proven its significance and value since its inception in 2001.

I encourage all to use this information provided as a research resource. I extend my sincere congratulations to the African-American Yearbook and the success that it has become.

Sincerely,

George W. Bush

From: Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>
To: Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>; Jamie.E.Brown@usdoj.gov <Jamie.E.Brown@usdoj.gov>; viet.dinh@usdoj.gov <viet.dinh@usdoj.gov>; brian.a.benczkowski@usdoj.gov <brian.a.benczkowski@usdoj.gov>; brian.a.benczkowski@usdoj.gov <Grubbs, Wendy J.>; adam.charnes@usdoj.gov <adam.charnes@usdoj.gov>; adam.charnes@usdoj.gov <Kavanaugh, Brett M.>; adam.charnes@usdoj.gov <Snee, Ashley>; Monica.goodling@usdoj.gov <Monica.goodling@usdoj.gov>; Galyean, James \(\L. Graham\) <James_Galyean@lgraham.senate.gov>; Vogel, Alex \(\Frist\) <Alex_Vogel@frist.senate.gov>; Abegg, John \(\McConnell\) <John_Abegg@mccconnell.senate.gov>; Smith, William \(\Judiciary\) <William_Smith@Judiciary.senate.gov>; Ho, James \(\Judiciary\) <James_Ho@Judiciary.senate.gov>; Duffield, Steven \(\RPC\) <Steven_Duffield@rpc.senate.gov>; Gumerson, Katie \(\RPC\) <Katie_Gumerson@rpc.senate.gov>; Miranda, Manuel \(\Frist\) <Manuel_Miranda@frist.senate.gov>; Ledeen, Barbara \(\Republican-Conf\) <Barbara_Leeden@src.senate.gov>; Comisac, RenaJohnson \(\Judiciary\) <Rena_Johnson_Comisac@Judiciary.senate.gov>; Delrahim, Makan \(\Judiciary\) <Makan_Delrahim@Judiciary.senate.gov>; Dahl, Alex \(\Judiciary\) <Alex_Dahl@Judiciary.senate.gov>
Sent: 4/11/2003 9:56:53 AM
Subject: RE: Meeting Friday at 10:30 a.m.

Due to the Judiciary Mark-up scheduled for 10:00a.m. today, this meeting will be postponed until 12:00p.m. Same location.

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

From: Caramanica, Jessica (Judiciary)

Sent: Wednesday, March 26, 2003 4:13 PM

To: 'Jamie.E.Brown@usdoj.gov'; 'viet.dinh@usdoj.gov'; 'brian.a.benczkowski@usdoj.gov'; 'wendy_j._grubbs@who.eop.gov'; 'adam.charnes@usdoj.gov'; 'bkavanau@who.eop.gov'; 'ashley_m._snee@who.eop.gov'; 'Monica.goodling@usdoj.gov'; Galyean, James (L. Graham); Vogel, Alex (Frist); Abegg, John (McConnell); Smith, William (Judiciary); Ho, James (Judiciary); Duffield, Steven (RPC); Gumerson, Katie (RPC); Miranda, Manuel (Frist); Ledeen, Barbara (Republican-Conf); Comisac, RenaJohnson (Judiciary); Delrahim, Makan (Judiciary); Dahl, Alex (Judiciary)

Subject: Meeting Friday at 10:30 a.m.

On Friday at 10:30 a.m., there will be a meeting in Makan's office (SD-145) to discuss judicial nominations. Hope you can make it.

CONFIDENTIALITY NOTE:

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REV_00233879

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: joschal@dcigroup.com [UNKNOWN] <joschal@dcigroup.com>; Abegg, John (McConnell) <John_Abegg@mccconnell.senate.gov>; Ferrier, Antonia (Frist) <Antonia_Ferrier@frist.senate.gov>; Leonardo F. Gorordo/WHO/EOP@EOP [WHO] <Leonardo F. Gorordo>; Abel Guerra/WHO/EOP@EOP [WHO] <Abel Guerra>; Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>; stevenjduffield@hotmail.com [UNKNOWN] <stevenjduffield@hotmail.com>; Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Keys, Elizabeth (Republican-Conf) <Elizabeth_Keys@src.senate.gov>; Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>; Ashley Snee/WHO/EOP@EOP [WHO] <Ashley Snee>; Monica.Goodling@usdoj.gov [UNKNOWN] <Monica.Goodling@usdoj.gov>; Adam.Charnes@usdoj.gov [UNKNOWN] <Adam.Charnes@usdoj.gov>; Brian.A.Benczkowski@usdoj.gov [UNKNOWN] <Brian.A.Benczkowski@usdoj.gov>; SCastillo@rnchq.org [UNKNOWN] <SCastillo@rnchq.org>; SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>; Higgins, Stephen (Judiciary) <Stephen_Higgins@Judiciary.senate.gov>; Mercedes M. Viana/WHO/EOP@EOP [WHO] <Mercedes M. Viana>; Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>; Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>; KRdaly@aol.com [UNKNOWN] <KRdaly@aol.com>; Dahl, Alex (Judiciary) <Alex_Dahl@Judiciary.senate.gov>; Vogel, Alex (Frist) <Alex_Vogel@frist.senate.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Ledeen, Barbara (Republican-Conf) <Barbara_Ledeen@src.senate.gov>; Jacquot, Joe (Hutchison) <Joe_Jacquot@hutchison.senate.gov>; Jamie.E.Brown@usdoj.gov [UNKNOWN] <Jamie.E.Brown@usdoj.gov>; Viet.Dinh@usdoj.gov [UNKNOWN] <Viet.Dinh@usdoj.gov>; Kristi.L.Remington@usdoj.gov [UNKNOWN] <Kristi.L.Remington@usdoj.gov>; Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
CC: csburkhardt@sorlinglaw.com [UNKNOWN] <csburkhardt@sorlinglaw.com>; thielen@republicanlawyer.net [UNKNOWN] <thielen@republicanlawyer.net>
Sent: 4/11/2003 6:47:05 AM
Subject: : RE: ConfCall, Fri 11:30 am

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:11-APR-2003 10:47:05.00

SUBJECT:: RE: ConfCall, Fri 11:30 am

TO:joschal@dcigroup.com (joschal@dcigroup.com [UNKNOWN])

READ:UNKNOWN

TO:"Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> ("Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Ferrier, Antonia (Frist)" <Antonia_Ferrier@frist.senate.gov> ("Ferrier, Antonia (Frist)" <Antonia_Ferrier@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Leonardo F. Gorordo (CN=Leonardo F. Gorordo/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Abel Guerra (CN=Abel Guerra/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:stevenjduffield@hotmail.com (stevenjduffield@hotmail.com [UNKNOWN])

READ:UNKNOWN

TO:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Keys, Elizabeth (Republican-Conf)" <Elizabeth_Keys@src.senate.gov> ("Keys, Elizabeth (Republican-Conf)" <Elizabeth_Keys@src.senate.gov> [UNKNOWN])

REV_00233889

READ:UNKNOWN
TO:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Monica.Goodling@usdoj.gov (Monica.Goodling@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Adam.Charnes@usdoj.gov (Adam.Charnes@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:SCastillo@rnchq.org (SCastillo@rnchq.org [UNKNOWN])
READ:UNKNOWN
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
TO:"Higgins, Stephen (Judiciary)" <Stephen_Higgins@Judiciary.senate.gov> ("Higgins, Stephen (Judiciary)" <Stephen_Higgins@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Mercedes M. Viana (CN=Mercedes M. Viana/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:KRdaly@aol.com (KRdaly@aol.com [UNKNOWN])
READ:UNKNOWN
TO:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ("Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Vogel, Alex (Frist)" <Alex_Vogel@frist.senate.gov> ("Vogel, Alex (Frist)" <Alex_Vogel@frist.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> ("Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Jacquot, Joe (Hutchison)" <Joe_Jacquot@hutchison.senate.gov> ("Jacquot, Joe (Hutchison)" <Joe_Jacquot@hutchison.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Jamie.E.Brown@usdoj.gov (Jamie.E.Brown@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Viet.Dinh@usdoj.gov (Viet.Dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Kristi.L.Remington@usdoj.gov (Kristi.L.Remington@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
CC:csburkhardt@sorlinglaw.com (csburkhardt@sorlinglaw.com [UNKNOWN])
READ:UNKNOWN
CC:thielen@republicanlawyer.net (thielen@republicanlawyer.net [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

The 11:30 is on,

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

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

From: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
To: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>;
Brian.A.Benczkowski@usdoj.gov <Brian.A.Benczkowski@usdoj.gov>;
Kristi.L.Remington@usdoj.gov <Kristi.L.Remington@usdoj.gov>;
Adam.Charnes@usdoj.gov <Adam.Charnes@usdoj.gov>; Viet.Dinh@usdoj.gov

REV_00233890

<Viet.Dinh@usdoj.gov>; Monica.Goodling@usdoj.gov
<Monica.Goodling@usdoj.gov>; Jamie.E.Brown@usdoj.gov
<Jamie.E.Brown@usdoj.gov>; asnee@who.eop.gov <asnee@who.eop.gov>; Jacquot,
Joe (Hutchison) <Joe_Jacquot@hutchison.senate.gov>; Comisac, RenaJohnson
(Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>; Ledeen, Barbara
(Republican-Conf) <Barbara_Ledeen@src.senate.gov>; Keys, Elizabeth
(Republican-Conf) <Elizabeth_Keys@src.senate.gov>;
Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>;
wgrubbs@who.eop.gov <wgrubbs@who.eop.gov>; Vogel, Alex (Frist)
<Alex_Vogel@frist.senate.gov>; Delrahim, Makan (Judiciary)
<Makan_Delrahim@Judiciary.senate.gov>; Dahl, Alex (Judiciary)
<Alex_Dahl@Judiciary.senate.gov>; stevenjduffield@hotmail.com
<stevenjduffield@hotmail.com>; KRdaly@aol.com <KRdaly@aol.com>;
Tim_Googlein@who.eop.gov <Tim_Googlein@who.eop.gov>;
Matthew_E._Smith@who.eop.gov <Matthew_E._Smith@who.eop.gov>;
Abel_Guerra@who.eop.gov <Abel_Guerra@who.eop.gov>;
leonard_b._rodriguez@who.eop.gov <leonard_b._rodriguez@who.eop.gov>;
Leonardo_F._Gorordo@who.eop.gov <Leonardo_F._Gorordo@who.eop.gov>;
Mercedes_M._Viana@who.eop.gov <Mercedes_M._Viana@who.eop.gov>; Ferrier,
Antonia (Frist) <Antonia_Ferrier@frist.senate.gov>; Higgins, Stephen
(Judiciary) <Stephen_Higgins@Judiciary.senate.gov>; Abegg, John
(McConnell) <John_Abegg@mcconnell.senate.gov>; Vogel, Alex (Frist)
<Alex_Vogel@frist.senate.gov>; SRushton@CommitteeforJustice.org
<SRushton@CommitteeforJustice.org>; joschal@dcigroup.com
<joschal@dcigroup.com>; SCastillo@rnchq.org <SCastillo@rnchq.org>;
rfernandez@rnchq.org <rfernandez@rnchq.org>; LJeness_Olmos@rnchq.org
<LJeness_Olmos@rnchq.org>; Wichterman, Bill (Frist)
<Bill_Wichterman@frist.senate.gov>
CC: Michael Thielen <thielen@republicanlawyer.net>; Craig S Burkhardt
<csturkhardt@sorlinglaw.com>
Sent: Fri Apr 11 09:43:38 2003
Subject: RE: ConfCall, Fri 11:30 am

Is this call still on, notwithstanding the Judic exec this morning?

James C. Ho
Chief Counsel
Senate Subcommittee on the Constitution, Civil Rights & Property Rights
Chairman, Senator John Cornyn
James_Ho@judiciary.senate.gov
(202) 224-9614 (direct line)
(202) 224-2934 (general office number)
(202) 491-8227 (mobile)
(703) 812-8152 (home)

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

From: Miranda, Manuel (Frist)
Sent: Thursday, April 10, 2003 2:27 PM
To: Brian.A.Benczkowski@usdoj.gov; Kristi.L.Remington@usdoj.gov;
Adam.Charnes@usdoj.gov; Viet.Dinh@usdoj.gov; Monica.Goodling@usdoj.gov;
Jamie.E.Brown@usdoj.gov; asnee@who.eop.gov; Ho, James (Judiciary);
Jacquot, Joe (Hutchison); Comisac, RenaJohnson (Judiciary); Ledeen,
Barbara (Republican-Conf); Keys, Elizabeth (Republican-Conf);
Brett_M._Kavanaugh@who.eop.gov; wgrubbs@who.eop.gov; Vogel, Alex (Frist);
Delrahim, Makan (Judiciary); Dahl, Alex (Judiciary);
stevenjduffield@hotmail.com; KRdaly@aol.com; Tim_Googlein@who.eop.gov;
Matthew_E._Smith@who.eop.gov; Abel_Guerra@who.eop.gov;
leonard_b._rodriguez@who.eop.gov; Leonardo_F._Gorordo@who.eop.gov;
Mercedes_M._Viana@who.eop.gov; Ferrier, Antonia (Frist); Higgins, Stephen
(Judiciary); Abegg, John (McConnell); Vogel, Alex (Frist);
SRushton@CommitteeforJustice.org; joschal@dcigroup.com;
SCastillo@rnchq.org; rfernandez@rnchq.org; LJeness_Olmos@rnchq.org;
Wichterman, Bill (Frist)
Cc: Michael Thielen; Craig S Burkhardt
Subject: ConfCall, Fri 11:30 am

Using the same codes below, and so as to have a longer meeting that
Barbara can make, we will move the call tomorrow to 11:30.

REV_00233891

We will also address Sutton and Holmes.

Again, please be reminded not to put us on hold with musak. Simply hand up and call in again if you have to.

Dial-in: 353-0877

Passcode: 9290

From: Comisac, RenaJohnson \(\Judiciary\) <Rena_Johnson_Comisac@Judiciary.senate.gov>
To: monica.goodling@usdoj.gov <Kavanaugh, Brett M.>;Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>
CC: Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>;jamie.e.brown@usdoj.gov <jamie.e.brown@usdoj.gov>;viet.dinh@usdoj.gov <viet.dinh@usdoj.gov>;brian.a.benczkowski@usdoj.gov <brian.a.benczkowski@usdoj.gov>;brian.a.benczkowski@usdoj.gov <Grubbs, Wendy J.>;adam.charnes@usdoj.gov <adam.charnes@usdoj.gov>;adam.charnes@usdoj.gov <Snee, Ashley>;monica.goodling@usdoj.gov <monica.goodling@usdoj.gov>;Galyean, James \(\L. Graham\) <James_Galyean@lgraham.senate.gov>;Vogel, Alex \(\Frist\) <Alex_Vogel@frist.senate.gov>;Abegg, John \(\McConnell\) <John_Abegg@mccconnell.senate.gov>;Smith, William \(\Judiciary\) <William_Smith@Judiciary.senate.gov>;Ho, James \(\Judiciary\) <James_Ho@Judiciary.senate.gov>;Duffield, Steven \(\RPC\) <Steven_Duffield@rpc.senate.gov>;Gumerson, Katie \(\RPC\) <Katie_Gumerson@rpc.senate.gov>;Miranda, Manuel \(\Frist\) <Manuel_Miranda@frist.senate.gov>;Ledeen, Barbara \(\Republican-Conf\) <Barbara_Ledeen@src.senate.gov>;Delrahim, Makan \(\Judiciary\) <Makan_Delrahim@Judiciary.senate.gov>;Dahl, Alex \(\Judiciary\) <Alex_Dahl@Judiciary.senate.gov>
Sent: 4/11/2003 10:57:59 AM
Subject: RE: Meeting Friday at 10:30 a.m.

No problem. 12:15 it is. See you then.

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

From: Brett_M_Kavanaugh@who.eop.gov
[mailto:Brett_M_Kavanaugh@who.eop.gov]
Sent: Friday, April 11, 2003 10:48 AM
To: Caramanica, Jessica (Judiciary)
Cc: Caramanica, Jessica (Judiciary); jamie.e.brown@usdoj.gov; viet.dinh@usdoj.gov; brian.a.benczkowski@usdoj.gov; Wendy_J_Grubbs@who.eop.gov; adam.charnes@usdoj.gov; ashley_m_snee@who.eop.gov; monica.goodling@usdoj.gov; Galyean, James (L. Graham); Vogel, Alex (Frist); Abegg, John (McConnell); Smith, William (Judiciary); Ho, James (Judiciary); Duffield, Steven (RPC); Gumerson, Katie (RPC); Miranda, Manuel (Frist); Ledeen, Barbara (Republican-Conf); Comisac, RenaJohnson (Judiciary); Delrahim, Makan (Judiciary); Dahl, Alex (Judiciary)
Subject: RE: Meeting Friday at 10:30 a.m.

can we make this 12:15?

(Embedded
image moved "Caramanica, Jessica (Judiciary)"
to file:
pic32514.pcx) 04/11/2003 09:56:53 AM

Record Type: Record

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

REV_00233893

cc:

Subject: RE: Meeting Friday at 10:30 a.m.

Due to the Judiciary Mark-up scheduled for 10:00a.m. today, this meeting will be postponed until 12:00p.m. Same location.

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

From: Caramanica, Jessica (Judiciary)

Sent: Wednesday, March 26, 2003 4:13 PM

To: 'Jamie.E.Brown@usdoj.gov'; 'viet.dinh@usdoj.gov';

'brian.a.benczkowski@usdoj.gov'; 'wendy_j._grubbs@who.eop.gov';

'adam.charnes@usdoj.gov'; 'bkavanau@who.eop.gov';

'ashley_m._snee@who.eop.gov'; 'Monica.goodling@usdoj.gov'; Galyean,

James (L. Graham); Vogel, Alex (Frist); Abegg, John (McConnell); Smith,

William (Judiciary); Ho, James (Judiciary); Duffield, Steven (RPC);

Gumerson, Katie (RPC); Miranda, Manuel (Frist); Ledeen, Barbara

(Republican-Conf); Comisac, RenaJohnson (Judiciary); Delrahim, Makan

(Judiciary); Dahl, Alex (Judiciary)

Subject: Meeting Friday at 10:30 a.m.

On Friday at 10:30 a.m., there will be a meeting in Makan's office (SD-145) to discuss judicial nominations. Hope you can make it.

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees. If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited. If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>
Sent: 4/11/2003 7:13:28 AM
Subject: : Re: you looking for me?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 11-APR-2003 11:13:28.00
SUBJECT: : Re: you looking for me?
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ: UNKNOWN
End Original ARMS Header

just wondering if there is any algiers update?

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/11/2003 11:13:16 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: you looking for me?

;

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/11/2003 7:19:44 AM
Subject: : RE: you looking for me?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME:11-APR-2003 11:19:44.00
SUBJECT:: RE: you looking for me?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Waiting for Hobbs to report in.

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

From: Kavanaugh, Brett M.
Sent: Friday, April 11, 2003 11:13 AM
To: Lefkowitz, Jay P.
Subject: Re: you looking for me?

just wondering if there is any algiers update?

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/11/2003 11:13:16 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: you looking for me?

From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/11/2003 7:29:30 AM
Subject: : Haley Barbour

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-APR-2003 11:29:30.00
SUBJECT:: Haley Barbour
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett - Ken and I are meeting with Haley Barbour on Monday to discuss his '03 gubernatorial race. He obviously wants as much administration support as possible, and we are inclined to help as much as possible. That said, with CFR, etc., can we provide the same type of support for his race as we did in the '02 races? Specifically, he has requested political events and fundraisers with the president and vice president, senior WH staff and Cabinet.

Thanks for any guidance. pbd

From: Delrahim, Makan \(\Judiciary\) <Makan_Delrahim@Judiciary.senate.gov>
To: monica.goodling@usdoj.gov <Kavanaugh, Brett M.>;Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>
CC: jamie.e.brown@usdoj.gov <jamie.e.brown@usdoj.gov>;viet.dinh@usdoj.gov <viet.dinh@usdoj.gov>;brian.a.benczkowski@usdoj.gov <brian.a.benczkowski@usdoj.gov>;brian.a.benczkowski@usdoj.gov <Grubbs, Wendy J.>;adam.charnes@usdoj.gov <adam.charnes@usdoj.gov>;adam.charnes@usdoj.gov <Snee, Ashley>;monica.goodling@usdoj.gov <monica.goodling@usdoj.gov>;Galyean, James \(\L. Graham\) <James_Galyean@lgraham.senate.gov>;Vogel, Alex \(\Frist\) <Alex_Vogel@frist.senate.gov>;Abegg, John \(\McConnell\) <John_Abegg@mccconnell.senate.gov>;Smith, William \(\Judiciary\) <William_Smith@Judiciary.senate.gov>;Ho, James \(\Judiciary\) <James_Ho@Judiciary.senate.gov>;Duffield, Steven \(\RPC\) <Steven_Duffield@rpc.senate.gov>;Gumerson, Katie \(\RPC\) <Katie_Gumerson@rpc.senate.gov>;Miranda, Manuel \(\Frist\) <Manuel_Miranda@frist.senate.gov>;Ledeen, Barbara \(\Republican-Conf\) <Barbara_Ledeen@src.senate.gov>;Comisac, RenaJohnson \(\Judiciary\) <Rena_Johnson_Comisac@Judiciary.senate.gov>;Dahl, Alex \(\Judiciary\) <Alex_Dahl@Judiciary.senate.gov>
Sent: 4/11/2003 11:35:15 AM
Subject: RE: Meeting Friday at 10:30 a.m.

Sure. We are still here at the committee mrkup. 1215 is fine.

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

From: Brett_M_Kavanaugh@who.eop.gov
To: Caramanica, Jessica (Judiciary)
CC: Caramanica, Jessica (Judiciary) ; jamie.e.brown@usdoj.gov ; viet.dinh@usdoj.gov ; brian.a.benczkowski@usdoj.gov ; Wendy_J_Grubbs@who.eop.gov ; adam.charnes@usdoj.gov ; ashley_m_snee@who.eop.gov ; monica.goodling@usdoj.gov ; Galyean, James (L. Graham) ; Vogel, Alex (Frist) ; Abegg, John (McConnell) ; Smith, William (Judiciary) ; Ho, James (Judiciary) ; Duffield, Steven (RPC) ; Gumerson, Katie (RPC) ; Miranda, Manuel (Frist) ; Ledeen, Barbara (Republican-Conf) ; Comisac, RenaJohnson (Judiciary) ; Delrahim, Makan (Judiciary) ; Dahl, Alex (Judiciary)
Sent: Fri Apr 11 10:47:53 2003
Subject: RE: Meeting Friday at 10:30 a.m.

can we make this 12:15?

(Embedded
image moved "Caramanica, Jessica (Judiciary)"
to file:
pic32514.pcx) 04/11/2003 09:56:53 AM

Record Type: Record

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

cc:

Subject: RE: Meeting Friday at 10:30 a.m.

REV_00233901

Due to the Judiciary Mark-up scheduled for 10:00a.m. today, this meeting will be postponed until 12:00p.m. Same location.

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

From: Caramanica, Jessica (Judiciary)

Sent: Wednesday, March 26, 2003 4:13 PM

To: 'Jamie.E.Brown@usdoj.gov'; 'viet.dinh@usdoj.gov';

'brian.a.benczkowski@usdoj.gov'; 'wendy_j._grubbs@who.eop.gov';

'adam.charnes@usdoj.gov'; 'bkavanau@who.eop.gov';

'ashley_m._snee@who.eop.gov'; 'Monica.goodling@usdoj.gov'; Galyean,

James (L. Graham); Vogel, Alex (Frist); Abegg, John (McConnell); Smith,

William (Judiciary); Ho, James (Judiciary); Duffield, Steven (RPC);

Gumerson, Katie (RPC); Miranda, Manuel (Frist); Ledeen, Barbara

(Republican-Conf); Comisac, RenaJohnson (Judiciary); Delrahim, Makan

(Judiciary); Dahl, Alex (Judiciary)

Subject: Meeting Friday at 10:30 a.m.

On Friday at 10:30 a.m., there will be a meeting in Makan's office (SD-145) to discuss judicial nominations. Hope you can make it.

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees. If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited. If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>
Sent: 4/11/2003 8:44:50 AM
Subject: : Re: ConfCall, Fri 11:30 am

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 11-APR-2003 12:44:50.00
SUBJECT: : Re: ConfCall, Fri 11:30 am
TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

classic; there is another Owen sister story that we should discuss

From: Wendy J. Grubbs/WHO/EOP@Exchange on 04/11/2003 12:42:19 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: ConfCall, Fri 11:30 am

I love manny.

.

From: Kavanaugh, Brett M.
To: <Snee, Ashley>;<Grubbs, Wendy J.>;<Goeglein, Tim>;<Smith, Matthew E.>
Sent: 4/11/2003 2:02:53 PM
Subject: status of circuit seats

108th Congress – Status of Circuit Nominees

(April 11, 2003)

COURT OF APPEALS NOMINEES (21)

Confirmed (2)

Jay Bybee (9th Nevada)

Tim Tymkovich (10th Colorado)

On Executive Calendar (5)

Miguel Estrada (DC)

Priscilla Owen (5th Texas)

Ed Prado (5th Texas)

Deborah Cook (6th Ohio)

Jeff Sutton (6th Ohio)

In Judiciary Committee (14)

John Roberts (DC)*

Richard Wesley (2nd New York)

Michael Chertoff (3rd New Jersey)

Terry Boyle (4th North Carolina)

Charles Pickering (5th Mississippi)

David McKeague (6th Michigan)

Susan Neilson (6th Michigan)

Richard Griffin (6th Michigan)

Henry Saad (6th Michigan)

Steve Colloton (8th Iowa)

Carlos Bea (9th California)

Consuelo Callahan (9th California)

Carolyn Kuhl (9th California)

Bill Pryor (11th Alabama)

ANNOUNCED FUTURE RETIREMENTS or CURRENT VACANCIES WITHOUT NOMINEES (9)

CADC

CADC

CA3

CA3

CA4

CA4

CA4

CA8

CA9

Message Sent To:

Alberto R. Gonzales/WHO/EOP@Exchange@EOP

David G. Leitch/WHO/EOP@Exchange@EOP

Jennifer R. Brosnahan/WHO/EOP@EOP

Jennifer G. Newstead/WHO/EOP@EOP

H. Christopher Bartolomucci/WHO/EOP@EOP

Kyle Sampson/WHO/EOP@EOP

Noel J. Francisco/WHO/EOP@EOP

Benjamin A. Powell/WHO/EOP@EOP

Theodore W. Ulyot/WHO/EOP@EOP

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 4/11/2003 2:33:47 PM
Subject: demographics

Note that after the April 28 circuit nominations, 4 of the President's 42 circuit nominees will have been Hispanic (9.5%) and 5 of 42 will have been African-American (12%). Historically speaking, those numbers are very high and very significant.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/11/2003 3:49:49 PM
Subject: FW: nominations

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

From: McCathran, William W.
Sent: Friday, April 11, 2003 3:47 PM
To: Bumatay, Patrick J.
Subject: Re: nominations

JUST DELIVERED TO THE SENATE.

TKS,
BILL

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/11/2003 11:49:31 AM
Subject: : FW: nominations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:11-APR-2003 15:49:31.00
SUBJECT:: FW: nominations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----
From: McCathran, William W.
Sent: Friday, April 11, 2003 3:47 PM
To: Bumatay, Patrick J.
Subject: Re: nominations

JUST DELIVERED TO THE SENATE.

TKS,
BILL

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 4/11/2003 4:34:50 PM
Subject: Re: FW: LRM JAB48 - - OMB Request for Identification of Any Unresolved Policy-Level Issues, TRANSPORTATION Draft Bill on Safe and Flexible Transportation Efficiency Act of 2003 (SAFTEA)

we worked with dpc on this.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 04/08/2003 04:31:01 PM

Record Type: Record

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

cc:

Subject: FW: LRM JAB48 - - OMB Request for Identification of Any Unresolved Policy-Level Issues, TRANSPORTATION Draft Bill on Safe and Flexible Transportation Efficiency Act of 2003 (SAFTEA)

Just a reminder, this was due at 10 am today.

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

From: Brown, James A.

Sent: Monday, April 07, 2003 10:26 AM

To: usdaobpaleg@obpa.usda.gov; usdaocrireg@obpa.usda.gov; appalachia@arc.gov; CLRM@doc.gov; dodlrs@osdgc.osd.mil; energy.gc71@hq.doe.gov; epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; lrm@hhs.gov; HUD_LRM@hud.gov; ocl@ios.doi.gov; justice.lrm@usdoj.gov; dol-sol-leg@dol.gov; state-lrm@state.gov; lr@do.treas.gov; cla@sba.gov; ca.legislation@gsa.gov; legteam@oge.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mcculc@ntsb.gov; ombjbrown@stb.dot.gov; achp@achp.gov; Ondcp Lrm; Ostp Lrm; cecc-leg@usace.army.mil

Cc: Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Perry, Philip J.; Wood, John F.; Schneider, Matthew J.; Joseffer, Daryl L.; Rettman, Rosalyn J.; Marsh, Robert; Lobrano, Lauren C.; McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Konove, Elissa; Chow, Joanne; McCartney, Erin P.; Marriott, Caroline A.; Vargas, Veronica; Noe, Paul R.; Clarke, Edward H.; Knuffman, Nathan L.; Hunt, Alexander T.; Theroux, Richard P.; Schwartz, Mark J.; Timberlake, Courtney B.; Bernhard, Elizabeth A.; Bals, Ellen J.; Zimmerman, Gail S.; Simms, Pamula L.; Rodriguez, Justine F.; Fairweather, Robert S.; Erbach, Adrienne C.; Neyland, Kevin F.; Dennis, Carol R.; Irwin, Janet E.; Crutchfield, J C.; Walsh, Maureen; Fairhall, Lisa B.; Blum, Mathew C.; Gerich, Michael D.; Ohs Lrm; Rosado, Timothy A.; Fraas, Arthur G.; Kelly, Kenneth S.; Haun, David J.; Kron, Jennifer S.; Rossman, Elizabeth L.; Kaplan, Joel; Silverberg, Kristen; Joseffer, Daryl L.; Dove, Stephen W.; O'Hollaren, Sean B.; Jukes, James J.; Green, Richard E.; Nichols, Julie L.; Redburn, Francis S.; Bear, Dinah; mary.crouter@ost.dot.gov; Sharp, Jess

Subject: LRM JAB48 - - OMB Request for Identification of Any Unresolved Policy-Level Issues, TRANSPORTATION Draft Bill on Safe and Flexible Transportation Efficiency Act of 2003 (SAFTEA)

OMB would like to express its appreciation to those who have commented and worked with DOT, CEQ, and OMB to perfect this bill. We are working to complete the resolution of any outstanding issues by c.o.b. Friday. Toward that end, we asking you to identify, by 10:00 A.M. tomorrow, Tuesday, any ISSUES REQUIRING POLICY LEVEL DECISIONS that you believe remain unresolved. You will receive a final draft for review to confirm that agreed upon changes have been made. Thanks.

REV_00233956

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, April 7, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: OMB Request for Identification of Unresolved Policy-Level Issues, TRANSPORTATION Draft Bill on Safe and Flexible Transportation Efficiency Act of 2003 (SAFTEA)

DEADLINE: 10:00 A.M. Tuesday, April 8, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: OMB would like to express its appreciation to those who have commented and worked with DOT, CEQ, and OMB to perfect this bill. We are working to complete the resolution of any outstanding issues by c.o.b. Friday. Toward that end, we asking you to identify any ISSUES REQUIRING POLICY LEVEL DECISIONS that you believe remain unresolved. You will receive a final draft for review to confirm that agreed upon changes have been made.

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- 032-ENERGY - Ted Pulliam - (202) 586-3397
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093-Office of the Special Counsel - Jane McFarland - (202) 653-9001
128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755
085-National Transportation Safety Board - David Balloff - (202) 314-6120
-Surface Transportation Board - Dan G. King - 202-565-1588
002-Advisory Council on Historic Preservation - Sharon S. Conway - (202) 606-8648
089-Office of National Drug Control Policy - David Rivait - (202) 395-5505
095-Office of Science and Technology Policy - Maureen O'Brien - (202) 456-6037
015-Army Corps of Engineers (DOD) - Susan Bond - (202) 761-0913

EOP:

CEA LRM

NEC LRM

WHGC LRM

OVP LRM

David S. Addington

Carlos E. Bonilla

Elizabeth S. Dougherty

Philip J. Perry

John F. Wood

Matthew J. Schneider

Daryl L. Joseffer

Rosalyn J. Rettman

Roland N. Litterst
Robert Marsh
Christine Ciccone
Lauren C. Lobrano
Stephen S. McMillin
Kenneth L. Schwartz
Steven M. Mertens
Elissa Konove
Joanne Chow
Erin P. McCartney
Caroline A. Marriott
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Gail S. Zimmerman
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Kristen Silverberg
Daryl L. Joseffer
Stephen W. Dove
Sean B. O'Hollaren
James J. Jukes
Richard E. Green
Julie L. Nichols
Francis S. Redburn

LRM ID: JAB48 **SUBJECT:** OMB Request for Identification of Unresolved Policy-Level Issues, TRANSPORTATION Draft Bill on Safe and Flexible Transportation Efficiency Act of 2003 (SAFTEA)

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

From: Elliot E. Slotnick <Slotnick.1@osu.edu>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: PRA 6
Sent: 4/11/2003 12:34:15 PM
Subject: : Follow-up Request...

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Elliot E. Slotnick" PRA 6 "Elliot E. Slotnick"
PRA 6
CREATION DATE/TIME:11-APR-2003 16:34:15.00
SUBJECT:: Follow-up Request...
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
READ:UNKNOWN
End Original ARMS Header

Dear Brett,

Just a brief follow-up to our phone conversation to "formalize" the request Sheldon Goldman and I are making to learn the identity of the participants at the weekly meetings of your WH/DOJ Judicial Selection Committee. As I mentioned on the phone, we are closing in on a draft of our Judicature piece covering the first two years of judicial selection during the Bush Administration. At present, our article will note that both you and Viet Dinh are present at these meetings which are Chaired by Judge Gonzalez--and that, in addition to WH/DOJ participation, others are included in the meeting as relevant/appropriate to the day's agenda. At present, we'll indicate that, in our interviews, both you and Viet declined to identify the other participants in the meetings as per administration policy. We'll note that, in the past, such as in the Clinton administration, we did ascertain the identity of various participants including, for example, representatives from the Vice President's office, Legislative Liaison, and the First Lady's office.

Ideally, of course, we would very much like to include specific information along these lines in documenting the participation at your meetings. You indicated that this e-mail could serve as a starting point for re-addressing this matter with Judge Gonzalez. I'd greatly appreciate it if, in the next week or so, you could let me know if we should continue describing your meeting participants as I've outlined above or, alternatively and preferably, from our point of view, you could fill in some of the details about the participants. Thanks, in advance, for helping us to reach closure on this facet of the article. Your efforts and continued assistance are very much appreciated.

I'm copying this to Shelly, Brett, to underscore your request to take a look at the piece before we go to press with it. I would hope that we could have a draft to you by early May.

Thanks, again, for all of your help. Enjoy the weekend and, if work allows, stop and smell the cherry blossoms.

Best,
elliot

Elliot E. Slotnick
Professor of Political Science
Associate Dean
The Graduate School
The Ohio State University
250 University Hall

230 N. Oval Mall
Columbus, Ohio 43210

614-292-6031 (office)
614-292-3656 (Fax)

PRA 6

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 4/11/2003 4:55:41 PM
Subject: RE: any word on algiers

good news

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/11/2003 04:55 PM -----

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/11/2003 04:55:59 PM

Record Type: Record

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

cc:

Subject: RE: any word on algiers

Looks like we've won this one -- for now.

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/11/2003 12:55:35 PM
Subject: : RE: any word on algiers

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME:11-APR-2003 16:55:35.00
SUBJECT:: RE: any word on algiers
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Looks like we've won this one -- for now.

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Friday, April 11, 2003 4:52 PM
To: Lefkowitz, Jay P.
Subject: any word on algiers

From: CN=Kevin Warsh/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/14/2003 3:25:26 AM
Subject: : Re: WH Counsel comments on LRM OGG30 - - TREASURY Letter on Draft Bill on Federal Deposit Insurance Reform

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:14-APR-2003 07:25:26.00
SUBJECT:: Re: WH Counsel comments on LRM OGG30 - - TREASURY Letter on Draft Bill on Federal Deposit Insurance Reform
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

what is best way to send consensus letter that allows one agency to have political cover given that final proposal is different than what it testified they wanted?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>;David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 4/14/2003 5:52:38 AM
Subject: : Stuart Taylor on preferences

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 14-APR-2003 09:52:38.00
SUBJECT:: Stuart Taylor on preferences
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ: UNKNOWN
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

<http://nationaljournal.com/taylor.htm>

From: CN=Kevin Warsh/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/14/2003 3:25:26 AM
Subject: : Re: WH Counsel comments on LRM OGG30 - - TREASURY Letter on Draft Bill on Federal Deposit Insurance Reform

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:14-APR-2003 07:25:26.00
SUBJECT:: Re: WH Counsel comments on LRM OGG30 - - TREASURY Letter on Draft Bill on Federal Deposit Insurance Reform
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

what is best way to send consensus letter that allows one agency to have political cover given that final proposal is different than what it testified they wanted?

From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 4/14/2003 9:13:49 AM
Subject: FW: MESSAGE MEETING REMINDER

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

From: Ritacco, Krista L.

Sent: Monday, April 14, 2003 9:13 AM

To: Yunker, Jacob H.; Allgood, Lauren K.; Ball, Andrea G.; Barrales, Ruben S.; Bennett, Melissa S.; Besanceney, Brian R.; Buchan, Claire ; Burkhart, Shannon; Campbell, Anne E.; Christie, Ronald I.; Ciafardini, Andrew D.; Conde, Roberta L.; Cooper, Rory S.; DeFrancis, Suzy; Devenish, Nicolle; Douglas, Penny G.; Duffy, Trent D.; Ellison, Kimberly; Eskew, Tucker A.; Figg, Kara G.; Gerdelman, Sue H.; Gillmor, Eleanor L.; Grant, Britt; Gray, Adrian G.; Gray, Ann ; Healy, Erin E.; Hennessey, Keith; Hernandez, Israel; Hughes, A. Merrill; Hughes, Taylor A.; Ingle, Edward; Jackson, Barry S.; Kaplan, Joel; Kozberg, Lindsey C.; Kyle, Ross M.; Lefkowitz, Jay P.; Lineberry, Stephen M.; Litkenhaus, Colleen; Mallea, Jose; Martin, Catherine J.; McClellan, Scott ; McDonald, Rebekah; McQuade, Vickie A.; Mehlman, Ken; Middlemas, A. Morgan; Millerwise, Jennifer; Montiel, Charlotte L.; Nelson, Carolyn; Nipper, Wendy L.; Parell, Christie; Pelletier, Eric C.; Perez, Anna M.; Ralston, Susan B.; Reese, Shelley; Riecke, January M.; Riepenhoff, Allison L.; Rodriguez, Noelia ; Rogers, Edwina C.; Rust, Kathryn E.; Ryun, Catharine A.; Sforza, Scott N.; Silverberg, Kristen; Smith, Heidi M.; Snee, Ashley; Spagnoli, Deborah A.; Torgerson, Karin B.; Towey, Jim; Vestewig, Lauren J.; Walters, Katherine M.; Wehner, Peter H.; Westine, Lezlee J.; Williams, Mary C.; Wozniak, Natalie S.

Subject: MESSAGE MEETING REMINDER

There will be a message meeting today at noon in the Roosevelt Room.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Brosnahan, Jennifer R.>; <Newstead, Jennifer G.>; <Bartolomucci, H. Christopher>; <Sampson, Kyle>; <Francisco, Noel J.>; <Powell, Benjamin A.>; <Ullyot, Theodore W.>
Sent: 4/14/2003 11:46:27 AM
Subject: re Justice Kennedy's speech last week

Confirmation Consternation

Justice Kennedy speaks out on judicial confirmation deadlock.

By Dahlia Lithwick

Posted Monday, April 14, 2003, at 8:07 AM PT

Attending a speech by a Supreme Court justice is generally just slightly less interesting than perusing the *Federal Reporter*. With the exception of Justice Antonin Scalia, who increasingly uses his public-speaking opportunities to erupt on some issue of church and state, most justices tend to speak in vague generalities about the workings of the court; to reassert that judges should do their speaking only in the form of judicial opinions (remind me again why they are giving speeches?); and to tell funny, charming anecdotes about justices who are dead and thus unable to defend themselves.

A speech by Justice Anthony Kennedy last week at the University of Virginia Law School almost proved this rule. He did funny British accents, he did Justice William Brennan. He dismissed last year's Supreme Court TV shows as "vacuous, insipid, *and* improbable." He offered a credible, if ultimately unpersuasive riff on how there are no "cliques or kabals" among the justices, and managed to charm and amuse without saying anything political, ideological, or controversial.

Which is why his off-the-cuff comments on the judicial confirmation shenanigans bear repeating: Kennedy was remarkably candid in asserting that there is a crisis in the lower courts—that shrinking numbers of judges are being asked to decide growing caseloads and that the slowdown in confirmations is devastating their ability to do their jobs. He was equally candid in opining that "both parties have been guilty of this" and that there is definitely some "payback going on here." And he made the best case I have heard thus far for limiting the Senate's "advise and consent" role to something that falls short of a veto based on ideological litmus tests. Calling it a danger to judicial independence for senators to insist on nominees with specific views, Kennedy made an eloquent case for a judge's highest authority still coming from "the ability to change his mind." Urging that judicial independence is a creature unlike any other, Kennedy stressed that becoming a judge necessarily alters one's fixed ideology, simply because, once you hear a case, "suddenly, there's a real person there."

One of the nicest things that can be said about getting a Supreme Court justice out of the black robes and blinking into the bright auditorium lights is that there's a real person *there* as well. The members of the high court should be a little more willing to weigh in on the crisis facing their colleagues on the bench; more public shaming from The Brethren might just make a difference in the Senate.

From: CN=Catherine Lotrionte/OU=PFIAB/O=EOP [PFIAB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Alison L. Massagli/PFIAB/EOP@EOP [PFIAB] <Alison L. Massagli>;Randy W. Deitering/PFIAB/EOP@EOP [PFIAB] <Randy W. Deitering>
Sent: 4/14/2003 8:48:49 AM
Subject: : Access to PFIAB Records

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Catherine Lotrionte (CN=Catherine Lotrionte/OU=PFIAB/O=EOP [PFIAB])
CREATION DATE/TIME:14-APR-2003 12:48:49.00
SUBJECT:: Access to PFIAB Records
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Alison L. Massagli (CN=Alison L. Massagli/OU=PFIAB/O=EOP@EOP [PFIAB])
READ:UNKNOWN
CC:Randy W. Deitering (CN=Randy W. Deitering/OU=PFIAB/O=EOP@EOP [PFIAB])
READ:UNKNOWN
End Original ARMS Header

Brett,
Wondering if you had a change to take care of the access to archived records question for PFIAB staff? You may recall last month Randy Deitering and I met with you to go over a few issues about access to Presidential Records. One question we had was whether you could draft a letter to NARA allowing four PFIAB staff members to get access to PFIAB archived records in order to do out day-to-day work here at PFIAB. I have an immediate request to get access to PFIAB records in order to complete an assignment from General Scowcroft. When you get a chance can you call me at 5-9123.
Regards,
Catherine

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 4/14/2003 9:00:44 AM
Subject: : guidance, pls.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 14-APR-2003 13:00:44.00
SUBJECT: : guidance, pls.
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I told Blake that this seemed a good idea.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
04/14/2003 12:59 PM -----

From: Blake Gottesman/WHO/EOP@Exchange on 04/10/2003 04:25:02 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: guidance, pls.

there is currently no mechanism or process in place to capture the president's activities aboard afl for transmittal to the diarist.; on the flights to and from belfast, i asked the flight attendants to keep a very basic log of his activities - similar to the one maintained by the camp personnel on the weekends (e.g., when he ate, whether he watched a movie, etc.) ... just as a trial run; to see whether it might be helpful / appropriate information for us to have, and whether it would be a burden for the afl crew.

; the crew said they are happy to help.; so, that's not an issue.

; i just faxed you a copy of what they collected for you to review.; when you get a chance, pls let me know whether this is a process we should continue.

; IF; you suggest that we continue this practice and move forward, there are a couple of things worth pointing out:

- 1) there were several mistakes on the flight attendant's logs (i wrote notes beside them).; i; would likely review the logs w/ the attendant at the end of the flight - or soon afterward, which would give me an opportunity to redact any information which is strictly personal and should not be included - there is an example of that in the logs which i faxed over.
- 2); i would come up w/ a standardized form (like the milaides use for the ranch and for camp), and i would give them better, more specific direction on what kind of info to record
- 3) any logs would still go to the judge for review before they go to the diarist

; thanks,
blake

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/14/2003 9:31:20 AM
Subject: : RE: any problems with attached
Attachments: P_E7ILF003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:14-APR-2003 13:31:20.00
SUBJECT:: RE: any problems with attached
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Comments reflected in the attached. Call me if you need elaboration.

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

From: Kavanaugh, Brett M.
Sent: Monday, April 14, 2003 1:15 PM
To: Leitch, David G.
Subject: any problems with attached

<< File: cl 4 14 03.doc >>
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_E7ILF003_WHO.TXT_1>

April 14, 2003

Mr. Terry Carlstrom
Regional Director
National Capitol Region
National Park Service
1100 Ohio Drive, S.W.
Washington, D.C. 20024

Dear Mr. Carlstrom:

As you know, the White House will once again host its annual Easter Egg Roll on the White House lawn on Monday, April 21, 2003. To ensure the safety and security of our guests, the White House requests that no public access be granted to certain areas during this year's Easter Egg Roll from 4:30 a.m. to 3:00 p.m. on that day. Specifically, the restricted area includes the White House South fence line to Constitution Avenue, Sherman Park, the First Division Memorial, the area known as the Ellipse and its side panels to include the area between State Place, E Street and Alexander Hamilton Place to the North; Constitution Avenue to the South; 15th Street N.W. to the East; and 17th Street N.W. to the West. It is our intention to have ticket holders use the aforementioned area, as a staging area prior to entering the White House lawn for cleared vendors, caterers, and bathrooms. [huh?]

The Easter Egg Roll is traditionally one of the largest public events at the White House Complex and draws both national and international media coverage. This year, the White House has determined that additional security measures are warranted because of American Military operations in Iraq and the National Threat Level being at "Orange." ~~The White House Complex also remains a priority terrorist target.~~ In light of these extraordinary threats/circumstances, the Easter Egg Roll will not be open to the general public; ~~there will be~~ 15,000 tickets will be distributed for this event to U.S. military members and their families.

In order to ensure the safety and well being of our ~~military~~ guests at the Easter Egg Roll, it is imperative that supplementary security measures be implemented to include additional stand-off distance and greater observation ability to identify potential risk. When implemented, these measures will significantly reduce ~~and eliminate~~ likely threats.

We have coordinated with the United States Secret Service in making this request, and they concur in it. Thank you for your continued assistance and cooperation in this matter.

Sincerely,

JEFFREY G. THOMPSON
Director For Security
Executive Office Of The President

REV_00234004

From: CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/14/2003 10:52:32 AM
Subject: : RE: guidance, pls.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:14-APR-2003 14:52:32.00
SUBJECT:: RE: guidance, pls.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I agree, thanks.

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

From: Kavanaugh, Brett M.
Sent: Monday, April 14, 2003 1:00 PM
To: Gonzales, Alberto R.
Subject: guidance, pls.

I told Blake that this seemed a good idea.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
04/14/2003 12:59 PM -----

From: Blake Gottesman/WHO/EOP@Exchange on 04/10/2003 04:25:02 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: guidance, pls.

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thanks,
blake

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 4/15/2003 4:38:20 AM
Subject: : CFJ.
Attachments: P_AD9MF003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME:15-APR-2003 08:38:20.00
SUBJECT:: CFJ.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Former President Bush Joins Battle Over Judges
Funds Raised for Ads Targeting Democrats

By Thomas B. Edsall
Washington Post
April 15, 2003

Former president George H.W. Bush has entered the battle over his son's judicial nominees, hosting a fundraiser at his Houston home that netted about \$250,000 to buy television ads attacking several Democratic senators seeking reelection next year.

The ads, which call on Democrats in swing states to abandon delaying tactics against the current president's judicial nominees, could aid Republican challengers in some of 2004's most fiercely contested Senate races. Top officials of the Committee for Justice, which is coordinating the effort, say similar ads they aired last year helped Republican John Cornyn defeat Democrat Ron Kirk in the U.S. Senate race in Texas.

The Committee for Justice is run by C. Boyden Gray, who was the first president Bush's White House counsel. Several committee members and directors are from a Washington lobbying firm headed by Haley Barbour, former national Republican Party chairman. They include Barbour, Lanny Griffith, Ed Rogers and M. Diane Allbaugh.

Gray refused to divulge the committee's contributors. He said the group's political adversaries, particularly People for the American Way and the Alliance for Justice, do not reveal their sources of financial support.

"I just don't want to get into that game. I don't think its productive," Gray said. "If they [People for the American Way and the Alliance for Justice] will disclose, then maybe we will disclose. . . . To disclose would only irritate donors who think they have confidentiality."

About 60 people attended the fundraiser at the elder Bush's Houston home on April 4. Guests were asked to give at least \$5,000. On Feb. 25, about 50 people attended a committee fundraiser at Gray's Georgetown home, which featured Senate Majority Leader Bill Frist (R-Tenn.), Sen. Orrin G. Hatch (R-Utah) and Karen Hughes, a former top aide to the current president. Sources said attendees were asked to contribute at least \$10,000 each, although Gray refused to discuss finances.

One knowledgeable source said the committee has received at least two "meaningful" contributions, which he described as "in excess of \$50,000."

In the Texas Senate race, the committee ran ads declaring: "A new gang's riding into Texas, gunning for one of our judges [Priscilla Owen]. . . . Liberal special interests have held up her nomination for over a year. Bill Clinton, Hillary Clinton, Tom Daschle, and groups like People for the American Way want to bury the nomination of Judge Owen. . . . At first Ron Kirk said the Senate needed to confirm judicial nominees. Then he met the liberal gang at fundraisers in Washington and New York, took their money and changed his mind." Senate Democrats are refusing to allow a vote on President Bush's judicial nomination of Miguel Estrada, saying they do not know enough about his views. The Committee for Justice is running ads, some in Spanish, saying Estrada would be "the first Hispanic ever to serve on the federal appeals court in Washington. But the radical left says he's not liberal enough."

The Estrada ad has run in Indiana, North Carolina, Arkansas and Nevada, where, respectively, Democratic Sens. Evan Bayh, John Edwards, Blanche Lincoln and Harry M. Reid face reelection in 2004. The ad also has run in New Mexico, where Sen. Jeff Bingaman (D) is up in 2006. Sean Rushton, the committee's executive director, said Bingaman is "somebody who wants to be perceived as a moderate. He cannot afford to be too far out."

The committee also plans to air ads in Louisiana, North Dakota, Florida, South Carolina and South Dakota, where Democratic Sens. John Breaux, Byron L. Dorgan, Bob Graham, Ernest F. Hollings and Thomas A. Daschle are up for reelection next year.

Sean Rushton

Executive Director

Committee for Justice

1275 Pennsylvania Avenue, NW

Tenth Floor

Washington, DC 20004

202-481-6850 phone

PRA 6 mobile

www.committeeforjustice.org

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_AD9MF003_WHO.TXT_1>

REV_00234030

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Washington Post
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Sean Rushton
Executive Director
Committee for Justice
1275 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC < font size=2 face=Arial> 20004
202-481-6850 phone
PRA 6 mobile
www.committeeforjustice.org

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: James Boden/OMB/EOP@EOP [OMB] <James Boden>;Kristen Silverberg/WHO /EOP@Exchange@EOP [WHO] <Kristen Silverberg>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>;Kenneth L. Schwartz/OMB/EOP@EOP [OMB] <Kenneth L. Schwartz>;Lauren E. Bloomquist/OMB/EOP@EOP [OMB] <Lauren E. Bloomquist>;Diana L. Schacht/OPD /EOP@EOP [OPD] <Diana L. Schacht>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Richard E. Green/OMB /EOP@EOP [OMB] <Richard E. Green>
Sent: 4/15/2003 9:18:33 AM
Subject: : FYI - Stories on Senate Judiciary Committee approval of class action bill (S. 274)

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:15-APR-2003 13:18:33.00
SUBJECT:: FYI - Stories on Senate Judiciary Committee approval of class action bill (S. 274)
TO:James Boden (CN=James Boden/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kenneth L. Schwartz (CN=Kenneth L. Schwartz/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lauren E. Bloomquist (CN=Lauren E. Bloomquist/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

note: The second story ends with a rundown of how the committee members voted on each amendment.

No. 71
Monday April 14, 2003 Page A-9
ISSN 1523-567X
Regulation & Law

Class Actions

Senate Judiciary Committee Completes

Markup of Class Action Fairness Measure

Voting along mostly party lines, the Senate Judiciary Committee April 11 approved the Class Action Fairness Act (S. 274), sending the bill to the Senate where a vote is expected as early as May, according to committee staff.

The class action bill, heavily supported by business groups, would amend current law to expand federal court jurisdiction over class actions filed in state court when at least one plaintiff and one defendant are from different states and the damages claimed total at least \$5 million.

Committee Trims Scope of Bill

In a markup session that took up portions of two consecutive days, the committee trimmed the scope of the bill, deleting provisions that also treated so-called private attorney general actions and mass torts as "class actions."

The committee also adopted an amendment proposed by Sen. Dianne Feinstein

(D-Calif.) which would allow a class action to remain in state court if more than two-thirds of the plaintiffs and the primary defendant were from the same state. Feinstein's amendment also increased the jurisdictional amount in controversy threshold of class actions covered by the bill to \$5 million. The original bill set the monetary threshold at \$2 million. Feinstein and Sen. Herb Kohl (D-Wis.) were the only Democrats voting with committee Republicans to report out the bill, making the committee vote 11-7.

Prospects Uncertain in Senate

Prospects for the bill in the Senate remain uncertain. Even with the shift to Republican control, it is unclear whether supporters can muster the 60 votes needed to overcome an expected Democrat-led filibuster, Hatch said. However, shortly after the committee vote, one Senate Democrat announced her support for the bill. Sen. Blanche Lincoln (D-Ark.) said, "I believe the legislation adopted by the Judiciary Committee is a balanced approach that will benefit both plaintiffs who have legitimate claims and businesses that are forced to defend themselves against frivolous suits." The Senate bill also would require increased court scrutiny over class action settlements, particularly those involving "coupons" in lieu of cash settlements. The bill would also require notices sent to class members to be written in "plain English" and prohibit settlements favoring plaintiffs who reside "in closer geographic proximity" to the court than other plaintiffs.

Senators Accuse Bill of 'Overreaching.'

The current bill, as originally introduced, would also have covered suits where the plaintiff purports to act for the general public--known as "private attorney general" actions--and suits where monetary damage claims of 100 or more persons are joined, which frequently include mass tort actions.

Sens. Arlen Specter (R-Pa.) and Feinstein said including those types of suits in the bill was "overreaching."

Committee Chairman Sen. Orrin Hatch (R-Utah) agreed to remove the suits from the bill, but indicated he expected to work out compromise language to address Feinstein's and Specter's concerns at a later date.

A nearly identical bill (H.R. 1115) was introduced in the House March 6, co-sponsored by Reps. Bob Goodlatte (R-Va.) and Rick Boucher (D-Va.). The bill has been referred to the House Judiciary Committee, which has not yet scheduled hearings or markup on the bill.

Bill Opposed by Consumer Groups, Others

The legislation, which mirrors class action bills introduced in the last Congress, is opposed by consumer groups, environmental organizations, and other public interest advocates who say the legislation will create delays in hearing class actions and impose added expense on plaintiffs.

In addition, on March 26 the U.S. Judicial Conference, the federal judiciary's chief policy-making body, expressed its opposition to the pending legislation, saying it would "unduly burden" federal courts and interfere with state control over cases traditionally heard in state court. The conference urged that "sufficient limitations and threshold requirements" be included in any final bill.

Feinstein's amendment was an attempt to address some of the concerns of the bill's opponents. It tightens restrictions on cases allowed to be removed from state to federal court by increasing the amount in controversy threshold from \$2 million to \$5 million. The amendment would also exclude from the bill any class action where two-thirds or more of the class members reside in the same state, where there are less than 100 members in the class, or where the primary defendant is a state.

Amendment Allows Judge Discretion

In addition, Feinstein's amendment would allow a federal judge discretion to decline jurisdiction over any class action where more than one-third but less than two-thirds of the class members and the primary defendants are citizens of the state where the case was filed.

For those class actions, the amendment lists five factors to be considered by a federal judge in deciding whether to take jurisdiction, including:

(1) whether the claims involve matters of national interest, (2) whether the claims are governed by laws other than those of the state where the action was filed, (3) whether the class action is pleaded in a manner that seeks to avoid federal jurisdiction, (4) whether there are substantially more class members in the state where the action was filed, and (5)

whether there are one or more class actions asserting similar claims. The ranking committee Democrat, Sen. Patrick Leahy (D-Vt.) said Feinstein's amendment "touches on only a sliver of the class action cases that S. 274 would affect, and even then, I am afraid that it may do more harm than good."

Also criticizing the bill, Sen. Dick Durbin (D-Ill.) said, "This bill is a double-header win for our gilded committee. First, it locks the courthouse doors, then it relegates the lucky few who make it into court to appear before" conservative federal judges.

By Ralph Lindeman

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CQ COMMITTEE COVERAGE

Senate Judiciary Committee Markup

April 11, 2003

Panel Approves Bill that Could Mean More Class Action Lawsuits in Federal Courts

By Marilee Miller, CQ Staff

The Senate Judiciary Committee approved a measure (S 274) Friday that would send many state class action lawsuits to federal court.

Approved in a 12-7 roll call vote, the measure would require judiciary scrutiny of non-cash settlements, prohibit uneven distribution of settlements among plaintiffs as a result of geographic location and force class action notices to be made available in more easily understood terms. The bill also would require that the appropriate state and federal officials are notified of pending suits.

Proponents of the bill say that it will rectify abuses present in the class action system, including "forum shopping" by attorneys to ensure larger verdicts.

But opponents fear that the new measure will shift a large number of cases from state to federal jurisdiction. Some, including Supreme Court Chief Justice William H. Rehnquist, have said that this bill would simply put too much stress on the federal courts.

Sen. Dianne Feinstein, D-Calif., introduced an amendment that she said will "narrow the scope [of the bill] and decrease the number of cases automatically sent to federal court." The amendment was adopted, 11-8.

The Feinstein amendment would create three categories of class action suits * each with different criteria for deciding whether removal to federal court is appropriate. In the first category, cases with more than two-thirds of the plaintiffs coming from the same state as the defendant would go to state court. In the second, cases with less than one-third of the plaintiffs coming from the state as the defendant would go to federal court if one of the parties requests removal. The remaining cases would be up to the discretion of a federal judge.

The amendment also would require that at least \$5 million be at stake for any class action suit to be eligible for removal to federal court, instead of the \$2 million figure included in Iowa Republican Charles E. Grassley's original version of the bill.

Some members feared the Feinstein amendment would further complicate an already complex jurisdictional process. "I think this amendment could actually make things worse in the small amount of cases where it applies," Russell D. Feingold, D-Wis., said in urging members to vote against the amendment. Under this amendment, he said, plaintiffs could be forced to go through years of litigation over which court should hear a case.

Feingold offered a trio of amendments, each rejected 7-11. The first would have deemed the bill's provisions not apply to class action suits brought under state consumer protection law.

The second would have rectified what he called a "merry-go-round of removal and dismissal" included in the bill. His amendment would have allowed cases that were removed to Federal Court but then dismissed because of class considerations, to be heard in state court.

A third Feingold amendment, offered on behalf of Ranking Member Patrick J. Leahy of Vermont, would have prevented the bill's provisions from applying to class action suits involving environmental protection laws. Several other Democratic amendments were also rejected during the mark up. Democrats Feinstein and Herb Kohl of Wisconsin joined Republicans in

voting against each of the Democrat-sponsored amendments that were rejected. Both members were also the only Democrats who voted for the underlying bill.

The committee voted down, 8-11 an amendment offered by Richard J. Durbin, D-Ill., that would have exempted cases involving tobacco products from the bill's provisions.

Two amendments offered by Edward M. Kennedy , D-Mass., were also rejected, 7-11. The first would have released class action suits involving civil rights from the bill's limitations, and the second would have excepted suits filed in response to firearm- and ammunition-related violence.

In other business, the committee approved without objection three resolutions that would designate a week in April as National Cowboy Poetry Week (S Res 108), express the sense of Congress supporting the goals of the National Sexual Awareness and Prevention Month (S J Res 8), and designate April 30 as a day to celebrate young Americans (S Res 111).

10:00 a.m., 226 Dirksen Bldg., April 11, 2003

Committee Votes

Committee Vote Position Key

* Proxy vote # Paired for

P Voted present X Paired against

A Abstained + Announced for

? Did not vote - Announced against

S 274 Class Action Fairness Act/Scope Narrowing Amendment

Amendment that would require that at least \$5 million be at stake for any class action case to be eligible for removal to federal court.

Create three categories of class action suits - each with different criteria for deciding whether removal to federal court is appropriate.

In cases with more than two-thirds of the plaintiffs coming from the same state as the defendant, the case would go to state court.

In cases with less than one-third of the plaintiffs coming from the state as the defendant, the case would go to federal court if one of the parties requested removal.

In the rest of the cases, the matter would be up to the discretion of a federal judge.

Adopted 11-8: R 9-1; D 2-7; I 0-0; April 11, 2003.

YEAS (11)

Republicans (9)

Chambliss (Ga.) *

REV_00234068

Cornyn (Texas)
Craig (Idaho) *
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)
Specter (Pa.)

Democrats (2)
Feinstein (Calif.)
Kohl (Wis.)

NAYS (8)

Republicans (1)
DeWine (Ohio)

Democrats (7)
Biden (Del.) *
Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.)
Leahy (Vt.) *
Schumer (N.Y.) *

S 274 Class Action Fairness Act/Tobacco Lawsuit Exemption

Durbin, D-Ill. - Amendment that would exempt class action suits involving tobacco products from the provisions of the bill.

Rejected 8-11: R 1-9; D 7-2; I 0-0; April 11, 2003.

YEAS (8)

Republicans (1)
DeWine (Ohio)

Democrats (7)
Biden (Del.) *
Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.)
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas) *
Craig (Idaho) *
Graham, L. (S.C.) *
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)
Specter (Pa.) *

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

S 274 Class Action Fairness Act/Civil Rights Amendment

Kennedy, D-Mass. - Amendment that would exempt civil rights violation class action suits from the provisions of the bill.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

REV_00234070

YEAS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.) *
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.)
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/Firearm Exclusion Amendment

Kennedy, D-Mass. - Amendment that would exempt from the provisions of the bill class action lawsuits that deal with harm by firearms and ammunition.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

YEAS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.) *
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.)
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *

Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/State Court Amendment

Feingold, D-Wis. - Amendment that would allow cases that were removed to federal court but then dismissed because of class considerations, to be heard in state court if the class is eligible there.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

YEAS (7)

Democrats (7)
Biden (Del.) *

Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.) *
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/Consumer Protection Amendment

Feingold, D-Wis. - Amendment that would exempt lawsuits involving violations of state consumer protection laws from the bill's provisions.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

REV_00234074

YEAS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.) *
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/Environment Amendment

Leahy, D-Vt. - Amendment that would exempt class action cases filed under state or federal environmental law from the provisions of the bill.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

YEAS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.) *
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)

REV_00234076

DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/Vote to Report

Require that at least \$5 million be at stake for any class action case to be eligible for removal to federal court.
Create three categories of class action suits - each with different criteria for deciding whether removal to federal court is appropriate:
In cases with more than two-thirds of the plaintiffs coming from the same state as the defendant, the case would go to state court.
In cases with less than one-third of the plaintiffs coming from the state as the defendant, the case would go to federal court if one of the parties requested removal.
In the rest of the cases, the matter would be up to the discretion of a federal judge.
Require judiciary scrutiny of non-cash settlements.
Prohibit giving some members of the class greater settlements because of their geographic location.
Force class action notices to be made available in easily understood terms.
Require that the appropriate state and federal officials are notified of pending suits.

Reported favorably to the full Senate 12-7; R 10-0; D 2-7; I 0-0; April 11, 2003.

YEAS (12)

Republicans (10)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)
Specter (Pa.) *

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NAYS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.) *
Edwards, J. (N.C.) *
Feingold (Wis.) *
Kennedy, E. (Mass.) *
Leahy (Vt.) *
Schumer (N.Y.) *

S Res 108, S Res 111, S J Res 8 Senate Resolutions En Bloc/Vote to Report

Designate April 21 through April 27, 2003 as National Cowboy Poetry Week.
Designate April 30, 2003 as "Dia de los Ninos: Celebrating Young
Americans"
Express the sense of Congress supporting the goals and ideals of National
Sexual Assault Awareness and Prevention Month and encouraging prevention

REV_00234078

of sexual assault in the United States.

Reported favorably to the full Senate without objection; April 11, 2003.

Source: CQ Committee Coverage

Gavel-to-gavel coverage and votes of every markup on Capitol Hill.

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From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: John Laster <John.Laster@nara.gov>
Sent: 4/15/2003 10:14:11 AM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
CREATION DATE/TIME: 15-APR-2003 14:14:11.00
SUBJECT: : Re:
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: John Laster <John.Laster@nara.gov> (John Laster <John.Laster@nara.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

OK.

John, can you have the Reagan Library make two copies of the videotape for WH review. Thanks.

>>> <Brett_M._Kavanaugh@who.eop.gov> 4/15/03 2:03:20 PM >>>
yes

(Embedded
image moved GaryM Stern <garym.stern@nara.gov>
to file: 04/15/2003 01:19:54 PM
pic29069.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: John Laster <John.Laster@nara.gov>
Subject: Re:

No problem. Do you also want to review the approximately 15 minutes of videotape? If so, we will need the Reagan Library to make a copy; should they make two copies, for Paul as well?

John, can you fax the 74 pages to the number below.

>>><Brett_M._Kavanaugh@who.eop.gov> 4/15/03 12:37:26 PM >>>
out of office, but can you fax to 456-5104 the reagan documents shipped to colborn today. someone else needs to review here, and this is easiest way for me to get records to them while i am out of office. Thanks.

From: CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/15/2003 6:59:05 AM
Subject: : airline issue

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME:15-APR-2003 10:59:05.00
SUBJECT:: airline issue
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Did we learn anything more about Joel Klein's predatory pricing appeal?
;
I know Hew thinks it's past the point of no return.

From: CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>
Sent: 4/15/2003 7:00:10 AM
Subject: : RE: Ellipse

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:15-APR-2003 11:00:10.00
SUBJECT:: RE: Ellipse
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks Brett. Also, did you close the loop with Addington re: VPR (vp residence) waves capabilities. Are we completely ok with it? Thanks.

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 15, 2003 8:45 AM
To: Litkenhaus, Colleen
Cc: Gambatesa, Linda M.
Subject: Re: Ellipse

Some points:

- Date change to April 15.
- No period after "Drive" in address
- Should "Specifically, the closed park areas are" instead be "Specifically, the White House requests that the following park areas be temporarily closed:"
- missing apostrophe after "guests" at end of para. 1
- at end of para. 2, does the explanation of why only military personnel are being invited mesh with prior public explanations; in other words, should you just delete the sentence beginning "In light of these extraordinary circumstances"?

From: Colleen Litkenhaus/WHO/EOP@Exchange on 04/14/2003 07:28:05 PM
Record Type: Record

To: Linda M. Gambatesa/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Ellipse

I hate to have to run this by you again, but changes were made. Do you mind looking at it one more time? << File: Ellipse closure final.doc >>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: garym.stern@nara.gov @ inet [UNKNOWN] <garym.stern@nara.gov @ inet>
Sent: 4/15/2003 8:37:43 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:15-APR-2003 12:37:43.00
SUBJECT:
TO:garym.stern@nara.gov @ inet (garym.stern@nara.gov @ inet [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

out of office, but can you fax to 456-5104 the reagan documents
shipped to colborn today. someone else needs to review here, and this is
easiest way for me to get records to them while i am out of office.
Thanks.

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: James Boden/OMB/EOP@EOP [OMB] <James Boden>;Kristen Silverberg/WHO /EOP@Exchange@EOP [WHO] <Kristen Silverberg>;Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>;Kenneth L. Schwartz/OMB/EOP@EOP [OMB] <Kenneth L. Schwartz>;Lauren E. Bloomquist/OMB/EOP@EOP [OMB] <Lauren E. Bloomquist>;Diana L. Schacht/OPD /EOP@EOP [OPD] <Diana L. Schacht>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>;Richard E. Green/OMB /EOP@EOP [OMB] <Richard E. Green>
Sent: 4/15/2003 9:18:33 AM
Subject: : FYI - Stories on Senate Judiciary Committee approval of class action bill (S. 274)

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:15-APR-2003 13:18:33.00
SUBJECT:: FYI - Stories on Senate Judiciary Committee approval of class action bill (S. 274)
TO:James Boden (CN=James Boden/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Kenneth L. Schwartz (CN=Kenneth L. Schwartz/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Lauren E. Bloomquist (CN=Lauren E. Bloomquist/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
CC:Richard E. Green (CN=Richard E. Green/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
End Original ARMS Header

note: The second story ends with a rundown of how the committee members voted on each amendment.

No. 71
Monday April 14, 2003 Page A-9
ISSN 1523-567X
Regulation & Law

Class Actions

Senate Judiciary Committee Completes

Markup of Class Action Fairness Measure

Voting along mostly party lines, the Senate Judiciary Committee April 11 approved the Class Action Fairness Act (S. 274), sending the bill to the Senate where a vote is expected as early as May, according to committee staff.

The class action bill, heavily supported by business groups, would amend current law to expand federal court jurisdiction over class actions filed in state court when at least one plaintiff and one defendant are from different states and the damages claimed total at least \$5 million.

Committee Trims Scope of Bill

In a markup session that took up portions of two consecutive days, the committee trimmed the scope of the bill, deleting provisions that also treated so-called private attorney general actions and mass torts as "class actions."

The committee also adopted an amendment proposed by Sen. Dianne Feinstein

(D-Calif.) which would allow a class action to remain in state court if more than two-thirds of the plaintiffs and the primary defendant were from the same state. Feinstein's amendment also increased the jurisdictional amount in controversy threshold of class actions covered by the bill to \$5 million. The original bill set the monetary threshold at \$2 million. Feinstein and Sen. Herb Kohl (D-Wis.) were the only Democrats voting with committee Republicans to report out the bill, making the committee vote 11-7.

Prospects Uncertain in Senate

Prospects for the bill in the Senate remain uncertain. Even with the shift to Republican control, it is unclear whether supporters can muster the 60 votes needed to overcome an expected Democrat-led filibuster, Hatch said. However, shortly after the committee vote, one Senate Democrat announced her support for the bill. Sen. Blanche Lincoln (D-Ark.) said, "I believe the legislation adopted by the Judiciary Committee is a balanced approach that will benefit both plaintiffs who have legitimate claims and businesses that are forced to defend themselves against frivolous suits." The Senate bill also would require increased court scrutiny over class action settlements, particularly those involving "coupons" in lieu of cash settlements. The bill would also require notices sent to class members to be written in "plain English" and prohibit settlements favoring plaintiffs who reside "in closer geographic proximity" to the court than other plaintiffs.

Senators Accuse Bill of 'Overreaching.'

The current bill, as originally introduced, would also have covered suits where the plaintiff purports to act for the general public--known as "private attorney general" actions--and suits where monetary damage claims of 100 or more persons are joined, which frequently include mass tort actions.

Sens. Arlen Specter (R-Pa.) and Feinstein said including those types of suits in the bill was "overreaching."

Committee Chairman Sen. Orrin Hatch (R-Utah) agreed to remove the suits from the bill, but indicated he expected to work out compromise language to address Feinstein's and Specter's concerns at a later date.

A nearly identical bill (H.R. 1115) was introduced in the House March 6, co-sponsored by Reps. Bob Goodlatte (R-Va.) and Rick Boucher (D-Va.). The bill has been referred to the House Judiciary Committee, which has not yet scheduled hearings or markup on the bill.

Bill Opposed by Consumer Groups, Others

The legislation, which mirrors class action bills introduced in the last Congress, is opposed by consumer groups, environmental organizations, and other public interest advocates who say the legislation will create delays in hearing class actions and impose added expense on plaintiffs.

In addition, on March 26 the U.S. Judicial Conference, the federal judiciary's chief policy-making body, expressed its opposition to the pending legislation, saying it would "unduly burden" federal courts and interfere with state control over cases traditionally heard in state court. The conference urged that "sufficient limitations and threshold requirements" be included in any final bill.

Feinstein's amendment was an attempt to address some of the concerns of the bill's opponents. It tightens restrictions on cases allowed to be removed from state to federal court by increasing the amount in controversy threshold from \$2 million to \$5 million. The amendment would also exclude from the bill any class action where two-thirds or more of the class members reside in the same state, where there are less than 100 members in the class, or where the primary defendant is a state.

Amendment Allows Judge Discretion

In addition, Feinstein's amendment would allow a federal judge discretion to decline jurisdiction over any class action where more than one-third but less than two-thirds of the class members and the primary defendants are citizens of the state where the case was filed.

For those class actions, the amendment lists five factors to be considered by a federal judge in deciding whether to take jurisdiction, including:

(1) whether the claims involve matters of national interest, (2) whether the claims are governed by laws other than those of the state where the action was filed, (3) whether the class action is pleaded in a manner that seeks to avoid federal jurisdiction, (4) whether there are substantially more class members in the state where the action was filed, and (5)

whether there are one or more class actions asserting similar claims. The ranking committee Democrat, Sen. Patrick Leahy (D-Vt.) said Feinstein's amendment "touches on only a sliver of the class action cases that S. 274 would affect, and even then, I am afraid that it may do more harm than good."

Also criticizing the bill, Sen. Dick Durbin (D-Ill.) said, "This bill is a double-header win for our gilded committee. First, it locks the courthouse doors, then it relegates the lucky few who make it into court to appear before" conservative federal judges.

By Ralph Lindeman

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CQ COMMITTEE COVERAGE

Senate Judiciary Committee Markup

April 11, 2003

Panel Approves Bill that Could Mean More Class Action Lawsuits in Federal Courts

By Marilee Miller, CQ Staff

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Approved in a 12-7 roll call vote, the measure would require judiciary scrutiny of non-cash settlements, prohibit uneven distribution of settlements among plaintiffs as a result of geographic location and force class action notices to be made available in more easily understood terms. The bill also would require that the appropriate state and federal officials are notified of pending suits.

Proponents of the bill say that it will rectify abuses present in the class action system, including "forum shopping" by attorneys to ensure larger verdicts.

But opponents fear that the new measure will shift a large number of cases from state to federal jurisdiction. Some, including Supreme Court Chief Justice William H. Rehnquist, have said that this bill would simply put too much stress on the federal courts.

Sen. Dianne Feinstein, D-Calif., introduced an amendment that she said will "narrow the scope [of the bill] and decrease the number of cases automatically sent to federal court." The amendment was adopted, 11-8.

The Feinstein amendment would create three categories of class action suits * each with different criteria for deciding whether removal to federal court is appropriate. In the first category, cases with more than two-thirds of the plaintiffs coming from the same state as the defendant would go to state court. In the second, cases with less than one-third of the plaintiffs coming from the state as the defendant would go to federal court if one of the parties requests removal. The remaining cases would be up to the discretion of a federal judge.

The amendment also would require that at least \$5 million be at stake for any class action suit to be eligible for removal to federal court, instead of the \$2 million figure included in Iowa Republican Charles E. Grassley's original version of the bill.

Some members feared the Feinstein amendment would further complicate an already complex jurisdictional process. "I think this amendment could actually make things worse in the small amount of cases where it applies," Russell D. Feingold, D-Wis., said in urging members to vote against the amendment. Under this amendment, he said, plaintiffs could be forced to go through years of litigation over which court should hear a case.

Feingold offered a trio of amendments, each rejected 7-11. The first would have deemed the bill's provisions not apply to class action suits brought under state consumer protection law.

The second would have rectified what he called a "merry-go-round of removal and dismissal" included in the bill. His amendment would have allowed cases that were removed to Federal Court but then dismissed because of class considerations, to be heard in state court.

A third Feingold amendment, offered on behalf of Ranking Member Patrick J. Leahy of Vermont, would have prevented the bill's provisions from applying to class action suits involving environmental protection laws. Several other Democratic amendments were also rejected during the mark up. Democrats Feinstein and Herb Kohl of Wisconsin joined Republicans in

voting against each of the Democrat-sponsored amendments that were rejected. Both members were also the only Democrats who voted for the underlying bill.

The committee voted down, 8-11 an amendment offered by Richard J. Durbin, D-Ill., that would have exempted cases involving tobacco products from the bill's provisions.

Two amendments offered by Edward M. Kennedy, D-Mass., were also rejected, 7-11. The first would have released class action suits involving civil rights from the bill's limitations, and the second would have excepted suits filed in response to firearm- and ammunition-related violence.

In other business, the committee approved without objection three resolutions that would designate a week in April as National Cowboy Poetry Week (S Res 108), express the sense of Congress supporting the goals of the National Sexual Awareness and Prevention Month (S J Res 8), and designate April 30 as a day to celebrate young Americans (S Res 111).

10:00 a.m., 226 Dirksen Bldg., April 11, 2003

Committee Votes

Committee Vote Position Key

* Proxy vote # Paired for

P Voted present X Paired against

A Abstained + Announced for

? Did not vote - Announced against

S 274 Class Action Fairness Act/Scope Narrowing Amendment

Amendment that would require that at least \$5 million be at stake for any class action case to be eligible for removal to federal court.

Create three categories of class action suits - each with different criteria for deciding whether removal to federal court is appropriate.

In cases with more than two-thirds of the plaintiffs coming from the same state as the defendant, the case would go to state court.

In cases with less than one-third of the plaintiffs coming from the state as the defendant, the case would go to federal court if one of the parties requested removal.

In the rest of the cases, the matter would be up to the discretion of a federal judge.

Adopted 11-8: R 9-1; D 2-7; I 0-0; April 11, 2003.

YEAS (11)

Republicans (9)

Chambliss (Ga.) *

REV_00234105

Cornyn (Texas)
Craig (Idaho) *
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)
Specter (Pa.)

Democrats (2)
Feinstein (Calif.)
Kohl (Wis.)

NAYS (8)

Republicans (1)
DeWine (Ohio)

Democrats (7)
Biden (Del.) *
Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.)
Leahy (Vt.) *
Schumer (N.Y.) *

S 274 Class Action Fairness Act/Tobacco Lawsuit Exemption

Durbin, D-Ill. - Amendment that would exempt class action suits involving tobacco products from the provisions of the bill.

Rejected 8-11: R 1-9; D 7-2; I 0-0; April 11, 2003.

YEAS (8)

Republicans (1)
DeWine (Ohio)

Democrats (7)
Biden (Del.) *
Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.)
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas) *
Craig (Idaho) *
Graham, L. (S.C.) *
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)
Specter (Pa.) *

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

S 274 Class Action Fairness Act/Civil Rights Amendment

Kennedy, D-Mass. - Amendment that would exempt civil rights violation class action suits from the provisions of the bill.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

REV_00234107

YEAS (7)

Democrats (7)

Biden (Del.) *

Durbin (Ill.) *

Edwards, J. (N.C.) *

Feingold (Wis.)

Kennedy, E. (Mass.)

Leahy (Vt.) *

Schumer (N.Y.) *

NAYS (11)

Republicans (9)

Chambliss (Ga.) *

Cornyn (Texas)

Craig (Idaho)

DeWine (Ohio)

Graham, L. (S.C.)

Grassley (Iowa)

Hatch (Utah)

Kyl (Ariz.)

Sessions, J. (Ala.)

Democrats (2)

Feinstein (Calif.) *

Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/Firearm Exclusion Amendment

Kennedy, D-Mass. - Amendment that would exempt from the provisions of the bill class action lawsuits that deal with harm by firearms and ammunition.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

YEAS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.) *
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.)
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *

Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/State Court Amendment

Feingold, D-Wis. - Amendment that would allow cases that were removed to federal court but then dismissed because of class considerations, to be heard in state court if the class is eligible there.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

YEAS (7)

Democrats (7)
Biden (Del.) *

Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.) *
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/Consumer Protection Amendment

Feingold, D-Wis. - Amendment that would exempt lawsuits involving violations of state consumer protection laws from the bill's provisions.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

REV_00234111

YEAS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.) *
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/Environment Amendment

Leahy, D-Vt. - Amendment that would exempt class action cases filed under state or federal environmental law from the provisions of the bill.

Rejected 7-11: R 0-9; D 7-2; I 0-0; April 11, 2003.

YEAS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.)
Edwards, J. (N.C.) *
Feingold (Wis.)
Kennedy, E. (Mass.) *
Leahy (Vt.) *
Schumer (N.Y.) *

NAYS (11)

Republicans (9)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)

DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NOT VOTING (1)

Republicans (1)
Specter (Pa.) P

S 274 Class Action Fairness Act/Vote to Report

Require that at least \$5 million be at stake for any class action case to be eligible for removal to federal court.
Create three categories of class action suits - each with different criteria for deciding whether removal to federal court is appropriate:
In cases with more than two-thirds of the plaintiffs coming from the same state as the defendant, the case would go to state court.
In cases with less than one-third of the plaintiffs coming from the state as the defendant, the case would go to federal court if one of the parties requested removal.
In the rest of the cases, the matter would be up to the discretion of a federal judge.
Require judiciary scrutiny of non-cash settlements.
Prohibit giving some members of the class greater settlements because of their geographic location.
Force class action notices to be made available in easily understood terms.
Require that the appropriate state and federal officials are notified of pending suits.

Reported favorably to the full Senate 12-7; R 10-0; D 2-7; I 0-0; April 11, 2003.

YEAS (12)

Republicans (10)
Chambliss (Ga.) *
Cornyn (Texas)
Craig (Idaho)
DeWine (Ohio)
Graham, L. (S.C.)
Grassley (Iowa)
Hatch (Utah)
Kyl (Ariz.)
Sessions, J. (Ala.)
Specter (Pa.) *

Democrats (2)
Feinstein (Calif.) *
Kohl (Wis.) *

NAYS (7)

Democrats (7)
Biden (Del.) *
Durbin (Ill.) *
Edwards, J. (N.C.) *
Feingold (Wis.) *
Kennedy, E. (Mass.) *
Leahy (Vt.) *
Schumer (N.Y.) *

S Res 108, S Res 111, S J Res 8 Senate Resolutions En Bloc/Vote to Report

Designate April 21 through April 27, 2003 as National Cowboy Poetry Week.
Designate April 30, 2003 as "Dia de los Ninos: Celebrating Young
Americans"
Express the sense of Congress supporting the goals and ideals of National
Sexual Assault Awareness and Prevention Month and encouraging prevention

REV_00234115

of sexual assault in the United States.

Reported favorably to the full Senate without objection; April 11, 2003.

Source: CQ Committee Coverage

Gavel-to-gavel coverage and votes of every markup on Capitol Hill.

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From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/15/2003 3:02:06 PM
Subject: : Re: Conf Call/ Weds 11 am

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:15-APR-2003 19:02:06.00
SUBJECT:: Re: Conf Call/ Weds 11 am
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Frankly, manny and his crazy ideas are the real threat to the judiciary.
Fact is, this won't go anywhere...so I am whatever with it. We always get
whacked back for being kooks when we go the faith or religion route. I
mean, think about the faith based bill with no faith.

From: Nelson, Carolyn
To: wendy keefer <wendy.j.keefer@usdoj.gov>;adam ciongoli <adam.ciongoli@usdoj.gov>;albert brewster <albert.brewster@usdoj.gov>;amy bass <amy.bass@usdoj.gov>;andrew beach <andrew.beach@usdoj.gov>;<Bartolomucci, H. Christopher>;<Bennett, Melissa S.>;<Brilliant, Hana F.>;<Bumatay, Patrick J.>;<Ellison, Kimberly>;evelyn long <evelyn.v.long@usdoj.gov>;<Francisco, Noel J.>;<Gray, Ann>;Grubbs, Wendy J. <wgrubbs@WHO.eop.gov>;Heather McNaught <Heather.McNaught@usdoj.gov>;<Jones, Alison>;<Kavanaugh, Brett M.>;Kristi Remington <Kristi.I.Remington@usdoj.gov>;<Kyle, Ross M.>;<Leitch, David G.>;<Lockart, Sarah K.>;<McMaster, David>;<Montiel, Charlotte L.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Ralston, Susan B.>;<Sampson, Kyle>;tracy washington <tracy.t.washington@usdoj.gov>;viet dinh <viet.dinh@usdoj.gov>;<Walker, Helgard C.>
Sent: 4/15/2003 3:54:08 PM
Subject: WHJSC Meeting - Wednesday, April 16

The WHJSC will meet tomorrow at 4:00pm in the Roosevelt Room.

Thanks!

From: Nelson, Carolyn
To: wendy keefer <wendy.j.keefer@usdoj.gov>;adam ciongoli <adam.ciongoli@usdoj.gov>;albert brewster <albert.brewster@usdoj.gov>;amy bass <amy.bass@usdoj.gov>;andrew beach <andrew.beach@usdoj.gov>;<Bartolomucci, H. Christopher>;<Bennett, Melissa S.>;<Brilliant, Hana F.>;<Bumatay, Patrick J.>;<Ellison, Kimberly>;evelyn long <evelyn.v.long@usdoj.gov>;<Francisco, Noel J.>;<Gray, Ann>;Grubbs, Wendy J. <wgrubbs@WHO.eop.gov>;Heather McNaught <Heather.McNaught@usdoj.gov>;<Jones, Alison>;<Kavanaugh, Brett M.>;Kristi Remington <Kristi.I.Remington@usdoj.gov>;<Kyle, Ross M.>;<Leitch, David G.>;<Lockart, Sarah K.>;<McMaster, David>;<Montiel, Charlotte L.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Ralston, Susan B.>;<Sampson, Kyle>;tracy washington <tracy.t.washington@usdoj.gov>;viet dinh <viet.dinh@usdoj.gov>;<Walker, Helgard C.>
Sent: 4/15/2003 3:54:08 PM
Subject: WHJSC Meeting - Wednesday, April 16

The WHJSC will meet tomorrow at 4:00pm in the Roosevelt Room.

Thanks!

From: CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO]
To: Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/16/2003 3:29:46 AM
Subject: : Limbaugh

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:16-APR-2003 07:29:46.00
SUBJECT:: Limbaugh
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

what do you think of him for the 8th?

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 4/16/2003 11:43:42 AM
Subject: : Holmes letter to Lincoln/Lincoln statement
Attachments: P_H6BOF003_WHO.TXT_1.pdf; P_H6BOF003_WHO.TXT_2.pdf

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:16-APR-2003 15:43:42.00

SUBJECT:: Holmes letter to Lincoln/Lincoln statement

BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

- Holmes ltr to Lincoln.pdf - Lincoln Statement on Holmes.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_H6BOF003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_H6BOF003_WHO.TXT_2>

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Leon Holmes
leon@qgtb.com

April 11, 2003

Via facsimile to (202) 228-2042

The Honorable Blanche Lincoln
United States Senate
355 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Lincoln:

Certain issues have surfaced about my nomination since we met, and because they have arisen since we met, you and I have not had the opportunity to discuss them personally. Out of respect for you personally, and out of respect for the important constitutional role of the Senate in the appointment process for federal judges, I wanted to write to you this letter to address some of these issues.

In the 1980's I wrote letters to the editor and newspaper columns regarding the abortion issue using strident and harsh rhetoric. I am a good bit older now and, I hope, more mature than I was at that time. As the years passed, I came to realize that one cannot convey a message about the dignity of the human person, which is the message I intended to convey, using that kind of rhetoric in public discussion. While I cannot speak for those who raise these issues, my impression is that my statements about the abortion issue that they criticize are all more than fifteen years old.

As I stated in response to written questions from Senator Durbin, I am especially troubled by the sentence about rape victims in a 1980 letter to the editor regarding the proposed Human Life Amendment; and, as I said there, regardless of the merits of the issue, the articulation of that sentence reflects an insensitivity for which there is no excuse and for which I apologize. I do not propose to defend that sentence, and I would not expect you or anyone else to do so. My impression is that, in fulfilling your responsibilities in this matter, you have spoken with or heard from many Arkansans, male and female, who know me well. I hope, and I believe, that their comments have and will give you assurance that this 23 year-old sentence is not indicative of how I have conducted myself in the past several years and not indicative of how I would conduct myself as a judge.

In 1987, when I was President of Arkansas Right to Life, that organization was attacked in a guest column in a newspaper on the ground that its members allegedly defined life too narrowly and were, as I read the column, hypocrites. That same column stated that abortion involves a taking of human life. In response, I wrote that, if the author believed that abortion takes a human life, he should start his own pro-life organization but should not use our defects as a reason not to act on his beliefs. In

Letter to Senator Lincoln, April 11, 2003, page2

that context, I asked the rhetorical question, what if someone had advanced such a basis as a reason not to save lives during the holocaust? I did not intend to say that supporters of abortion rights should be equated with Nazis. I have never intended anything that I said to give that impression, and I do not think my comments, which now are criticized, were taken to mean that when they were written. From 1983 through 1988, when I was active in pro-life activity and was writing most of the columns that are now criticized, I was an associate at a large law firm, and I worked for and with many lawyers who are pro-choice. Since then, most of my partners have been pro-choice. I have had many cases with and against lawyers who are pro-choice. No one raised this concern at that time nor at any time prior to the past two weeks. I believe that no one raised this concern because everyone who knows me recognizes that I did not intend such a thing. The letters written on my behalf by pro-choice colleagues are strong testimony of their confidence in me.

While I expected that my past activities relating to the abortion issue would draw scrutiny, and properly so, I did not expect that my religious beliefs would draw similar scrutiny, but they have. I am aware that some concern has been expressed about a 1997 column co-authored by my wife and me for our local Catholic newspaper on historic teachings of the Catholic Church. The Catholic faith is pervaded with the view that the visible things symbolize aspects of the spiritual realm. This pervasive element of the faith is manifest in the teaching that the marital relationship symbolizes the relationship between Christ and the Church. My wife and I believe that this teaching ennobles and dignifies marriage and both partners in it. We do not believe that this teaching demeans either the husband or the wife but that it elevates both. It involves a mutual self-giving and self-forgetting, a reciprocal gift of self. This teaching is not inconsistent with the equality of all persons, male and female, and, in fact, in that column we say, “[a]ll of us, male and female, are equally sons of God and therefore brothers of one another.” This aspect of my faith—the teaching that male and female have equal dignity and are equal in the sight of God—has been manifest, I believe, in my dealings with my female colleagues in our firm and in the profession as a whole. While I am not at all ashamed of my faith, or any part of it, I do not believe that the historic Catholic teaching that the marital relationship symbolizes Christ and the Church is or has been relevant to my conduct in my professional life, nor would it affect my conduct as a judge, should I be fortunate enough to be confirmed.

Another aspect of my faith is that God brings good out of evil. I wrote about this belief, as taught by Booker T. Washington, in the context of a 1981 article in a religious magazine. Washington taught that God could and would bring good out of evil. Washington, who was born in slavery, recognized it as evil, not only in theory but as a part of his earliest experience. Yet, his faith was so great that he believed that God could bring good from that evil; and his love was so great that he hoped that those of his race would become a beacon of God’s love to their oppressors. My article combines his view of providence—that God brings good out of evil—with his view that we all are called to love one another. This teaching can be criticized only if it is misunderstood.

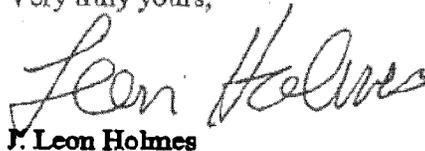
Quattrocchi, Grooms, Tull & Burrow PLLC

Letter to Senator Lincoln, April 11, 2003, page3

Some of the criticisms directed at things I wrote years ago are just; some of them are not. I hope that my legal career as a whole, spanning the years 1982 through 2003, evidences that I am now ready to assume the responsibility of a United States District Court Judge. I certainly was not ready in 1980, nor for many years thereafter, and I do not claim that I was. My impression is that my colleagues in the Arkansas bar—those who know me well and who represent clients in federal court—believe that my legal career as a whole manifests a readiness to assume the responsibilities of a district court judge, and I hope that you believe so as well.

With best wishes and warmest regards, I am

Very truly yours,

A handwritten signature in cursive script that reads "Leon Holmes". The signature is written in dark ink and is positioned above the printed name.

J. Leon Holmes

cc: The Honorable Mark Pryor (via facsimile to (202) 228-0908)

REV_00234150

News from..



U.S. Senator Blanche Lincoln of Arkansas

355 Dirksen Senate Office Building, Washington D.C. 20510

Phone (202) 224-4843 Fax (202) 228-1371

For Immediate Release
April 11, 2003

Contact: Drew Goessl
(202) 224-4843

Lincoln Statement on Judicial Nominee Leon Holmes

Washington – U.S. Senator Blanche Lincoln (D-Ark.) today issued the following statement today concerning Leon Holmes, an Arkansas native who is President Bush's nominee to serve as federal court judge for the Eastern District of Arkansas:

"After questions were raised by Senators about the views of Leon Holmes during consideration of his nomination in the Senate Judiciary Committee on Thursday, April 10, I asked him to address these questions to me. His response to me indicates that while he has expressed his views in a harsh and intemperate manner in the past, he now regrets some of those characterizations.

"Together with a substantial number of recommendations from respected Arkansas citizens, mostly in the legal community, Mr. Holmes' answers convince me that he can set his personal views and religious beliefs aside both as a lawyer and a judge, if he is confirmed. While Mr. Holmes and I differ in some of our beliefs, I am confident that Mr. Holmes will be a fair judge who is not influenced by political ideology or religious teachings. Moreover, I believe Mr. Holmes' recognition of and apology for inflammatory statements made in the past is an indication that he has grown and matured as a person.

"In deciding to maintain my support for Leon Holmes as Federal District Judge in Arkansas, I cannot ignore the many letters of support generated by members of the legal community in Arkansas, many of whom also share different views than Mr. Holmes. These letters describe him as 'fair', 'compassionate', 'even-handed' and 'disciplined'. His colleagues hold him in high esteem.

"Mr. Holmes demonstrates in his letter to me that even on emotional issues like a woman's right to choose, he can respect the opposite view."

A copy of Mr. Holmes's letter to Lincoln is attached.

From: Bumatay, Patrick J.
To: <Ullyot, Theodore W.>;<Addington, David S.>;<Bartolomucci, H. Christopher>;<Bellinger, John B.>;<Brilliant, Hana F.>;<Brosnahan, Jennifer R.>;<Bumatay, Patrick J.>;<Carroll, James W.>;<Everson, Nanette>;<Farrell, J. Elizabeth>;<Francisco, Noel J.>;<Ganter, Jonathan F.>;<Jucas, Tracy>;<Kavanaugh, Brett M.>;<McNally, Edward>;<Montiel, Charlotte L.>;<Nelson, Carolyn>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 4/16/2003 12:42:39 PM
Subject: P. Kevin Castel

P. Kevin Castel, USDJ, Southern District of New York, is uanimously rated "Well Qualified" by the ABA.

Thanks

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>; Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
Sent: 4/17/2003 7:09:47 AM
Subject: : from Ft. Worth Star Telegram

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 17-APR-2003 11:09:47.00
SUBJECT:: from Ft. Worth Star Telegram
TO: Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

No bench for them?
By Don Erler
Special to the Star-Telegram

Today, more than a billion Christians celebrate the institution of the Lord's Supper. Roman Catholics, the Eastern Orthodox and many Lutherans and Anglicans believe in the "real presence" of Christ in the consecrated bread and wine. Such a belief does not accord with the empirical observations of ordinary human beings. Bread is bread; wine is wine; Jesus is neither. A case might be made from a Socratic perspective that those who believe such a non-rational doctrine should be disqualified from serving in public positions requiring keen rationality. Socrates taught that only the most reasonable man -- unfettered by various beliefs about the gods -- is capable of exercising proper political authority. Judges especially, a philosopher might argue, should be free of religious "prejudice." So those who believe that a death-dealing God passed over marked Hebrew houses, as Jews celebrate during Passover, would also be disqualified from judicial office, as surely would Muslims and perhaps others. But Socrates' position is not ours. Our political institutions presuppose -- even fundamentally depend upon -- our diverse supernatural beliefs. Look, for example, at our constitutional use of oaths and at the First Amendment's explicit protection of free religious exercise. Yet Democrats, aroused by their feminist supporters, seem determined to keep religious believers off the federal bench, and obviously not for Socratic reasons. For example, James Leon Holmes, whose nomination to the federal bench is now pending in the Senate Judiciary Committee, is regarded by the leading secular newspaper in Arkansas, the Arkansas Democrat-Gazette, as a "superbly qualified (lawyer, working scholar and eminent spirit among us." But in 1997, he and his wife, Susan, wrote for The Arkansas Catholic that "the wife is to subordinate herself to her husband" and that "the woman is to place herself under the authority of the man" in the same way that "the church is to place herself under the protection of Christ." Most Christians will recognize this formulation as coming straight out of St. Paul's letter to the Ephesians (5:22-33). Feminists, of course, distrust anyone who actually accepts this teaching. So key Democratic senators have attacked Holmes' views on sexual equality, religion and abortion. Abortion is clearly difficult to square with any belief in a God-given soul. Holmes knows that pre-born human beings are human beings, entitled, therefore, to be treated accordingly. And nearly all Christians profess to believe that Paul's teaching about the proper relation between husbands and wives is divinely inspired. So

neither Protestants nor Catholics (or probably Jews and Muslims, whose scriptures have similar teachings) should be acceptable judicial choices for feminist-inspired Democrat senators.

If we exclude Jews, Christians and Muslims from the judiciary on the basis that some of their beliefs are inconsistent with contemporary liberal ideology, then we shall exclude nearly everyone in our overwhelmingly theistic country. Should conservative Republicans automatically reject liberals whose views are biblically based?

Contemporary Democrats, working in tandem with feminist extremists who have come to regard abortion -- found nowhere in the Constitution -- as the constitutional right want to ban Christians from the federal judiciary.

If they succeed, they will have changed the exquisite wine of the Constitution into the waste water of liberal dogma, radically subverting what was done by our founders "in the Year of our Lord one thousand seven hundred and Eighty seven."

Don Erler is president of General Building Maintenance.

PRA 6

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/17/2003 1:02:08 PM
Subject: : News & Politics The Insider April 11, 2003
Attachments: P_4AQPF003_WHO.TXT_1.html

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SUBJECT:: News & Politics The Insider April 11, 2003
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Read attachment re: Steve Colloton.
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Leon Holmes <LHolmes@qggtb.com>
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To: H. Christopher Bartolomucci/WHO/EOP@EOP, "Kristi Remington (E-mail)"
<Kristi.L.Remington@usdoj.gov>, "Monica Goodling (E-mail)"
<Monica.Goodling@usdoj.gov>
cc:
Subject: News & Politics The Insider April 11, 2003

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This is from our local weekly. You will see a paragraph about Steve Colloton. When this week's edition is posted, I'll forward to you what they have said about me, which is not so bad considering the editorial position of this paper.

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The Insider

April 11, 2003

Something's up downtown

This one's just in the rumor stage. But there's word from a couple of sources that a Texas developer is working on a deal to build a 160-unit housing project east of Interstate 30 in the general vicinity of the Clinton Presidential Library. More as it becomes available, as the anchors say.

Glug, glug, glug

Included among the 29 bodies of water the federal Environmental Protection Agency has asked the Arkansas Department of Environmental Quality to add to its list of "impaired waters" is Lake Winona, a reservoir that contributes more than 20 million gallons daily to greater Little Rock's Water supply.

Bruno Kirsch, chief operations officer with Central Arkansas Water, said officials there are "shocked" by the EPA suggestion that Winona is polluted. Kirsch said water monitors with the U.S. Geological Survey have been telling them for years that Winona, a spring-fed lake in the Ouachita Mountains west of the city, is among the purest water available in the state. Kirsch said the only water-quality problem at Winona in recent memory has been a mercury advisory on largemouth bass above a certain size. Hirsch said monitors have assured Central Arkansas Water that the mercury advisory is due to a naturally occurring anomaly in the food chain, as mercury and other pollutants have never been detected in the water column.

"We're curious about what EPA is doing," Kirsch said, "I have called DEQ and they don't understand it either. We plan to write letters to the EPA saying, How's this [possible]? Here's our data."

Judicial payoff

Word is that liberals and Democrats are planning more resistance to the nomination of Steve Colloton for a federal judgeship than they provided to two other former deputies of Kenneth Starr. Amy St. Eve and John Bates, both of whom spent time with Colloton in Little Rock during Starr's Whitewater investigation, were confirmed for district judgeships fairly easily. Colloton, 40, now a U.S. attorney in Des Moines, has been nominated for a seat on the U.S. Eighth Circuit Court of Appeals, which includes Arkansas. Though he's taken few public positions, Colloton is suspected of

being another conservative ideologue of the sort President Bush favors. He's a member of the far-right Federalist Society and a former law clerk for U.S. Chief Justice William Rehnquist.

More bangin'

Former Pulaski County coroner Steve Nawojczyk says HBO is making good progress on the sequel to "Gang War: Bangin' in Little Rock", the 1994 documentary that put Little Rock's gang problems on the national radar screen. Nawojczyk, who was famously the near-victim of a drive-by shooting captured on film in the first "Bangin' in Little Rock" documentary, is known as an expert on gang culture and symbolism, and will feature prominently in part two. He said the new documentary will focus on Leifel Jackson, a Crip gang leader featured in "Bangin'" who has turned his life around after spending most of the last decade in prison.

Recent weeks have seen an HBO film crew tagging along with Nawojczyk to various speaking engagements. He adds that crew members who worked on the first "Bangin'" documentary have been shocked at the changes they have seen in the metro area's inner city. "We did go back to one of the first spots I took them [Silver City Courts] in part one," Nawojczyk wrote in a recent e-mail, "and they were blown away with the improvement." 

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Sent: 4/17/2003 2:09:23 PM
Subject: : FW: News & Politics The Insider April 11, 2003
Attachments: P_6DTPF003_WHO.TXT_1.html

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FYI attached is an arkansas paper blurb on Colloton.

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

From: LHolmes@qggtb.com [mailto:LHolmes@qggtb.com]
Sent: Thursday, April 17, 2003 4:56 PM
To: Remington, Kristi L; Goodling, Monica;
H_Christopher_Bartolomucci@who.eop.gov
Subject: News & Politics The Insider April 11, 2003

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Subject:

4/18/2003 4:49:10 AM
: POSTMASTER: Mess Holiday Hours

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CREATOR:PostMaster (CN=PostMaster/O=EOP [OA])

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CREATION DATE/TIME:18-APR-2003 08:49:10.00
SUBJECT:: POSTMASTER: Mess Holiday Hours
TO:Linda Springer (CN=Linda Springer/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Thomas A. Shannon Jr. (CN=Thomas A. Shannon Jr./OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Daniel K. Wilmot (CN=Daniel K. Wilmot/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jocelyn White (CN=Jocelyn White/OU=WHF/O=EOP [OPM])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Peter H. Wehner (CN=Peter H. Wehner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Paul A. Wedderien (CN=Paul A. Wedderien/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:John P. Walters (CN=John P. Walters/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Richard J. Tubb (CN=Richard J. Tubb/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jim Towey (CN=Jim Towey/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Karin B. Torgerson (CN=Karin B. Torgerson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Catherine W. Tobias (CN=Catherine W. Tobias/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jeffrey G. Thompson (CN=Jeffrey G. Thompson/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
TO:Phillip L. Swagel (CN=Phillip L. Swagel/OU=CEA/O=EOP [CEA])
READ:UNKNOWN
TO:Jose G. Suarez (CN=Jose G. Suarez/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Aquiles F. Suarez (CN=Aquiles F. Suarez/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Angela B. Styles (CN=Angela B. Styles/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Mary K. Sturtevant (CN=Mary K. Sturtevant/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Deborah A. Spagnoli (CN=Deborah A. Spagnoli/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary A. Solberg (CN=Mary A. Solberg/OU=ONDCP/O=EOP [ONDCP])
READ:UNKNOWN
TO:Carlos Solari (CN=Carlos Solari/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP [OMB])
READ:UNKNOWN
TO:Kristen Silverberg (CN=Kristen Silverberg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Faryar Shirzad (CN=Faryar Shirzad/OU=NSC/O=EOP [NSC])
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TO:Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP [WHO])
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TO:Matthew Scully (CN=Matthew Scully/OU=WHO/O=EOP [WHO])
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TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP [NSC])
READ:UNKNOWN

TO:Howard A. Schmidt (CN=Howard A. Schmidt/OU=NSC/O=EOP [NSC])
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TO:William Lang (CN=William Lang/OU=WHO/O=EOP [WHO])
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TO:Clay Johnson III (CN=Clay Johnson III/OU=WHO/O=EOP@Exchange [WHO])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
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TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP [OVP])
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TO:John P. Hannah (CN=John P. Hannah/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Terrell L. Halaska (CN=Terrell L. Halaska/OU=OPD/O=EOP [OPD])
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TO:Joseph W. Hagin (CN=Joseph W. Hagin/OU=WHO/O=EOP@Exchange [WHO])
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TO:Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP [NSC])
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TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
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TO:John Graham (CN=John Graham/OU=OMB/O=EOP [OMB])
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TO:John A. Gordon (CN=John A. Gordon/OU=NSC/O=EOP [NSC])
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TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
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TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP [WHO])
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TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
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TO:Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP [OPD])
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TO:Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP [WHO])
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TO:Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
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TO:Daniel Fried (CN=Daniel Fried/OU=NSC/O=EOP [NSC])
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TO:Jendayi E. Frazer (CN=Jendayi E. Frazer/OU=NSC/O=EOP [NSC])
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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP [WHO])
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TO:Lawrence A. Fleischer (CN=Lawrence A. Fleischer/OU=WHO/O=EOP@Exchange [WHO])
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TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
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TO:Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP [WHO])
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TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
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TO:Mark Everson (CN=Mark Everson/OU=OMB/O=EOP [OMB])
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TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
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TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP [WHO])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP [NSC])
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TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
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TO:Nancy Dorn (CN=Nancy Dorn/OU=OMB/O=EOP [OMB])
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TO:Nicolle Devenish (CN=Nicolle Devenish/OU=WHO/O=EOP [WHO])
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TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
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TO:John J. Daly (CN=John J. Daly/OU=WHO/O=EOP [WHO])
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TO:Stacia L. Cropper (CN=Stacia L. Cropper/OU=OA/O=EOP@Exchange [OA])
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TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP [CEQ])
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TO:Rebecca Contreras (CN=Rebecca Contreras/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP [OPD])
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TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP [CEQ])
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TO:Robin Cleveland (CN=Robin Cleveland/OU=OMB/O=EOP [OMB])
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TO:Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP [WHO])
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TO:Andrea G. Barthwell (CN=Andrea G. Barthwell/OU=ONDCP/O=EOP [ONDCP])
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TO:Jackie Arends (CN=Jackie Arends/OU=WHO/O=EOP [WHO])
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TO:Richard E. Antaya (CN=Richard E. Antaya/OU=WHO/O=EOP [WHO])
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TO:Michael Allen (CN=Michael Allen/OU=WHO/O=EOP [WHO])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
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TO:Nikkya G. Williams (CN=Nikkya G. Williams/OU=NSC/O=EOP [NSC])
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TO:Terrill G. Tucker (CN=Terrill G. Tucker/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Anne Trenolone (CN=Anne Trenolone/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:David L. Travers (CN=David L. Travers/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Carol J. Thompson (CN=Carol J. Thompson/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Julieanne H. Thomas (CN=Julieanne H. Thomas/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Robert E. Schubert (CN=Robert E. Schubert/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Noelia Rodriguez (CN=Noelia Rodriguez/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Maurice C. Robinson (CN=Maurice C. Robinson/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Mark Robinson (CN=Mark Robinson/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

TO:January M. Riecke (CN=January M. Riecke/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Katherine A. Rhodes (CN=Katherine A. Rhodes/OU=WHO/O=EOP@Exchange [WHO])
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TO:Tim Reynolds (CN=Tim Reynolds/OU=WHO/O=EOP@Exchange [WHO])
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TO:David Reyes (CN=David Reyes/OU=NSC/O=EOP [NSC])
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TO:A. Morgan Middlemas (CN=A. Morgan Middlemas/OU=WHO/O=EOP [WHO])
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TO:Barbara B. Knight (CN=Barbara B. Knight/OU=WHO/O=EOP@Exchange [WHO])
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TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@Exchange [WHO])
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TO:Suzanne Primoff (CN=Suzanne Primoff/OU=WHO/O=EOP [WHO])
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TO:Richard S. Paulus (CN=Richard S. Paulus/OU=WHO/O=EOP@Exchange [WHO])
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TO:Joyce A. Parker (CN=Joyce A. Parker/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Christie Parell (CN=Christie Parell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Edward J. Padinske (CN=Edward J. Padinske/OU=NSC/O=EOP [NSC])
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TO:Eric H. Otto (CN=Eric H. Otto/OU=OPD/O=EOP@Exchange [OPD])
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TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Lee B. Mynatt (CN=Lee B. Mynatt/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Steven Myers (CN=Steven Myers/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP@Exchange [WHO])
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TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Cathy L. Millison (CN=Cathy L. Millison/OU=NSC/O=EOP [NSC])
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TO:Sonya E. Medina (CN=Sonya E. Medina/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Sara B. McIntosh (CN=Sara B. McIntosh/OU=WHO/O=EOP@Exchange [WHO])
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TO:Peter A. McCauley (CN=Peter A. McCauley/OU=NSC/O=EOP [NSC])
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TO:Daniel M. McCarthy (CN=Daniel M. McCarthy/OU=WHO/O=EOP@Exchange [WHO])
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TO:Thomas S. Marsh (CN=Thomas S. Marsh/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Elizabeth Liptock (CN=Elizabeth Liptock/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Lindsey M. Lineweaver (CN=Lindsey M. Lineweaver/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Adam L. Levine (CN=Adam L. Levine/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Sang W. Lee (CN=Sang W. Lee/OU=NSC/O=EOP [NSC])
READ:UNKNOWN

TO:David L. Lee (CN=David L. Lee/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Elliott M. Langer (CN=Elliott M. Langer/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jennie M. Koch (CN=Jennie M. Koch/OU=NSC/O=EOP [NSC])
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TO:Jennifer M. Katzaman (CN=Jennifer M. Katzaman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Alexander S. Joves (CN=Alexander S. Joves/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:M. Kay Joshi (CN=M. Kay Joshi/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Megan R. Johnston (CN=Megan R. Johnston/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Sydney R. Johnson (CN=Sydney R. Johnson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Clarence C. Johnson (CN=Clarence C. Johnson/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Melanie A. Jackson (CN=Melanie A. Jackson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@Exchange [WHO])
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TO:Joseph Clancy (CN=Joseph Clancy/OU=WHO/O=EOP [WHO])
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TO:Elizabeth H. Donnan (CN=Elizabeth H. Donnan/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Theresa M. Hunter (CN=Theresa M. Hunter/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Taylor A. Hughes (CN=Taylor A. Hughes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jason C. Hubbard (CN=Jason C. Hubbard/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Jeffrey P. Houle (CN=Jeffrey P. Houle/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:David F. Holt (CN=David F. Holt/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ashley Holbrook (CN=Ashley Holbrook/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Josephine L. Hirsch (CN=Josephine L. Hirsch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jane C. Heishman (CN=Jane C. Heishman/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Anne Heiligenstein (CN=Anne Heiligenstein/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Elizabeth A. Hearn (CN=Elizabeth A. Hearn/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Leah J. Harrelson (CN=Leah J. Harrelson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Robert C. Hargis (CN=Robert C. Hargis/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Mary Ann Hanusa (CN=Mary Ann Hanusa/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Mary A. Haines (CN=Mary A. Haines/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Henry C. Hager (CN=Henry C. Hager/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Katharina M. Hager (CN=Katharina M. Hager/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Albert J. Guarnieri (CN=Albert J. Guarnieri/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Andrew W. Green (CN=Andrew W. Green/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Emily S. Gray (CN=Emily S. Gray/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Wendy E. Gray (CN=Wendy E. Gray/OU=NSC/O=EOP [NSC])
READ:UNKNOWN

TO:Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Georgia D. Godfrey (CN=Georgia D. Godfrey/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Dorothy C. Garvin (CN=Dorothy C. Garvin/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jenna R. Galyean (CN=Jenna R. Galyean/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Joachim D. Fuchs (CN=Joachim D. Fuchs/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Restituto M. Francisco (CN=Restituto M. Francisco/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Julian M. Flannery (CN=Julian M. Flannery/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Barbara J. Finn (CN=Barbara J. Finn/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jennifer N. Field (CN=Jennifer N. Field/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Douglas M. Erdahl (CN=Douglas M. Erdahl/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Ruth E. Elliott (CN=Ruth E. Elliott/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Kady Dunlap (CN=Kady Dunlap/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Penny G. Douglas (CN=Penny G. Douglas/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Joan R. Doty (CN=Joan R. Doty/OU=WHO/O=EOP@Exchange [WHO])
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TO:Reed Dickens (CN=Reed Dickens/OU=WHO/O=EOP@Exchange [WHO])
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TO:Josh Deckard (CN=Josh Deckard/OU=WHO/O=EOP@Exchange [WHO])
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TO:Colin Crosby (CN=Colin Crosby/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Lynn A. Crable (CN=Lynn A. Crable/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Colby J. Cooper (CN=Colby J. Cooper/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@Exchange [WHO])
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TO:Shane P. Chambers (CN=Shane P. Chambers/OU=WHO/O=EOP [WHO])
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TO:Lois A. Cassano (CN=Lois A. Cassano/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Pamela R. Casey (CN=Pamela R. Casey/OU=WHO/O=EOP [WHO])
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TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Regina L. Cain (CN=Regina L. Cain/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Janice L. Burmeister (CN=Janice L. Burmeister/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Johnathan C. Bunting (CN=Johnathan C. Bunting/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Marko R. Broz (CN=Marko R. Broz/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Katherine A. Brown (CN=Katherine A. Brown/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Debra S. Brown (CN=Debra S. Brown/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Bonnie S. Broadwick (CN=Bonnie S. Broadwick/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Gary E. Bresnahan (CN=Gary E. Bresnahan/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Brian Bravo (CN=Brian Bravo/OU=WHO/O=EOP@Exchange [WHO])
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TO:Denise Bradley (CN=Denise Bradley/OU=WHO/O=EOP@Exchange [WHO])
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TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:H. Andrew Boerstling (CN=H. Andrew Boerstling/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Jeff Blair (CN=Jeff Blair/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Debra D. Bird (CN=Debra D. Bird/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Cheryl E. Barnett (CN=Cheryl E. Barnett/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Mitchell P. Backfield (CN=Mitchell P. Backfield/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Chelsey Atkin (CN=Chelsey Atkin/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Lauren K. Allgood (CN=Lauren K. Allgood/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
End Original ARMS Header

Mess Holiday Hours

In observance of the Holiday, the White House Mess will close for business at 3:00 PM on Friday, April 18 and remain closed through Sunday, April 20. Normal business hours will resume at 6:45 AM on Monday, April 21. If the need arises, necessary arrangements will be made to meet any unforeseen demands.

We apologize for any inconvenience.

Thank you.
#00287

MANAGEMENT AND ADMINISTRATION

From: Leitch, David G.
To: <Gonzales, Alberto R.>; <Kavanaugh, Brett M.>
Sent: 4/20/2003 9:29:50 PM
Subject: Fw:

Of note.

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

From: PRA 6
To: Leitch, David G.
Sent: Sun Apr 20 20:15:08 2003
Subject:

GOP tiring of judicial confirmation battles
Robert Novak (back to web version)

April 19, 2003

WASHINGTON -- Senate Republicans are tiring of the battle to confirm contested judicial nominees, indicating that Sen. Edward M. Kennedy's Democratic plan to prevent President Bush from shaping the federal judiciary is succeeding.

Weekly meetings of Republican senators produce increased grumbling. The complaining senators ask the White House and the Republican leadership why they should keep fighting to confirm as appellate judges Washington, D.C., lawyer Miguel Estrada and Texas Supreme Court Justice Priscilla Owen. Not only liberal GOP senators but also some old guard committee chairmen claim this fight is neither important nor politically prudent.

Kennedy's unprecedented plan to block Bush's judicial selections always has been based on the theory that Republican senators soon would tire of the struggle.

From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 4/21/2003 6:00:35 PM
Subject: RE:

He's free from 3 on, but busy from 2-3. He's free from 9 to 11, if that helps.

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

From: Kavanaugh, Brett M.
Sent: Monday, April 21, 2003 5:57 PM
To: Montiel, Charlotte L.
Subject:

Is David free from 2 to 5 Friday? We need to do six D Maryland interviews.

From: Hernandez, Israel
To: <Kavanaugh, Brett M.>
Sent: 4/22/2003 1:44:21 PM
Subject: RE: what kind of info and in what format do you want for possible Law Day event

E-mail is fine...you can list the type of event, where, how many people you would want to invite, types of organizations you would like to invite..I will list them in the matrix I have for Andy's Anonymous. If they like the suggestions, then we would proceed with a proposal.

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 22, 2003 1:34 PM
To: Hernandez, Israel
Subject: what kind of info and in what format do you want for possible Law Day event

From: Bumatay, Patrick J.
To: <Leitch, David G.>;<Gray, Ann>;<Ellison, Kimberly>;<Jackson, Barry S.>;<Jones, Alison>;<Kyle, Ross M.>;<McMaster, David>;<Grubbs, Wendy J.>;<Ullyot, Theodore W.>;<Bartolomucci, H. Christopher>;<Brosnahan, Jennifer R.>;<Francisco, Noel J.>;<Kavanaugh, Brett M.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 4/22/2003 5:24:06 PM
Subject: Judicial Selection Meeting

WHJSC Selection Meeting is ON for tomorrow April 23, 2003 at 4 pm in the Roosevelt Room.

Thanks

From: Leitch, David G.
To: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>
Sent: 4/22/2003 7:55:19 PM
Subject: Re: event approved for Rose Garden on Friday, May 9

Hmm . . . May 9. Why does that date stick in my mind?

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

From: Kavanaugh, Brett M.
To: Gonzales, Alberto R. ; Leitch, David G.
Sent: Tue Apr 22 19:06:17 2003
Subject: event approved for Rose Garden on Friday, May 9

From: Kavanaugh, Brett M.
To: <Gottesman, Blake>
Sent: 4/22/2003 7:59:23 PM
Subject: RE:

I told Judge about AF1 idea, and he agreed that was good. So consider it approved by Counsel's office.

From: Blake Gottesman/WHO/EOP@Exchange on 04/22/2003 07:58:46 PM

Record Type: Record

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

cc:

Subject: RE:

yes; still parked - but i think it's w/ joe, not you. i'll check and let you know.

re: recording potus activities on af1 for diarist, do i need to wait for official approval (memo or e-mail) before i move forward on it?

thanks,

blake

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

From: Kavanaugh, Brett M.

Sent: Friday, April 18, 2003 11:21 AM

To: Gottesman, Blake

Subject:

Is the WHCA taping issue still parked? Anything we need to do? thx.

REV_00234410

From: CN=Ken Mehlman/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>
Sent: 4/23/2003 7:20:58 AM
Subject: : Marty Smith - Can we meet on Friday???
Attachments: P_8LZTF003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-APR-2003 11:20:58.00
SUBJECT:: Marty Smith - Can we meet on Friday???
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Please advise on the below proposed meeting from one of my fraternity brothers.

----- Forwarded by Ken Mehlman/WHO/EOP on 04/23/2003
11:20 AM -----

PRA 6

04/23/2003 10:44:19 AM
Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP
cc:
Subject: Marty Smith - Can we meet on Friday???

Hi Ken:

We have a Noon appointment with CIFA, a DOD intelligence agency and were hoping to stop by ANYTIME you could squeeze us in either before or after.

On two fronts, we have issues/solutions that have political ramifications, especially the 2 million weekly listeners in Ohio and 38 million opt-in email addresses nationally.

On a personal level, I simply need your help. I screwed-up royally by holding on to a failing business too long and have paid a steep price for not getting out more quickly (a lesson learned) - this project has the potential to get me back on my feet...and frankly, its a "win/win" for you, me and W.

Ken, I know you are busy as hell, but I believe we have enough political value to offer you to warrant helping out "a brother." :) If this Friday doesn't work, pick a day/time and we will match up with you...

We simply want to help you with our Realtalknetwork.com show and see if you can help us open some doors to DHS, ONDCP, and perhaps DOD...Once you understand what we can do to help track & trace terrorists, you will be glad you pointed us in some right directions - there are political ramifications to winning the war on terror???

Let me know. Ken Duberstein pointed to you and said, "he's your man..."

REV_00234443

Thanks Ken...its the least you can do since you have my dream job :)

Marty

PS - I shall strive to attain its ideals, and by so doing to bring to it honor and credit. I shall be loyal to my college and my chapter and shall keep strong my ties to them that I may ever retain the spirit of youth...I shall try always to discharge the obligation to others which arises from the fact that I am a fraternity man. :)

+++++Martin R.
Smith,
Vice President, Your Choice Communications

To view our Homeland Security Solutions & "Hot DART" Portal goto:
<https://demo.esportals.com>

Click you've been invited to join, create your user ID, add Org ID 269,
wait
for clearance then go to the Library

<https://demo.esportals.com> -
Homeland Security & Solutions
www.YourChoice2000.com - Prepaid
Communications
www.RealTalkNetwork.com - Live Talk
Radio "All the News That's Fit To Hear"

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8LZTF003_WHO.TXT_1>

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+++++Martin R. Smith, Vice President, Your Choice Communications

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<https://demo.esportals.com>

Click you've been invited to join, create your user ID, add Org ID 269, wait for clearance then go to the Library

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www.YourChoice2000.com - Prepaid Communications
www.RealTalkNetwork.com - Live Talk Radio "All the News That's Fit To Hear"

From: CN=Ken Mehlman/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>
Sent: 4/23/2003 7:20:58 AM
Subject: : Marty Smith - Can we meet on Friday???
Attachments: 1283_p_8lzt003_who.txt_1.html

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP [WHO])
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READ:UNKNOWN
CC:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])
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----- Forwarded by Ken Mehlman/WHO/EOP on 04/23/2003
11:20 AM -----

PRA 6

04/23/2003 10:44:19 AM
Record Type: Record

To: Ken Mehlman/WHO/EOP@EOP
cc:
Subject: Marty Smith - Can we meet on Friday???

Hi Ken:

We have a Noon appointment with CIFA, a DOD intelligence agency and were hoping to stop by ANYTIME you could squeeze us in either befor or after.

On two fronts, we have issues/solutions that have political ramifications, especially the 2 million weekly listeners in Ohio and 38 million opt-in email addresses nationally.

Redacted

Ken, I know you are busy as hell, but I believe we have enough political value to offer you to warrant helping out "a brother." :) If this Friday doesnt work, pick a day/time and we will match up with you...

We simply want to help you with our Realtalknetwork.com show and see if you can help us open some doors to DHS, ONDCP, and perhaps DOD...Once you understand what we can do to help track & trace terrorists, you will be glad you pointed us in some right directions - there are political ramifications to winning the war on terorr???

Let me know. Ken Duberstein pointed to you and said, "he's your man..."

REV_00234446

Thanks Ken...its the least you can do since you have my dream job :)

Marty

PS - I shall strive to attain its ideals, and by so doing to bring to it honor and credit. I shall be loyal to my college and my chapter and shall keep strong my ties to them that I may ever retain the spirit of youth...I shall try always to discharge the obligation to others which arises from the fact that I am a fraternity man. :)

+++++Martin R.
Smith,
Vice President, Your Choice Communications

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Radio "All the News That's Fit To Hear"

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <1283_p_8lzt03_who.txt_1>

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+++++Martin R. Smith, Vice President, Your Choice Communications

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From: CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>; Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 4/23/2003 7:45:03 AM
Subject: : RE: 4/23 11:30 am draft CA4 letter

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:23-APR-2003 11:45:03.00
SUBJECT:: RE: 4/23 11:30 am draft CA4 letter
TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ok

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

From: Kavanaugh, Brett M.
Sent: Wednesday, April 23, 2003 11:31 AM
To: Gonzales, Alberto R.; Nelson, Carolyn
Cc: Sampson, Kyle
Subject: 4/23 11:30 am draft CA4 letter

DRAFT (4/23)

Dear Senators Allen, Dole, Edwards, Mikulski, Sarbanes, and Warner:

I write about the status of the four vacancies on the U.S. Court of Appeals for the Fourth Circuit.

There are 15 authorized seats on the Court of Appeals. Federal law imposes only one requirement for allocation of seats within a circuit -- that each State have at least one judge who sits in that State. However, each State in a circuit often has a number of judges sitting in that State that corresponds at least roughly to the State,s percentage of the overall population in the circuit or to the percentage of the circuit,s caseload that arises from that State. To be sure, such geographic balance is not established in law or binding on the President or Senate. And there often are deviations in some circuits for a variety of historical and other reasons. (I would note, in addition, that judges can move from one State to another State in the circuit after their appointment, as has happened on some occasions in the past.) But this measure is generally a rough baseline for assessing the geographic allocation of seats within a circuit.

Based on this measure, of the 15 authorized seats, it appears that the allocation would roughly resemble the following: North Carolina: 4 or 5, Virginia: 4 or 5, South Carolina: 2 or 3, Maryland: 2 or 3, and West Virginia: 1. As of now, taking into account that Judge Widener recently notified the President of his intended retirement, the Fourth Circuit is significantly out of geographic balance:

Baseline Allocation	Current	Number of Judges
North Carolina:	4 or 5	0
Virginia:	4 or 5	3
South Carolina	2 or 3	4
Maryland:	2 or 3	2
West Virginia:	1	2

REV_00234455

There are four current vacancies on the Court. The four judges who previously occupied these seats maintained their chambers in North Carolina, Virginia, and Maryland (which is why I have sent this letter to you as the Senators from those States). Judge Terry Boyle of North Carolina was nominated for one vacancy in May 2001. For the three additional vacancies, the President intends to nominate well-qualified and well-respected individuals in a manner that will bring the circuit closer to geographic balance, recognizing that it would take several years and additional vacancies for the circuit to achieve balance and recognizing further that absolute balance is neither legally nor historically required. In particular, the President intends to nominate two such individuals on Monday, April 28 -- one who currently lives in Virginia and has strong roots in and ties to both Virginia and North Carolina and one who currently lives in North Carolina and has served on the state judiciary in North Carolina. Both are African-American, and their confirmations by the Senate will further dismantle a barrier that stood for far too long. For the last remaining vacancy, the President would intend to submit a nomination no later than September 2003, consistent with the President's commitment to submit nominations within 180 days of learning of an intended retirement or vacancy.

I remain disappointed that Judge Boyle's nomination has been pending for two years. But I am pleased that we otherwise have been able to consult extensively and work cooperatively on other circuit and district nominees in Virginia, North Carolina, and Maryland. Please feel free to contact me at any time with your thoughts regarding the Fourth Circuit or other issues of concern to you.

Sincerely,

Alberto R. Gonzales
Counsel to the President

From: Kavanaugh, Brett M.
To: <Sampson, Kyle>
CC: <Leitch, David G.>
Sent: 4/23/2003 2:00:45 PM
Subject: Fern Smith -- ND Cal

She has taken senior status. However, this does NOT create a new vacancy because she had been on Fed Judicial Center and the law authorizing judges to serve in that center creates an additional seat in the relevant district immediately (which has now been filled) and specifies that next vacancy (the Smith vacancy in this case) is not to be filed. So no vacancy.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/23/2003 2:40:38 PM
Subject: FW: LRM IKK43 - - REVISED COMMERCE Report on HR49 Internet Tax Nondiscrimination Act
Attachments: internettax2003OMB.doc

Just a reminder, this was due at 2 pm.

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

From: Kho, Irene

Sent: Thursday, April 17, 2003 5:32 PM

To: Ostp Lrm; llr@do.treas.gov; justice.lrm@usdoj.gov; state-lrm@state.gov; cla@sba.gov; laffairs@ustr.gov

Cc: Nec Lrm; Whgc Lrm; Ovp Lrm; Cea Lrm; Malphrus, Garry; Schacht, Diana L.; Mahaffie, Robert F.; Schwartz, Mark J.; Blomquist, Lauren E.; Boden, James; Dennis, Yvette M.; Lyon, Randolph M.; Stauffer, Anne R.; Kulkowski, James M.; Durant, Catherine; Casella, Michael; Green, Richard E.; Jukes, James J.; Foster, James D.; Russell, Richard M.; Silverberg, Kristen; Lobrano, Lauren C.; Chadwick, Kirsten; Lobrano, Lauren C.; Luczynski, Kimberley S.; Wood, John F.; Perry, Philip J.; McMillin, Stephen S.; Rust, Kathryn E.; Barrales, Ruben S.; MacEvevic, Lisa J.; Schroeder, Ingrid M.

Subject: LRM IKK43 - - REVISED COMMERCE Report on HR49 Internet Tax Nondiscrimination Act

Attached is a REVISED Commerce letter on H.R. 49. Please review and provide comments by 2:00 PM on Wednesday, April 23rd. Thank you.

- internettax2003OMB.doc <>

LRM ID: IKK43

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Thursday, April 17, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: **REVISED COMMERCE Report on HR49 Internet Tax Nondiscrimination Act**

DEADLINE: **2:00 PM Wednesday, April 23, 2003**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Attached is a REVISED Commerce letter supporting H.R. 49. Please review and provide comments by 2:00 PM on Wednesday, April 23rd.

DISTRIBUTION LIST

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Lisa J. Macecevic
Ingrid M. Schroeder

LRM ID: IKK43

SUBJECT: REVISED COMMERCE Report on HR49 Internet Tax

Nondiscrimination Act

RESPONSE TO

LEGISLATIVE REFERRAL

MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Irene Kho Phone: 395-5858 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT DRAFT DRAFT

The Honorable Christopher Cox
United States House of Representatives
2402 Russell House Office Building
Washington, DC 20515

Dear Representative Cox:

I want to commend you for your laudable efforts to extend the moratorium on Internet access and discriminatory taxes on electronic commerce through H.R. 49, the "Internet Tax Nondiscrimination Act."

The Internet is an innovative force that opens vast potential economic and social benefits of e-commerce and enables such applications as distance learning, telemedicine, e-business, e-government and precision farming. The next-generation, broadband Internet offers even greater impact, and this Administration is making aggressive deployment of broadband networks a priority. In this regard, government must not slow the roll-out or usage of Internet services by establishing administrative barriers or imposing additional taxation. As the President stated at the Waco Economic Forum in 2002, "If you want something to be used more, you don't tax it."

I encourage Congress to expeditiously pass legislation to extend the moratorium before it expires on November 1 of this year. Thank you again for your outstanding leadership on this important issue. If you should have any further questions or concerns, please feel free to contact me at (202) 482-2112, or Brenda Becker, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,

Donald L. Evans

From: PRA 6
To: <Lefkowitz, Jay P.>;<Conda, Cesar>;<Kavanaugh, Brett M.>
Sent: 4/23/2003 3:53:20 PM
Subject: from mike horowitz re kyl-cornyn
Attachments: ISCRAAFeeRegulation.pdf

**MEMORANDUM
VIA FAX AND EMAIL**

TO: Jay Lefkowitz
Cesar Conda
Brett Kavanaugh
FROM: Michael Horowitz
DATE: April 23, 2003
RE: "Wage Regulation" arguments against Kyl-Cornyn

In addition to material previously sent, I'm attaching the memo prepared today by Joe Matal re the so-called "wage regulation" argument that might be used against Kyl-Cornyn. (Pages 8-10 of the Kyl floor statement address the same issue in further detail; the attachment to the e-mail version of this memo includes that excerpt.)

To give context to the Matal memo, and to make absolutely clear that Kyl-Cornyn is not a fee cap bill, consider the following hourly claims that have been made by the tobacco lawyers, and the fees they would be eligible to receive under the bill on the reasonable assumption of a court-authorized \$400 per hour fee and 5x multiplier:

- Castano group lawyers: 400,000 hours - \$800 million
- NY lawyers: 48,000 hours - \$96 million
- Texas lawyers: 36,000 hours - \$72 million
- Illinois and Ohio lawyers: 15,000-20,000 hours - \$30 million
- Michigan lawyers: 20,000 hours - \$40 million
- Wisconsin lawyers: 26,500 hours - \$53 million
- California lawyers: 128,000 hours - \$256 million

As can be seen, fees authorized under Kyl-Cornyn, even divided among lawyers and across the years of litigation, are well within current CEO compensation.

But entirely aside from the size of legitimate fees under Kyl-Cornyn, please examine Joe Matal's superb memo, compelling in making clear that the bill merely creates a means of enforcing existing law - one that, in recognition of the fiduciary character of the attorney-client relationship, currently requires judicial regulation/supervision/ review of all attorneys' fees in all states.

ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

2. Because lawyers are fiduciaries, courts have *explicitly rejected* analogies between attorneys fee agreements and other business contracts.

Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation. (See also Senator Kyl's speech introducing ISCRAA, attached.)

According to the courts:

- “We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The

profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”¹

- “*There is but little analogy between the elements that control the determination of a lawyer’s fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney’s fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.*”²
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term in every contract for attorney’s fees.*”³

¹*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added). *See also Vaughn v. King*, 975 F.Supp. 1147 (N.D.Ind.1997) (“there are legal rules that limit the ability of a lawyer and her client to contract freely. Under Indiana law, an attorney is entitled only to reasonable fees regardless of the existence of a contract between her and her client.”) (citing *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995)).

²*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). *See also Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

³*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). *See also* G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) (“A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client”).

3. The model rules, and the ethics rules of all 50 States, *already* require attorneys to charge only reasonable fees.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer’s fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”⁴ (Emphasis added.)

4. Courts *already* review attorneys fees for reasonableness.

According to the courts:

- “Courts have broad authority to refuse to enforce contingent fee arrangements that award excessive fees. A fee can be unreasonable and subject to reduction without being so ‘clearly excessive’ as to justify a finding of breach of ethical rules.”⁵
- “[R]egardless of how a fee is characterized[,] each fee agreement must be carefully examined on its own facts for reasonableness.”⁶
- “[F]ew propositions are better established than that our courts do retain power of supervision to consider, notwithstanding the agreement, a client’s challenge thereto as unreasonable, unconscionable, exorbitant or for any reason that would move a court of equity to modify it or set it aside.”⁷
- “Despite attorney fee contracts[,] courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law.”⁸

⁴Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

⁵*Green v. Nevers*, 111 F.3d 1295, 1302 (6th Cir. 1997) (citing *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97, 100 (3rd Cir.1985)).

⁶*In the Matter of Connelly*, 55 P.3d 756, 761 (Ariz. 2002).

⁷*Golden v. Guaranty Acceptance Capital Corp.*, 807 F.Supp. 1161, 1164 (S.D.N.Y. 1992) (citations omitted).

⁸*Souhlas v. Orlando*, 629 So.2d 513, 515 (La. App. 1993).

- “Under a court’s general supervisory power over attorneys as officers of the court, attorney fee contracts are subject to scrutiny for the reasonableness of their terms.”⁹
- “[A]lthough parties are permitted to contract with respect to attorney fees, attorney fees are subject to review and control by the courts. Moreover, the reasonableness of an attorney fee award is always subject to court scrutiny.”¹⁰
- “As a matter of public policy, courts pay particular attention to fee arrangements between attorneys and their clients[,] and the reasonableness of attorney’s fees is always subject to court scrutiny. An attorney has the burden of showing that a fee contract is fair, reasonable, and fully known and understood by the client.”¹¹

⁹*Law Offices of J.E. Losavio, Jr. v. Law Firm of Michael W. McDivitt, P.C.*, 865 P.2d 934, 936 (Colo. App. 1993).

¹⁰*Succession of Abdalla*, 764 So.2d 362, 367 (La. App. 2000).

¹¹*Bizar & Martin v. U.S. Ice Cream Corp.*, 644 N.Y.S.2d 753, 754 (Sup.Ct. 1996) (citing cases).

[From Senator Kyl’s speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys’ rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

¹²*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). See also Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

¹³Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

¹⁴*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

¹⁵*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

¹⁶Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract.* The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

¹⁷*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

¹⁸*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

²⁰*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

From: Lefkowitz, Jay P.
To: <Kavanaugh, Brett M.>
Sent: 4/23/2003 4:01:31 PM
Subject: Fw: from mike horowitz re kyl-cornyn
Attachments: ISCRAAFeeRegulation.pdf

Can you weigh in on the retroactivity issue?

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

From: **PRA 6**
To: Lefkowitz, Jay P.; Conda, Cesar; Kavanaugh, Brett M.

Sent: Wed Apr 23 15:53:20 2003
Subject: from mike horowitz re kyl-cornyn

MEMORANDUM
VIA FAX AND EMAIL

TO: Jay Lefkowitz
Cesar Conda
Brett Kavanaugh
FROM: Michael Horowitz
DATE: April 23, 2003
RE: "Wage Regulation" arguments against Kyl-Cornyn

In addition to material previously sent, I'm attaching the memo prepared today by Joe Matal re the so-called "wage regulation" argument that might be used against Kyl-Cornyn. (Pages 8-10 of the Kyl floor statement address the same issue in further detail; the attachment to the e-mail version of this memo includes that excerpt.)

To give context to the Matal memo, and to make absolutely clear that Kyl-Cornyn is not a fee cap bill, consider the following hourly claims that have been made by the tobacco lawyers, and the fees they would be eligible to receive under the bill on the reasonable assumption of a court-authorized \$400 per hour fee and 5x multiplier:

- Castano group lawyers: 400,000 hours - \$800 million
- NY lawyers: 48,000 hours - \$96 million
- Texas lawyers: 36,000 hours - \$72 million
- Illinois and Ohio lawyers: 15,000-20,000 hours - \$30 million
- Michigan lawyers: 20,000 hours - \$40 million
- Wisconsin lawyers: 26,500 hours - \$53 million
- California lawyers: 128,000 hours - \$256 million

As can be seen, fees authorized under Kyl-Cornyn, even divided among lawyers and across the years of litigation, are well within current CEO compensation.

But entirely aside from the size of legitimate fees under Kyl-Cornyn, please examine Joe Matal's superb memo, compelling in making clear that the bill merely creates a means of enforcing existing law - one that, in recognition of the fiduciary character of the attorney-client relationship, currently requires judicial regulation/supervision/ review of all attorneys' fees in all states.

ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

2. Because lawyers are fiduciaries, courts have *explicitly rejected* analogies between attorneys fee agreements and other business contracts.

Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation. (See also Senator Kyl's speech introducing ISCRAA, attached.)

According to the courts:

- “We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The

profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”¹

- “*There is but little analogy between the elements that control the determination of a lawyer’s fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney’s fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.*”²
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term in every contract for attorney’s fees.*”³

¹*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added). See also *Vaughn v. King*, 975 F.Supp. 1147 (N.D.Ind.1997) (“there are legal rules that limit the ability of a lawyer and her client to contract freely. Under Indiana law, an attorney is entitled only to reasonable fees regardless of the existence of a contract between her and her client.”) (citing *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995)).

²*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

³*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) (“A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client”).

3. The model rules, and the ethics rules of all 50 States, *already* require attorneys to charge only reasonable fees.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer’s fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”⁴ (Emphasis added.)

4. Courts *already* review attorneys fees for reasonableness.

According to the courts:

- “Courts have broad authority to refuse to enforce contingent fee arrangements that award excessive fees. A fee can be unreasonable and subject to reduction without being so ‘clearly excessive’ as to justify a finding of breach of ethical rules.”⁵
- “[R]egardless of how a fee is characterized[,] each fee agreement must be carefully examined on its own facts for reasonableness.”⁶
- “[F]ew propositions are better established than that our courts do retain power of supervision to consider, notwithstanding the agreement, a client’s challenge thereto as unreasonable, unconscionable, exorbitant or for any reason that would move a court of equity to modify it or set it aside.”⁷
- “Despite attorney fee contracts[,] courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law.”⁸

⁴Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

⁵*Green v. Nevers*, 111 F.3d 1295, 1302 (6th Cir. 1997) (citing *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97, 100 (3rd Cir.1985)).

⁶*In the Matter of Connelly*, 55 P.3d 756, 761 (Ariz. 2002).

⁷*Golden v. Guaranty Acceptance Capital Corp.*, 807 F.Supp. 1161, 1164 (S.D.N.Y. 1992) (citations omitted).

⁸*Souhlas v. Orlando*, 629 So.2d 513, 515 (La. App. 1993).

- “Under a court’s general supervisory power over attorneys as officers of the court, attorney fee contracts are subject to scrutiny for the reasonableness of their terms.”⁹
- “[A]lthough parties are permitted to contract with respect to attorney fees, attorney fees are subject to review and control by the courts. Moreover, the reasonableness of an attorney fee award is always subject to court scrutiny.”¹⁰
- “As a matter of public policy, courts pay particular attention to fee arrangements between attorneys and their clients[,] and the reasonableness of attorney’s fees is always subject to court scrutiny. An attorney has the burden of showing that a fee contract is fair, reasonable, and fully known and understood by the client.”¹¹

⁹*Law Offices of J.E. Losavio, Jr. v. Law Firm of Michael W. McDivitt, P.C.*, 865 P.2d 934, 936 (Colo. App. 1993).

¹⁰*Succession of Abdalla*, 764 So.2d 362, 367 (La. App. 2000).

¹¹*Bizar & Martin v. U.S. Ice Cream Corp.*, 644 N.Y.S.2d 753, 754 (Sup.Ct. 1996) (citing cases).

[From Senator Kyl’s speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys’ rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

¹²*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). See also Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

¹³Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

¹⁴*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

¹⁵*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

¹⁶Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract.* The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer’s public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

¹⁷*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

¹⁸*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, ETHICS IN THE PRACTICE OF LAW 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

²⁰*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

From: Kavanaugh, Brett M.
To: <Brosnahan, Jennifer R.>
CC: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 4/23/2003 5:09:34 PM
Subject: Re: D. S.C. vacancy

We and our press office do not respond before nomination, but the Senators often put out press releases well in advance of actual nomination.

Jennifer R. Brosnahan

04/23/2003 05:04:26 PM

Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange@EOP, David G. Leitch/WHO/EOP@Exchange@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: D. S.C. vacancy

FYI, Senator Graham's Chief Counsel called to let us know the Senator's office has heard from a South Carolina reporter named Lee Bandy (sp?) seeking comment on rumors about who is going to be nominated for the District Court seat in SC. He wanted us to know that we may get a call, too. He said the Senator's staff will decline to comment but that the Senator may choose to do otherwise.

For my info, what is the appropriate response to such press calls? Is there someone to refer them to, or do we just decline to comment?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>
CC: david g. leitch/who/eop@exchange@eop [WHO] <david g. leitch>;alberto r. gonzales/who/eop@exchange@eop [WHO] <alberto r. gonzales>
Sent: 4/23/2003 1:09:52 PM
Subject: : Re: D. S.C. vacancy

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-APR-2003 17:09:52.00
SUBJECT: : Re: D. S.C. vacancy
TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: david g. leitch (CN=david g. leitch/OU=who/O=eop@exchange@eop [WHO])
READ: UNKNOWN
CC: alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@exchange@eop [WHO])
READ: UNKNOWN
End Original ARMS Header

We and our press office do not respond before nomination, but the Senators often put out press releases well in advance of actual nomination.

Jennifer R. Brosnahan
04/23/2003 05:04:26 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange@EOP, David G. Leitch/WHO/EOP@Exchange@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: D. S.C. vacancy

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For my info, what is the appropriate response to such press calls? Is there someone to refer them to, or do we just decline to comment?

From: Nelson, Carolyn
To: <Addington, David S.>;<Bartolomucci, H. Christopher>;<Bellinger, John B.>;<Ullyot, Theodore W.>;<Brilliant, Hana F.>;<Bumatay, Patrick J.>;<Carroll, James W.>;<Everson, Nanette>;<Leitch, David G.>;<Francisco, Noel J.>;<Jucas, Tracy>;<Kavanaugh, Brett M.>;<McNally, Edward>;<Montiel, Charlotte L.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>;<Brosnahan, Jennifer R.>
Sent: 4/24/2003 9:06:45 AM
Subject: Judge's Schedule

The Judge will be out of the office tomorrow and will not be in over the weekend. If you have issues to discuss with him before his departure this evening, please let me know.

Thanks!
Carrie

From: Sampson, Kyle
To: <Gonzales, Alberto R.>;<Leitch, David G.>
CC: <Kavanaugh, Brett M.>
Sent: 4/24/2003 1:53:42 PM
Subject: Stop Sutton! Grassroots Lobbying on April 28-29

fyi

----- Forwarded by Kyle Sampson/WHO/EOP on 04/24/2003 01:53 PM -----

Troy Justesen

04/24/2003 01:51:04 PM

Record Type: Record

To: Stephen M. Lineberry/WHO/EOP@EOP, Kyle Sampson/WHO/EOP@EOP

cc:

Subject: Stop Sutton! Grassroots Lobbying on April 28-29

FYI

----- Forwarded by Troy Justesen/OPD/EOP on 04/24/2003 01:50 PM -----

Doug Huntt

04/24/2003 01:46:50 PM

Record Type: Record

To: Troy Justesen/OPD/EOP@EOP

cc:

Subject: Stop Sutton! Grassroots Lobbying on April 28-29

>Delivered-To: PRA 6

>Date: Thu, 24 Apr 2003 06:35:47 -0400

>From: Justice For All Moderator

>Subject: Stop Sutton! Grassroots Lobbying on April 28-29

>Sender: owner-justice@jfanow.org

>To: justice@jfanow.org

>Mail-followup-to: justice@jfanow.org

>Organization: Justice For All E-Mail Network

>Organization: Justice For All Email Network

>X_Mailing_List_Server: Majordomo 1.94.4

>

>"Stop Sutton! Grassroots Lobbying on April 28-29"

>

>Make an Impact! Come to DC, make a phone call, write a

>letter, or send an email to tell the Senate about the

>importance of the ADA and the threat posed by judicial

>nominee Jeffrey Sutton.

>

>Here's what's going on, as planned by a coalition of

>disability and civil rights organizations:

>

>SCHEDULE OF EVENTS (all times Eastern):

>

>Monday, April 28

>

> 9-11 AM -- Visits, phone calls to Senate Offices

>

> 11 AM -- Coalition Event Opposing Sutton with Sen. Tom

> Harkin, Pat Garrett, Civil Rights leaders,

> etc. Dirksen Senate Office Building, Rm 628

>

> 1 PM -- Senator Tom Harkin resumes Senate debate on

> Sutton

>

> 1 PM -- Ongoing: Visits to Senate Offices, visibility

> in Senate Gallery and Reception Area, etc.

>

>Tuesday, April 29

>

> 8-10 AM -- Visits, phone calls to Senate Offices

>

> 10-11 AM -- Kick-Off Event with Sen. Tom Harkin,

> Pat Garrett, disability and civil

> rights leaders: US Capitol, Mansfield

> Room, 2nd Floor, S 207

>

> 12:30 PM -- Hallway Presence: Democratic Caucus,

> LBJ Room, 2nd Floor, S 211

>

> 12:30 PM -- Hallway Presence: Republican Caucus,

> Mansfield Room, 2nd Floor, S 207

>

> (After Caucus meetings: Hallway Presence then proceed

> to Senate Reception Area and Senate Gallery.)

>

> 2 PM -- Senate Vote expected!

>

>Call, FAX, email, and visit your U.S. Senators TODAY!

>

># # #

>

>=====

>

>NOTE: Some Internet Providers (including AOL, Earthlink and

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> subscribe justice

> unsubscribe justice

>

>

>

Douglas C. Hunt, Ph.D.

Executive Director

Assistive Technology of Ohio

614-292-2426

fax: 614-292-5866

From: Leitch, David G.
To: <McClellan, Scott>
CC: <Kavanaugh, Brett M.>
Sent: 4/24/2003 4:19:20 PM
Subject: RE:

I wouldn't necessarily tell them this, but my recollection is that DOJ advised us they did not intend to file and we concurred. Brett, I recall you being involved in the conversation; is that your recollection?

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

From: McClellan, Scott
Sent: Thursday, April 24, 2003 4:11 PM
To: Leitch, David G.
Subject: FW:

David -- ari forwarded this to me. Newsweek is also asking if there was any discussion about the administration filing a brief in this case. Did the justice department have any discussions with the white house about consideration of filing a brief? I assume no from your answer below.

Please advise.

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

From: Leitch, David G.
Sent: Thursday, April 24, 2003 6:11 AM
To: Fleischer, Lawrence A.
Cc: Gonzales, Alberto R.
Subject:

Saw you were asked why POTUS said something on Michigan case and not on sodomy case. One answer to consider is that there are federal programs that could be implicated one way or the other by the Michigan case, but there's not a federal law prohibiting sodomy. Our interests are more directly implicated in Michigan case.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>
Sent: 4/24/2003 12:34:49 PM
Subject: : Re: Fw: from mike horowitz re kyl-cornyn
Attachments: P_6BWVF003_WHO.TXT_1

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 24-APR-2003 16:34:49.00
SUBJECT: : Re: Fw: from mike horowitz re kyl-cornyn
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ: UNKNOWN
End Original ARMS Header

will do when we discuss tomorrow

From: Jay P. Lefkowitz/OPD/EOP@Exchange on 04/23/2003 04:01:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Fw: from mike horowitz re kyl-cornyn

Can you weigh in on the retroactivity issue?

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

From: PRA 6
To: Lefkowitz, Jay P. <Jay_P._Lefkowitz@opd.eop.gov>; Conda, Cesar <cconda@OVP.eop.gov>; Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
Sent: Wed Apr 23 15:53:20 2003
Subject: from mike horowitz re kyl-cornyn

MEMORANDUM
VIA FAX AND EMAIL

TO: Jay Lefkowitz
Cesar Conda
Brett Kavanaugh
FROM: Michael Horowitz
DATE: April 23, 2003
RE: ; ; ; ; ; "Wage Regulation" arguments against Kyl-Cornyn

;;;; In addition to material previously sent, I'm attaching the memo prepared today by Joe Matal re the so-called "wage regulation" argument that might be used against Kyl-Cornyn.; (Pages 8-10 of the Kyl floor statement address the same issue in further detail; the attachment to the e-mail version of this memo includes that excerpt.)

;;;; To give context to the Matal memo, and to make absolutely clear that Kyl-Cornyn is not a fee cap bill, consider the following hourly claims that have been made by the tobacco lawyers, and the fees they would be eligible to receive under the bill on the reasonable assumption of a court-authorized \$400 per hour fee and 5x multiplier:

ú Castano group lawyers:; 400,000 hours - \$800 million
ú NY lawyers: 48,000 hours - \$96 million
ú Texas lawyers: 36,000 hours - \$72 million

REV_00234614

- ú Illinois and Ohio lawyers: 15,000-20,000 hours - \$30 million
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- ú Wisconsin lawyers: 26,500 hours - \$53 million
- ú California lawyers: 128,000 hours - \$256 million

;;;; As can be seen, fees authorized under Kyl-Cornyn, even divided among lawyers and across the years of litigation, are well within current CEO compensation.

But entirely aside from the size of legitimate fees under Kyl-Cornyn, please examine Joe Matal's superb memo, compelling in making clear that the bill merely creates a means of enforcing existing law - one that, in recognition of the fiduciary character of the attorney-client relationship, currently requires judicial regulation/supervision/ review of all attorneys' fees in all states.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6BWVF003_WHO.TXT_1>

ISCRAA ISSUES: FREEDOM OF CONTRACT/ WAGE REGULATION

Question: Doesn't ISCRAA set a precedent for having the I.R.S. regulate professionals' salaries and incomes? Doesn't this violate freedom of contract?

Short answer: ISCRAA requires courts, not the I.R.S., to continue doing what they already do: to review attorneys fees for reasonableness. The courts have made very clear that attorneys fee agreements are not analogous to ordinary business contracts – attorneys are fiduciaries, who already are required to charge only reasonable fees by the ethics rules of all 50 States. ISCRAA does not change these substantive requirements; it merely makes them enforceable in an area where there has been gross abuse – the mass tort case.

1. Courts, not the I.R.S., apply the ISCRAA fee formula.

Unlike earlier versions of proposals similar to ISCRAA, the Kyl-Cornyn bill would require *courts*, not the I.R.S., to apply a fee formula in mass-tort cases. S. 887 requires the court to hire a legal auditing firm to review the attorney's billing records in order to determine a baseline lodestar fee. (See ISCRAA at pp.12-14, §4959(h).) The court then applies ISCRAA's multiplier formula to this lodestar. (See ISCRAA at pp.3-7, §4959(c).) ISCRAA's fee formula is merely a codification of a liberal interpretation of the courts' own practices when awarding reasonable fees in mass-tort cases. And so long as the court obtains and relies on the report of the legal auditing firm, and applies the ISCRAA fee formula, that fee is *presumed correct* for I.R.S. purposes. (See ISCRAA at p.7, §4959(c)(1)(D).) I.R.S. enforcement is merely a fail-safe mechanism under ISCRAA, designed to ensure that *the court* sets the fee in accordance with the fee formula. It is *the court* that has discretion to set the lodestar (the baseline reasonable hours) and to apply an appropriate multiplier; so long as the court does so, the I.R.S. plays no substantive role under ISCRAA.

2. Because lawyers are fiduciaries, courts have *explicitly rejected* analogies between attorneys fee agreements and other business contracts.

Attorneys long have been acknowledged to be fiduciaries who occupy a position of trust in their dealings with their clients. One obligation that flows from this status, universally recognized in the ethics rules of all 50 States, is the attorney's obligation not to charge an unreasonable or excessive fee. Courts have made very clear that attorneys are not equivalent to ordinary businessmen, who can engage in hard bargaining with their customers. Such behavior cannot be reconciled with an attorney's role as an officer of the court. The courts also have made clear that the requirement that a fee be reasonable will be read into every attorney fee contract, and will supercede terms that are inconsistent with this obligation. (See also Senator Kyl's speech introducing ISCRAA, attached.)

According to the courts:

- “We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract*. The

profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client.”¹

- “*There is but little analogy between the elements that control the determination of a lawyer’s fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney’s fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.*”²
- “[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy, *reasonableness is an implied term in every contract for attorney’s fees.*”³

¹*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added). *See also Vaughn v. King*, 975 F.Supp. 1147 (N.D.Ind.1997) (“there are legal rules that limit the ability of a lawyer and her client to contract freely. Under Indiana law, an attorney is entitled only to reasonable fees regardless of the existence of a contract between her and her client.”) (citing *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995)).

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3. The model rules, and the ethics rules of all 50 States, *already* require attorneys to charge only reasonable fees.

ISCRAA does not change the *substantive* law governing attorneys fee awards. Rather, it simply enforces established, *pre-existing* fiduciary standards that already bind every attorney in every state. The MODEL RULES OF PROFESSIONAL CONDUCT, at Rule 1.5(a), contain a clear, direct command that “*a lawyer’s fee shall be reasonable.*” Similarly, the MODEL CODE OF PROFESSIONAL RESPONSIBILITY, at DR 2-106, directs that an attorney “*shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.*” The Model Code further explains that an attorney’s fee is “clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Finally, as academic commentators point out, in addition to the model rules, “*all state rules of professional conduct prohibit attorneys from charging excessive fees.*”⁴ (Emphasis added.)

4. Courts *already* review attorneys fees for reasonableness.

According to the courts:

- “Courts have broad authority to refuse to enforce contingent fee arrangements that award excessive fees. A fee can be unreasonable and subject to reduction without being so ‘clearly excessive’ as to justify a finding of breach of ethical rules.”⁵
- “[R]egardless of how a fee is characterized[,] each fee agreement must be carefully examined on its own facts for reasonableness.”⁶
- “[F]ew propositions are better established than that our courts do retain power of supervision to consider, notwithstanding the agreement, a client’s challenge thereto as unreasonable, unconscionable, exorbitant or for any reason that would move a court of equity to modify it or set it aside.”⁷
- “Despite attorney fee contracts[,] courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law.”⁸

⁴Vonde M. Smith Hitch, *Ethics and the Reasonableness of Contingency Fees: A Survey of State and Federal Law Addressing the Reasonableness of Costs as They Relate to Contingency Fee Agreements*, 29 LAND & WATER L. REV. 215, 218 n.22 (1994).

⁵*Green v. Nevers*, 111 F.3d 1295, 1302 (6th Cir. 1997) (citing *McKenzie Const., Inc. v. Maynard*, 758 F.2d 97, 100 (3rd Cir.1985)).

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- “Under a court’s general supervisory power over attorneys as officers of the court, attorney fee contracts are subject to scrutiny for the reasonableness of their terms.”⁹
- “[A]lthough parties are permitted to contract with respect to attorney fees, attorney fees are subject to review and control by the courts. Moreover, the reasonableness of an attorney fee award is always subject to court scrutiny.”¹⁰
- “As a matter of public policy, courts pay particular attention to fee arrangements between attorneys and their clients[,] and the reasonableness of attorney’s fees is always subject to court scrutiny. An attorney has the burden of showing that a fee contract is fair, reasonable, and fully known and understood by the client.”¹¹

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¹¹*Bizar & Martin v. U.S. Ice Cream Corp.*, 644 N.Y.S.2d 753, 754 (Sup.Ct. 1996) (citing cases).

[From Senator Kyl’s speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys’ rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

¹²*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). *See also* Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

¹³Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

¹⁴*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

¹⁵*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

¹⁶Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract.* The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

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reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

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²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>
Sent: 4/24/2003 12:34:49 PM
Subject: : Re: Fw: from mike horowitz re kyl-cornyn
Attachments: P_6BWVF003_OPD.TXT_1

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CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 24-APR-2003 16:34:49.00
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¹¹*Bizar & Martin v. U.S. Ice Cream Corp.*, 644 N.Y.S.2d 753, 754 (Sup.Ct. 1996) (citing cases).

[From Senator Kyl’s speech introducing ISCRAA in the Senate:]

Another issue that I will address today is the argument – occasionally raised in opposition to proposals to limit attorneys fees – that such restrictions violate attorneys’ rights to freedom of contract.

The first principle to keep in mind when questions of attorneys fees are considered is that “a fiduciary relationship exists as a matter of law between attorney and client.”¹² (Illinois Supreme Court.) As one academic commentator has noted:

“[I]t is uncontroverted today that a lawyer is a fiduciary for, and therefore has a duty to deal fairly with, the client. * * * * Lawyers are fiduciaries because retention of an attorney to exercise ‘professional judgement’ on the client’s behalf necessarily involves reposing trust and confidence in the attorney. Exercising professional judgment requires that the lawyer advance the client’s interests as the client would define them if the client were well-informed.”¹³

The lawyer’s status as fiduciary places limits on his dealings with his client – including with regard to his fee. “An attorney’s freedom to contract with a client is subject to the constraints of ethical considerations.”¹⁴ (New Jersey Supreme Court.) “In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the general law of contracts.”¹⁵ (Massachusetts Appeals Court.) “As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. * * * * While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lawyer contexts.”¹⁶ (Joseph M. Perillo, law professor.)

The unique status of attorney fee contracts has led courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

¹²*Gaffney v. Harmon*, 90 N.E.2d 785, 788 (Ill. 1950). See also Charles Wolfram, MODERN LEGAL ETHICS § 4.1, at 146 (1986) (“the designation of ‘fiduciary,’ * * * surely attaches to the [lawyer-client] relationship”).

¹³Lester Brickman, “Contingent Fees Without Contingencies: Hamlet Without the Prince of Denmark?,” 37 U.C.L.A. L. REV. 29, 45-46 (1989).

¹⁴*Cohen v. Radio-Electronics Officers Union, Dist. 3*, 679 A.2d 1188, 1195-96 (N.J. 1996).

¹⁵*Garnick & Scudder, P.C. v. Dolinsky*, 701 N.E.2d 357, 358 (Mass. App. 1998).

¹⁶Joseph M. Perillo, *The Law of Lawyers’ Contracts is Different*, 67 FORDHAM L. REV. 443, 445 (1998).

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, *a fee agreement between lawyer and client is not an ordinary business contract.* The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is ‘a branch of the administration of justice and not a mere money getting trade.’ ABA CANONS OF PROFESSIONAL ETHICS, Canon 12.”¹⁷

The same principle has been identified by the Florida Supreme Court:

*“There is but little analogy between the elements that control the determination of a lawyer's fee and those which determine the compensation of skilled craftsmen in other fields. Lawyers are officers of the court. The court is an instrument of society for the administration of justice. Justice should be administered economically, efficiently, and expeditiously. The attorney's fee is, therefore, a very important factor in the administration of justice, and if it is not determined with proper relation to that fact it results in a species of social malpractice that undermines the confidence of the public in the bench and bar. It does more than that. It brings the court into disrepute and destroys its power to perform adequately the function of its creation.”*¹⁸

In order to protect the lawyer's public role and to enforce his fiduciary obligations, the courts read a reasonableness requirement into every attorney fee contract. “[T]he requirement that a fee be reasonable in amount overrides the terms of the contract, so that an ‘unreasonable’ fee cannot be recovered, even if agreed to by the client.” G. Hazard, Jr. & W. Hodes, *THE LAW OF LAWYERING* 1. 5:205 *Fee Litigation and Arbitration* 120 (1998 Supp.).

As one court has stated,

“[A]n attorney is only entitled to fees which are fair and just and which adequately compensate him for his services. This is true *no matter what fee is specified in the contract*, because an attorney, as a fiduciary, cannot bind his client to pay a greater compensation for his services than the attorney would have the right to demand if no contract had been made. Therefore, as a matter of public policy,

¹⁷*In the Matter of Swartz*, 686 P.2d 1236, 1243 (Ariz. 1984) (emphasis added).

¹⁸*Kuhnlein v. Department of Revenue*, 662 So.2d 309, 313 (Fla. 1995) (emphasis added). See also *Gruber & Coabella, P.A. v. Erickson*, 784 A.2d 758, 760 (N.J.Sup.Ct. 2001) (“Attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not businessmen entitled to charge what the traffic will bear”).

reasonableness is an implied term in every contract for attorney's fees."¹⁹

Finally, when assessing whether a fee is reasonable, courts ask whether the fee is proportional to the services that were actually provided. "Fees must be reasonably proportional to the services rendered and the situation presented."²⁰ (Arizona Supreme Court.) "If an attorney's fee is grossly disproportionate to the services rendered and is charged to a client who lacks full information about all of the relevant circumstances, the fee is 'clearly excessive' * * * even though the client consented to such fee."²¹ (West Virginia Supreme Court.)

Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney's dealings with his client always must reflect that the client comes to him in a position of trust – and therefore, the attorney's fee always must be reasonable. ISCRAA will help ensure that this important obligation is respected.

¹⁹*Missouri ex rel. Chase Resorts, Inc. v. Campbell*, 913 S.W.2d 832 (Mo. App. 1996) (emphasis added). See also G. Hazard, *ETHICS IN THE PRACTICE OF LAW* 99 (1978) ("A contract for a [legal] fee is, under general principles of law, a contract between a fiduciary and his protected dependent * * * [and] it is unenforceable unless its terms are fair to the client"); *Trinkle v. Leeney*, 650 N.E.2d 749, 754 (Ind.Ct.App.1995) ("Under no circumstances is a lawyer entitled to more than the reasonable value of his or her services. [Moreover,] [r]easonable fees are not necessarily determined by the terms of the attorney-client contract").

²⁰*In the Matter of Struthers*, 877 P.2d 789, 796 (Ariz. 1994).

²¹*Committee on Legal Ethics v. Tatterson*, 352 S.E.2d 107, 113 (W. Va. 1986).

From: Adam.Ciongoli@usdoj.gov
To: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Paul.D.Clement@usdoj.gov <Paul.D.Clement@usdoj.gov>; David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Dan.Bryant@usdoj.gov <Dan.Bryant@usdoj.gov>; Gregory.G.Garre@usdoj.gov <Gregory.G.Garre@usdoj.gov>; Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>
Sent: 4/25/2003 7:01:13 AM
Subject: : RE: Breaking news: O'Connor to retire!

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: "Adam.Ciongoli@usdoj.gov" <Adam.Ciongoli@usdoj.gov> ("Adam.Ciongoli@usdoj.gov" <Adam.Ciongoli@usdoj.gov> [UNKNOWN])

CREATION DATE/TIME: 25-APR-2003 11:01:13.00

SUBJECT: : RE: Breaking news: O'Connor to retire!

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN

TO: "Paul.D.Clement@usdoj.gov" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Paul.D.Clement@usdoj.gov" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: "Dan.Bryant@usdoj.gov" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dan.Bryant@usdoj.gov" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

READ: UNKNOWN

TO: "Gregory.G.Garre@usdoj.gov" <Gregory.G.Garre@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Gregory.G.Garre@usdoj.gov" <Gregory.G.Garre@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

READ: UNKNOWN

TO: "Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Yes, thanks a lot. I just interrupted the AG in a meeting based on your email on my blackberry. He'll be very pleased to hear it was a joke.

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

From: Dinh, Viet

Sent: Friday, April 25, 2003 10:46 AM

To: 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Ciongoli, Adam; Clement, Paul D; Bryant, Dan

Subject: FW: Breaking news: O'Connor to retire!

Importance: High

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

From: Sales, Nathan

Sent: Friday, April 25, 2003 10:31 AM

To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L; Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP);

Chenoweth, Mark

Subject: Breaking news: O'Connor to retire!

Importance: High

REV_00234663

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

From: Dan.Bryant@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Paul.D.Clement@usdoj.gov <Paul.D.Clement@usdoj.gov>; Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>; Gregory.G.Garre@usdoj.gov <Gregory.G.Garre@usdoj.gov>; Adam.Ciongoli@usdoj.gov <Adam.Ciongoli@usdoj.gov>
Sent: 4/25/2003 7:44:17 AM
Subject: : RE: Breaking news: O'Connor to retire!

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dan.Bryant@usdoj.gov" <Dan.Bryant@usdoj.gov> ("Dan.Bryant@usdoj.gov" <Dan.Bryant@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:25-APR-2003 11:44:17.00
SUBJECT:: RE: Breaking news: O'Connor to retire!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Paul.D.Clement@usdoj.gov" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Paul.D.Clement@usdoj.gov" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Gregory.G.Garre@usdoj.gov" <Gregory.G.Garre@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Gregory.G.Garre@usdoj.gov" <Gregory.G.Garre@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
TO:"Adam.Ciongoli@usdoj.gov" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Adam.Ciongoli@usdoj.gov" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I was in the meeting with the AG that Adam interrupted: Adam's breathless manner and appearance (picture Paul Revere on a horse) was, in the words of the advertisement....priceless.

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

From: Ciongoli, Adam
Sent: Friday, April 25, 2003 10:59 AM
To: Dinh, Viet; 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Clement, Paul D; Bryant, Dan
Subject: RE: Breaking news: O'Connor to retire!

Yes, thanks a lot. I just interrupted the AG in a meeting based on your email on my blackberry. He'll be very pleased to hear it was a joke.

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

From: Dinh, Viet
Sent: Friday, April 25, 2003 10:46 AM
To: 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Ciongoli, Adam; Clement, Paul D; Bryant, Dan
Subject: FW: Breaking news: O'Connor to retire!
Importance: High

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

From: Sales, Nathan

REV_00234672

Sent: Friday, April 25, 2003 10:31 AM
To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L;
Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP);
Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

From: Kavanaugh, Brett M.
To: <Leitch, David G.>
Sent: 4/25/2003 9:41:07 AM
Subject: Hew was in lead up meetings. Larry could not come today. Hew agrees.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/25/2003 10:47:21 AM
Subject: FW: LRM JAB63 - - Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003
Attachments: Snow letter re HR205.doc

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

From: Brown, James A.
Sent: Friday, April 25, 2003 10:38 AM
To: justice.lm@usdoj.gov; dol-sohleg@dol.gov; epalm@epamail.epa.gov; Ceq Lrm; llr@do.treas.gov; Jacqueline.Sierodzinski@sba.gov
Cc: McMillin, Stephen S.; Rhinesmith, Alan B.; Lyon, Randolph M.; Dennis, Yvette M.; Rasetti, Lorenzo; Rostker, David; Hill, Jefferson B.; Noe, Paul R.; Vargas, Veronica; Graham, John; Perry, Philip J.; Schneider, Matthew J.; Wood, John F.; Joseffer, Daryl L.; Addington, David S.; Whgc Lrm; Blum, Mathew C.; Gerich, Michael D.; Arbuckle, Donald R.; Nec Lrm; Lobrano, Lauren C.; Jukes, James J.; Green, Richard E.
Subject: LRM JAB63 - - Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003

 - Snow letter re HR205.doc <>

LRM ID: JAB63

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Friday, April 25, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: **Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003**

DEADLINE: **10:00 A.M. Wednesday, April 30, 2003**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: If we do not hear from you by the deadline, we will assume that you have no objection to clearance of this letter.

DISTRIBUTION LIST

AGENCIES:

061-JUSTICE - Jamie E. Brown - (202) 514-2141
062-LABOR - Robert A. Shapiro - (202) 693-5500
033-Environmental Protection Agency - Edward Krenik - (202) 564-5200

REV_00234692

EOP:

Stephen S. McMillin
Alan B. Rhinesmith
Randolph M. Lyon
Yvette M. Dennis
Lorenzo Rasetti
David Rostker
Jefferson B. Hill
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Philip J. Perry
Matthew J. Schneider
John F. Wood
Daryl L. Joseffer
David S. Addington
WHGC LRM
Mathew C. Blum
Michael D. Gerich
Donald R. Arbuckle
NEC LRM
Lauren C. Lobrano
James J. Jukes

Richard E. Green **LRM ID: JAB63 SUBJECT: Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003**

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)

(Name)

(Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

The Honorable Olympia J. Snowe
Chair, Committee on Small Business
and Entrepreneurship
United States Senate
Washington, DC 20510

Dear Madam Chairman:

This letter is to express the concerns of the U.S. Small Business Administration (SBA) on H.R. 205, the National Small Business Regulatory Assistance Act of 2003. While SBA recognizes the need and importance of providing assistance to small businesses, we do not support these amendments to the Small Business Act.

H.R. 205 would establish a pilot program under which Small Business Development Centers (SBDCs) would provide regulatory compliance assistance to small business concerns. SBA recognizes the importance of providing assistance to small businesses to help them comply with regulatory issues and believes that SBDCs can continue to play a useful role in bringing small businesses together with subject matter experts in the regulatory agencies who can assist them with their particular problems. However, expecting SBDCs to provide such expert guidance themselves, on a broad range of Federal regulatory questions would be at best duplicate assistance provided by the regulatory agencies, and could result in the provisions of contradictory or erroneous guidance that would harm small businesses and expose the SBDCs to liability.

Thank you for the opportunity to express our concerns regarding these proposed amendments to the Small Business Act.

Sincerely,

Hector V. Barreto
Administrator

From: Kavanaugh, Brett M.
To: Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>
CC: <Leitch, David G.>;\\"gregory.g.garre@usdoj.gov\
<gregory.g.garre@usdoj.gov>;\\"adam.ciongoli@usdoj.gov\
<adam.ciongoli@usdoj.gov>;\\"paul.d.clement@usdoj.gov\
<paul.d.clement@usdoj.gov>;\\"dan.bryant@usdoj.gov\
<dan.bryant@usdoj.gov>;<Bartolomucci,
H. Christopher>
Sent: 4/25/2003 10:48:57 AM
Subject: Re: FW: Breaking news: O'Connor to retire!

very funny . . . my heart rate just went way up for a few seconds . . .

"Viet.Dinh@usdoj.gov"

04/25/2003 10:46:17 AM

Record Type: Record

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

cc:

Subject: FW: Breaking news: O'Connor to retire!

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

From: Sales, Nathan

Sent: Friday, April 25, 2003 10:31 AM

To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L; Joy, Sheila; Hall, William; Benedi, Lizette
D; Kesselman, Marc (OLP); Chenoweth, Mark

Subject: Breaking news: O'Connor to retire!

Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

Message Sent To:

David G. Leitch/WHO/EOP@EOP

"Gregory.G.Garre@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested)

REV_00234698

"Adam.Ciongoli@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested)

"Paul.D.Clement@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested)

"Dan.Bryant@usdoj.gov" (Receipt Notification Requested) (IPM Return Requested)

H. Christopher Bartolomucci/WHO/EOP@EOP

Brett M. Kavanaugh/WHO/EOP@EOP

From: Viet.Dinh@usdoj.gov
To: Viet.Dinh@usdoj.gov <Viet.Dinh@usdoj.gov>; Gregory.G.Garre@usdoj.gov
<Gregory.G.Garre@usdoj.gov>; Adam.Ciongoli@usdoj.gov
<Adam.Ciongoli@usdoj.gov>; Paul.D.Clement@usdoj.gov
<Paul.D.Clement@usdoj.gov>; Dan.Bryant@usdoj.gov
<Dan.Bryant@usdoj.gov>; Dan.Bryant@usdoj.gov <Leitch, David G.>; Dan.Bryant@usdoj.gov
<Kavanaugh, Brett M.>; Dan.Bryant@usdoj.gov <Bartolomucci, H. Christopher>
Sent: 4/25/2003 10:56:46 AM
Subject: Clarification: Sinead O'Connor is to retire!! Sorry if anyone had a heart attack

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

From: Dinh, Viet
Sent: Friday, April 25, 2003 10:46 AM
To: 'David_G_Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Ciongoli, Adam; Clement, Paul D; Bryant, Dan
Subject: FW: Breaking news: O'Connor to retire!
Importance: High

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

From: Sales, Nathan
Sent: Friday, April 25, 2003 10:31 AM
To: Dinh, Viet; Charnes, Adam; Benzowski, Brian A; Remington, Kristi L; Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP); Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

From: Bartolomucci, H. Christopher
To: viet.dinh@usdoj.gov <viet.dinh@usdoj.gov>; adam.ciongoli@usdoj.gov
<adam.ciongoli@usdoj.gov>; gregory.g.garre@usdoj.gov
<gregory.g.garre@usdoj.gov>; paul.d.clement@usdoj.gov
<paul.d.clement@usdoj.gov>; dan.bryant@usdoj.gov
<dan.bryant@usdoj.gov>; dan.bryant@usdoj.gov <Leitch, David G.>; dan.bryant@usdoj.gov
<Kavanaugh, Brett M.>
Sent: 4/25/2003 12:00:31 PM
Subject: MORE BREAKING NEWS; THOMAS TO RETIRE; I AM NOT MAKING THIS UP

Click on the link below

<http://www.inform.umd.edu/outlook/2000-05-16/thomas.html>

From: Michael Thielen <thielen@republicanlawyer.net>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/25/2003 10:14:13 AM
Subject: : [Fwd: RNLA Judicial Advocacy Panel Update #6]
Attachments: P_TNXWF003_WHO.TXT_1.txt

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Michael Thielen <thielen@republicanlawyer.net> (Michael Thielen
<thielen@republicanlawyer.net> [UNKNOWN])
CREATION DATE/TIME:25-APR-2003 14:14:13.00
SUBJECT:: [Fwd: RNLA Judicial Advocacy Panel Update #6]
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TNXWF003_WHO.TXT_1>

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<P class=MsoNormal style="MARGIN: 0in 0in 0pt">Senator Bob Graham (FL)<o:p></o:p>
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<P class=MsoNormal style="MARGIN: 0in 0in 0pt">Senator Biden (DE)<o:p></o:p>
<P class=MsoNormal style="MARGIN: 0in 0in 0pt">Senator Carper (DE)<o:p></o:p>
<P class=MsoNormal style="MARGIN: 0in 0in 0pt">Senator Pryor (AR, note: he was not in the Senate for Smith and Shedd votes)<o:p></o:p>
<P class=MsoNormal style="MARGIN: 0in 0in 0pt">Senator Conrad (ND)<o:p></o:p>
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<P class=MsoNormal style="MARGIN: 0in 0in 0pt">Remember these next two weeks are very important President Bush's Judicial Nominees. Expect more updates and action items in the next two weeks.<o:p></o:p>
<P class=MsoNormal style="MARGIN: 0in 0in 0pt"><SPAN style="FONT-SIZE:

12pt; mso-bidi-font-size: 10.0pt"><FONT
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New
Roman"> <o:p></o:p>
<P class
=MsoNormal style="MARGIN: 0in 0in 0pt"><SPAN style="FONT-SIZE:
12pt; mso-bidi-font-size: 10.0pt"><FONT
face="Times
New
Roman">Regards,<o:p></o:p>
<P cla
ss=MsoNormal style="MARGIN: 0in 0in 0pt"><SPAN style="FONT-SIZE:
12pt; mso-bidi-font-size: 10.0pt"><FONT
face="Times
New
Roman"> <o:p></o:p>
<SPAN
style="FONT-SIZE: 12pt; FONT-FAMILY: 'Times New Roman';
mso-bidi-font-size: 10.0pt; mso-fareast-font-family: 'Times New Roman';
mso-ansi-language: EN-US; mso-fareast-language: EN-US; mso-bidi-language:
AR-SA">--Michael Thielen
Executive
Director
RNLA
703-719-6335

</DIV><DIV> </DIV>

From: Viet.Dinh@usdoj.gov
To: Jamie.E.Brown@usdoj.gov <Jamie.E.Brown@usdoj.gov>; Brian.A.Benczkowski@usdoj.gov <Brian.A.Benczkowski@usdoj.gov>; Manuel_Miranda@frist.senate.gov <Manuel_Miranda@frist.senate.gov>; Manuel_Miranda@frist.senate.gov <Grubbs, Wendy J.>; Manuel_Miranda@frist.senate.gov <Kavanaugh, Brett M.>
CC: Heather.McNaught@usdoj.gov <Heather.McNaught@usdoj.gov>
Sent: 4/25/2003 2:26:51 PM
Subject: RE: Scheduler notification from Capitol Correspond

Unfortunately, Personal - Non-PR but please do not reschedule on my account. The Department will be well represented by Jamie and Brian.

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

From: Manuel_Miranda@frist.senate.gov
[mailto:Manuel_Miranda@frist.senate.gov]
Sent: Friday, April 25, 2003 2:23 PM
To: Brown, Jamie E (OLA); Benczkowski, Brian A; Dinh, Viet; Brett_M_Kavanaugh@who.eop.gov; wgrubbs@who.eop.gov
Subject: FW: Scheduler notification from Capitol Correspond
Importance: High

Regrettably, we need to move the Principals' meeting to Thursday as below. WHF and OGH are clear. Please advise.

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

From: Senator_frist@frist.senate.gov
[mailto:Senator_frist@frist.senate.gov]
Sent: Thursday, April 24, 2003 6:52 PM
To: Vogel, Alex (Frist); Bainwol, Mitch (Frist); Miranda, Manuel (Frist)
Subject: Scheduler notification from Capitol Correspond

SCHEDULING NOTIFICATION

Description: (tentative) Meeting GOP Judiciary Committee Members with Judge Albert Gonzales, WH Legal Counsel and Viet Dinh

Status: Approved

Start Date: 05/01/2003 Start Time: 04:45 pm

End Date: 05/01/2003 End Time: 05:30 pm

Location: S-230

Contact: many coordinating

From: Viet.Dinh@usdoj.gov
To: Adam.Charnes@usdoj.gov <Kavanaugh, Brett M.>;Adam.Charnes@usdoj.gov <Leitch, David G.>
CC: Adam.Charnes@usdoj.gov <Adam.Charnes@usdoj.gov>
Sent: 4/25/2003 2:37:46 PM
Subject: FW: 4th Cir.

copy of letter? thanks

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

From: Charnes, Adam
Sent: Friday, April 25, 2003 12:22 PM
To: Dinh, Viet; Remington, Kristi L; Benczkowski, Brian A
Subject: 4th Cir.

Did anyone know about the referenced Gonzales letter?
<http://newsobserver.com/news/story/2486882p-2311678c.html>

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 4/25/2003 3:37:12 PM
Subject: Kim R. Gibson/Federal District Court Nomination

James R. Cascio (Attorney)

Fike, Cascio & Boose

814-445-7948

Robert P. Ging (Attorney)

814-395-3661

Darryl G. Geary (Attorney)

Assistant District Attorney

814-443-3844

Pamela Tokar-Ickes, County Commissioner

814-445-1400

Jimmy Marker, County Commissioner

814-445-1400

Patricia A. Brant, Recorder of Deeds

814-445-1547

Bob R. Bastian, State Representative

814-443-4230

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 4/25/2003 7:14:02 PM
Subject: Suko list

Honorable Justin Quackenbush, Judge, Eastern District of Washington, (760) 776-5810

Honorable Fred Van Sickle, Chief Judge, Eastern District of Washington, (509) 353-3224

Chris Schlect, attorney, head of Northwest Horticultural Council, (509) 453-3193

Rich Relyea, attorney, Winston & Cashatt, Spokane, Washington, (509) 838-6131

David Savage, attorney, Pullman, Washington, (509) 332-3502

Jerry Talbott, attorney, Talbott, Simpson, Gibson & Davis, (509) 575-7501

From: Gonzales, Alberto R.
To: <Kavanaugh, Brett M.>
Sent: 4/27/2003 11:03:22 AM
Subject: Re: Status Report on noms

You are doing a great job. as we talk about the work of the Senate it seems to me that we should not hold them accountable for failing to confirm anyone who does not have an ABA rating.

From: fried@law.harvard.edu [NSC]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/27/2003 8:50:15 AM
Subject: : NYTimes.com Article: In Defense of a Judge

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: fried@law.harvard.edu (fried@law.harvard.edu [NSC])
CREATION DATE/TIME: 27-APR-2003 12:50:15.00
SUBJECT: NYTimes.com Article: In Defense of a Judge
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

This article from NYTimes.com
has been sent to you by fried@law.harvard.edu.

/----- advertisement -----\
|

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<http://www.starbucks.com/default.asp?ci=1015>
|

In Defense of a Judge

April 27, 2003

To the Editor:

Re "Another Unworthy Judicial Nominee" (editorial, some
editions, April 24):

Your editorial opposing the confirmation of Judge Carolyn
Kuhl - who served as my deputy from 1985 to 1986, when I
was solicitor general - omits any mention of the support
Judge Kuhl has received from more than 100 fellow judges,
bar leaders in California, plaintiff's lawyers and civil
rights lawyers. This is surely the best evidence of how she
would perform as a federal judge.

You characterize Judge Kuhl as "outside the ideological
mainstream" because, among other things, she joined my
brief calling Roe v. Wade an unwarranted extension of
constitutional doctrine. That was also the view then of
mainstream liberal scholars like Archibald Cox, John Ely
and Paul Freund.

You also state that Judge Kuhl wrote a brief "backing the
defendant in a sexual harassment case." On the contrary,
she signed my brief in the Vinson case urging the Supreme
Court for the first time to hold that sexual harassment was
indeed a violation of the Civil Rights Act's guarantee of
equal economic opportunity. We did go on to write that as
applied to the particular facts in that case, the employer
might not be liable under that important general principle.

It is ironic that the Senate Democrats have been willing to
confirm several men as conservative as Judge Kuhl but now
threaten to make a goal-line stand against two women and a

Hispanic.
? CHARLES FRIED
Cambridge, Mass., April 24, 2003

<http://www.nytimes.com/2003/04/27/opinion/L27FRIE.html?ex=1052462586&ei=1&en=1e2f682a01dd22fe>

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From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 4/28/2003 8:59:29 AM
Subject: FW: MESSAGE MEETING REMINDER

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

From: Ritacco, Krista L.

Sent: Monday, April 28, 2003 8:59 AM

To: Yunker, Jacob H.; Allgood, Lauren K.; Ball, Andrea G.; Barrales, Ruben S.; Bennett, Melissa S.; Besanceney, Brian R.; Buchan, Claire ; Burkhart, Shannon; Burks, Jonathan W.; Campbell, Anne E.; Christie, Ronald I.; Ciafardini, Andrew D.; Conde, Roberta L.; Cooper, Rory S.; DeFrancis, Suzy; Devenish, Nicolle; Douglas, Penny G.; Duffy, Trent D.; Ellison, Kimberly; Eskew, Tucker A.; Figg, Kara G.; Gerdelman, Sue H.; Gillmor, Eleanor L.; Grant, Britt; Gray, Adrian G.; Gray, Ann ; Healy, Erin E.; Hennessey, Keith; Hernandez, Israel; Hughes, A. Merrill; Hughes, Taylor A.; Ingle, Edward; Jackson, Barry S.; Kaplan, Joel; Kozberg, Lindsey C.; Kyle, Ross M.; Lefkowitz, Jay P.; Lineberry, Stephen M.; Litkenhaus, Colleen; Mallea, Jose; Martin, Catherine J.; McClellan, Scott ; McCord, Lauren; McDonald, Rebekah; McQuade, Vickie A.; Mehlman, Ken; Middlemas, A. Morgan; Millerwise, Jennifer; Montiel, Charlotte L.; Nelson, Carolyn; Nipper, Wendy L.; Parell, Christie; Pelletier, Eric C.; Perez, Anna M.; Ralston, Susan B.; Reese, Shelley; Riepenhoff, Allison L.; Rodriguez, Noelia ; Rogers, Edwina C.; Rust, Kathryn E.; Ryun, Catharine A.; Sforza, Scott N.; Silverberg, Kristen; Smith, Heidi M.; Snee, Ashley; Torgerson, Karin B.; Towey, Jim; Vestewig, Lauren J.; Walters, Katherine M.; Wehner, Peter H.; Westine, Lezlee J.; Williams, Mary C.; Wozniak, Natalie S.

Subject: MESSAGE MEETING REMINDER

There will be a message meeting today at noon in the Roosevelt Room.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/28/2003 6:08:26 AM
Subject: : Fw: From the Charlotte Observer

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:28-APR-2003 10:08:26.00
SUBJECT:: Fw: From the Charlotte Observer
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Can you get this letter? I am on the hill. Thanks.

-----Original Message-----
From: Comisac, RenaJohnson (Judiciary)
<Rena_Johnson_Comisac@Judiciary.senate.gov>
To: Grubbs, Wendy J. <Wendy_J_Grubbs@who.eop.gov>
Sent: Mon Apr 28 10:06:21 2003
Subject: FW: From the Charlotte Observer

Could I pls. get a copy of Judge Gonzales,s 4/23 letter mentioned below?;
My fax number is 228-1698.; Thanks.

-----Original Message-----
From: PRA 6
Sent: Saturday, April 26, 2003 2:48 PM
To: PRA 6
Subject: From the Charlotte Observer

Posted on Sat, Apr. 26, 2003;; <
http://www.charlotte.com/images/component/topstory_fromthe_txt.gif
<http://www.charlotte.com/images/component/topstory_fromthe_txt.gif>>; <
http://www.charlotte.com/images/logos/site/charlotte/observer/archives_title.gif
<http://www.charlotte.com/images/logos/site/charlotte/observer/archives_title.gif>>; <<http://www.charlotte.com/images/common/spacer.gif>
<<http://www.charlotte.com/images/common/spacer.gif>>>
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<<http://www.charlotte.com/images/common/spacer.gif>>>
Impasse on judges ending?
Federal judges from N.C. likely
TIM FUNK AND GARY L. WRIGHT
Staff Writers

WASHINGTON -The White House plans to send nominations to the Senate on Monday that could elevate two Charlotte-based U.S. officials to the federal bench and place two black Republicans with strong N.C. connections on the 4th U.S. Circuit Court of Appeals in Richmond, Va.

U.S. Attorney Bob Conrad and U.S. Magistrate Judge Brent McKnight are expected to be nominated as federal judges for the Western District of North Carolina, said Mike Briggs, a spokesman for U.S. Sen. John Edwards, D-N.C.

Briggs said the White House also intends to nominate Raleigh lawyer Allyson Duncan to the federal appeals court.

Other sources said Claude Allen, a onetime aide to former U.S. Sen. Jesse Helms of North Carolina, would be the other appeals court nominee.

Duncan and Allen are African American.

Years of partisan wrangling in Washington have left North Carolina without a representative on the Richmond-based appeals court, which also covers South Carolina, Maryland, Virginia and West Virginia.

Each of those other states has at least two judges on the bench, which now has four vacancies.

President Bush's legal counsel, Alberto Gonzales, mentioned this geographic imbalance in an April 23 letter to U.S. senators representing North Carolina, Virginia and Maryland. To begin to rectify it, he wrote, the president will nominate, on Monday, two African Americans -- one who lives in North Carolina, one with strong ties to the state -- whose confirmation would also "dismantle an historic (racial) barrier."

Blacks make up 22 percent of the population covered by the circuit court -- higher than any other federal jurisdiction. But only one African American judge, Virginia's Roger Gregory, serves on the 12-member court.

Duncan, 51, was the first black woman to serve on the N.C. Court of Appeals.

She has been a member of the state utilities commission and is the president-elect of the N.C. Bar Association.

In the 1980s she worked for the federal Equal Employment Opportunity Commission and for a time was executive assistant to then-Chairman Clarence Thomas, now a U.S. Supreme Court justice.

Her nomination appears to have the support of both of North Carolina's senators, Edwards and Republican Elizabeth Dole. That's important because Senate rules have long given senators virtual veto power over home-state judicial nominees.

Allen, now a deputy secretary at the U.S. Department of Health and Human Services, could face opposition from Edwards.

The Democratic senator is already blocking Bush's nomination of Terrence Boyle to the 4th U.S. Circuit Court of Appeals. Boyle, chief district judge in Eastern North Carolina, also used to work for Helms.

Allen was press secretary for Helms' 1984 re-election campaign, then worked as a deputy director on the Senate Foreign Relations Committee. He's been deputy attorney general and secretary of health and human services in Virginia.

In 2001, he was picked to manage food safety issues at the U.S. Department of Health and Human Services. He also has been the point person for Bush's campaign to sell teenagers on sexual abstinence.

Neither Allen nor Duncan could be reached Friday.

A long-standing battle

The political fighting over the 4th U.S. Circuit Court of Appeals goes back more than 10 years. After Democrats in the Senate blocked the nomination of Boyle by then-President Bush in 1991, Helms retaliated by blocking four N.C. nominations made later by President Clinton.

Then, when Boyle was nominated by the current President Bush, Edwards made it known he opposed the nomination because of Boyle's decisions regarding civil rights.

Edwards and Helms' successor, Republican Elizabeth Dole, have said they

wanted to work together to break the impasse.

In a March 31 letter to Sen. Orrin Hatch, R-Utah, chairman of the Senate Judiciary Committee, Edwards touted Duncan as a "consensus nominee" that he and Dole and the White House could support.

Dole spokeswoman Mary Brown Brewer said this week that Dole wants the vacancies on the appeals court to be filled as soon as possible, but would favor moving forward with Boyle first.

"Terry Boyle's been waiting (more than) 10 years," Brewer said. Asked about Duncan, Brewer would say only that "the president has put forward a number of well-qualified nominees."

Experienced prosecutors

Conrad, 44, and McKnight, 51, wouldn't talk about their potential nominations to the federal judgeships. But both have undergone FBI background checks for the job, sources said.

Conrad, a federal prosecutor since 1989, has been U.S. attorney for the Western District of North Carolina since 2001.

In the trial of two Lebanese brothers last year, Conrad's prosecutors obtained the first criminal conviction under a U.S. law banning material support to terrorist organizations. One of the brothers was sentenced in February to 155 years in prison.

In 1998, Conrad and then-Assistant U.S. Attorney Thomas Walker became the first federal prosecutors in North Carolina to obtain the death penalty since capital punishment for federal crimes was reinstated in 1988.

In 1999, then-Attorney General Janet Reno appointed Conrad, a Republican, to head a Justice Department task force investigating illegal campaign fund raising. Conrad went to the White House with FBI agents to question Clinton under oath for four hours.

Conrad wouldn't talk about who might replace him if he gets the lifetime federal judgeship. Sources in the legal community, however, are speculating that Assistant U.S. Attorney Gretchen Shappert might be selected to replace Conrad as the top federal prosecutor for the Western District of North Carolina.

McKnight, also a Republican, was a state prosecutor in Charlotte for six years in the 1980s. He handled Mecklenburg's first case under the state's tough 1985 obscenity law and worked to close adult bookstores.

He served as a Mecklenburg district judge from 1988 to 1993. In 1993, he was named a federal magistrate judge.

From: Kavanaugh, Brett M.
To: Miranda, Manuel \ (Frist) <Manuel_Miranda@frist.senate.gov>; jamie.e.brown@usdoj.gov <Grubbs, Wendy J.>
CC: viet.dinh@usdoj.gov <viet.dinh@usdoj.gov>; brian benczkowski \ (e-mail) <brian.a.benczkowski@usdoj.gov>; jamie.e.brown@usdoj.gov <jamie.e.brown@usdoj.gov>
Sent: 4/28/2003 12:39:24 PM
Subject: Re: FW: Scheduler notification from Capitol Correspond

Judge Gonzales will be out of town all day on Thursday, May 1. Apologies.

"Miranda, Manuel (Frist)"

04/25/2003 02:22:56 PM

Record Type: Record

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

cc:

Subject: FW: Scheduler notification from Capitol Correspond

Regrettably, we need to move the Principals' meeting to Thursday as below. WHF and OGH are clear. Please advise.

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

From: Senator_frist@frist.senate.gov

[mailto:Senator_frist@frist.senate.gov]

Sent: Thursday, April 24, 2003 6:52 PM

To: Vogel, Alex (Frist); Bainwol, Mitch (Frist); Miranda, Manuel (Frist)

Subject: Scheduler notification from Capitol Correspond

SCHEDULING NOTIFICATION

Description: (tentative) Meeting GOP Judiciary Committee Members with

Judge Albert Gonzales, WH Legal Counsel and Viet Dinh

Status: Approved

REV_00234874

Start Date: 05/01/2003 Start Time: 04:45 pm

End Date: 05/01/2003 End Time: 05:30 pm

Location: S-230

Contact: many coordinating

Message Sent To:

Brett M. Kavanaugh/WHO/EOP@EOP

Viet.Dinh@usdoj.gov

"Brian Benczkowski (E-mail)"

Jamie.E.Brown@usdoj.gov

Wendy J. Grubbs/WHO/EOP@EOP

From: KRdaly@aol.com [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/28/2003 1:07:56 PM
Subject: : Re: irizarry
Attachments: P_VDVYF003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:KRdaly@aol.com (KRdaly@aol.com [UNKNOWN])
CREATION DATE/TIME:28-APR-2003 17:07:56.00
SUBJECT:: Re: irizarry
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

May I put your prologue into an email to the list (along with the bio, of course?) or would you prefer that I parrot a version of it without attribution?

Think I saw you on CSPAN at the WH Correspondent's dinner. Was supposed to be there, darn it all, but I'm trapped here at home on bedrest. Sigh.

KRD
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VDVYF003_WHO.TXT_1>

May I put your prologue into an email to the list (along with the bio, of course?) or would you prefer that I parrot a version of it without attribution?

Think I saw you on CSPAN at the WH Correspondent's dinner. Was supposed to be there, darn it all, but I'm trapped here at home on bedrest. Sigh.

KRD

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 4/28/2003 9:14:16 AM
Subject: : Nominees.
Attachments: P_RKGYF003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME:28-APR-2003 13:14:16.00
SUBJECT:: Nominees.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Bush continues battle for appeals court nominees

CARL WEISER
Gannett News Service
24 April 2003

WASHINGTON -- A controversial appeals court nominee will come up for a vote Tuesday in the Senate -- after disabled activists have rallied against him, senators have pelted him with hostile questions in a 12-hour confirmation hearing and Democrats have refused to consider his nomination for nearly two years.

The fight over the nomination of lawyer Jeffrey Sutton of Columbus, Ohio, for the appeals court that hears cases from Ohio, Kentucky, Michigan and Tennessee is the latest in what seems to be weekly battles over judicial nominees. And it will be far from the last.

"We're in a whole new world," said C. Boyden Gray, former counsel to the first President Bush and now chairman of the Committee for Justice that supports Sutton and other Bush court nominees.

What's driving the increasingly partisan fights over judges are two things, Gray said. With Republicans controlling both the presidency and Congress, Democrats want to prevent the GOP from taking over the third branch of government, the courts. And they are sending a warning to the president over any potential Supreme Court nominees.

The entire federal judiciary now is almost evenly divided between judges appointed by Democratic presidents and those appointed by Republicans. The appeals courts, one step below the Supreme Court, are a key battleground. That's because several of the 12 appeals courts could tilt one way or the other depending on who fills the seats. Appointments are for life.

While the Supreme Court decides fewer than 100 cases a year, courts of appeals decide 27,000 cases. "The courts of appeals, including the 6th

Circuit Court of Appeals, often are rendering the law of the land in cases affecting the environment, workers rights and the right to reproductive choice," said Nan Aron, president of the liberal Alliance for Justice.

That's one reason "we expect a very strong show of opposition" to Sutton, she said.

Both sides are bracing for a feisty debate. Sutton's confirmation hearing earlier this year had to be moved to a larger room to accommodate the dozens of disabled activists sporting "Stop Sutton" stickers. Many came in wheelchairs or brought seeing-eye dogs. Sutton's opponents plan to lobby senators, hold news conferences and rally Tuesday outside the Capitol.

The 42-year-old lawyer never has served as a judge, but both sides consider him to have a sharp legal mind. He has argued 12 cases before the Supreme Court, including one that led to a weakening of the Americans with Disabilities Act. That's what has enraged activists for the disabled.

"I think it will be a very tough debate," said Sen. Mike DeWine, R-Ohio, a member of the Senate Judiciary Committee and a Sutton supporter.

"I think it's likely he will pass."

Opponents such as Aron say Sutton adheres to a judicial philosophy that sees Congress as constantly overreaching into areas of law that should be left to the states.

His most controversial case involved an Alabama nurse named Patricia Garrett. She lost her job at a state hospital in Birmingham after taking medical leave to treat her breast cancer. She sued the state under the Americans with Disabilities Act.

Sutton argued against Garrett, telling the Supreme Court that Congress had gone too far when it wrote the Americans with Disabilities Act. Constitutionally, he said Congress couldn't give state employees the right to sue for damages.

The Supreme Court agreed.

"In Mr. Sutton's eyes, I and others with disabilities seem to be pawns in a game of power between the federal government and the states," Garrett said at a Washington news conference last month.

"Although some of his clients and positions might seem controversial, the consensus in a lot of legal circles is that he is a very good lawyer

and has a good legal mind," said Barbara Reed, director of the courts initiative at the nonpartisan Washington- based Constitution Project.

What's important to the public is that federal courts have enough judges, she said. And just as important: that judges not have specific policy agendas.

Sutton told the Senate Judiciary Committee that if confirmed, he would make decisions based on Supreme Court precedents and keep an open mind. But Democrats were not convinced. All but one of committee Democrat, California's Dianne Feinstein, voted against him.

"The Sutton nomination has been divisive because he epitomizes the kind of judicial activism that some in the right wing of the Republican Party have been advocating," said David Carle, spokesman for the Senate Judiciary Committee's top Democrat, Patrick Leahy of Vermont.

Sutton is the latest in a series of controversial nominees that have revolted and galvanized environmentalists, civil rights groups and other liberal lobbying organizations.

The one bit of good news for Sutton is that Democrats do plan to vote on him. They do not plan to filibuster, dragging out the debate endlessly to prevent a vote.

Democrats have this year filibustered one Bush nominee, Miguel Estrada. Republicans have neither conceded defeat nor succeeded in ending the filibuster.

Sixty votes can stop a filibuster in the Senate. That means that any truly controversial judge will require 60 votes in the future, not the simple majority of 51 votes specified in the Constitution.

"All of this is a prelude to establishing precedent -- a 60-vote barrier to a Supreme Court nominee," Gray said. "That's the big game."

Other divisive nominees

Besides Jeffrey Sutton, other controversial appeals court nominees set to come up for votes this spring include these:

Deborah Cook. An Ohio Supreme Court justice, she, too, has been criticized for ruling too often in favor of business against the powerless. Nominated for the same 6th Circuit bench as Sutton, she is expected to come up for a vote before the end of the month, DeWine said. She is expected to pass without a filibuster.

Priscilla Owen. The Texas Supreme Court justice was rejected last year for a seat on a New Orleans-based 5th Circuit when Democrats controlled the Senate Judiciary Committee. The committee, now under GOP control,

approved her nomination last month. But she could face a filibuster on the Senate floor. Opponents say her record is too pro-business and anti-abortion.

Bill Pryor. Alabama's attorney general is an advocate of relaxing the wall between church and state and a champion of Judge Roy Moore, the Alabama chief justice who suggested the Sept. 11, 2001, terrorist attacks may be a consequence of American's turning away from God, and who put a monument to the Ten Commandments in the Alabama judicial building. Pryor also has called Roe v. Wade, the Supreme Court decision that legalized abortion, "the worst abomination of constitutional law in our history." Bush nominated him for the Atlanta-based 11th U.S. Circuit Court of Appeals. He hasn't yet had a hearing before the Senate Judiciary Committee.

Charles Pickering. Like Owen, the Senate Judiciary Committee turned him down when Democrats controlled it. Bush has nominated him again for the New Orleans-based appeals court, but he has not come up for a new hearing yet. Democrats opposed him, saying he was insensitive to the rights of women and minorities.

Carolyn Kuhl. A Superior Court judge in Los Angeles, she is in trouble because of something she did when she served in Ronald Reagan's Justice Department. She urged the attorney general to reinstate the tax-exempt status of South Carolina's Bob Jones University, which at that time banned interracial dating. Bush has nominated her for the 9th Circuit Court of Appeals, based in San Francisco. She has had her hearing, but the Judiciary Committee has not voted on her. She, too, could face a filibuster.

Sean Rushton

Executive Director

Committee for Justice

1275 Pennsylvania Avenue, NW

Tenth Floor

Washington, DC 20004

202-481-6850 phone

PRA 6 mobile

www.committeeforjustice.org

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_RKGYF003_WHO.TXT_1>

REV_00234884

Bush continues battle for appeals court nominees
CARL WEISER
Gannett News Service
24 April 2003

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The fight over the nomination of lawyer Jeffrey Sutton of Columbus, Ohio, for the appeals court that hears cases from Ohio, Kentucky, Michigan and Tennessee is the latest in what seems to be weekly battles over judicial nominees. And it will be far from the last.

"We're in a whole new world," said C. Boyden Gray, former counsel to the first President Bush and now chairman of the **Committee for Justice** that supports Sutton and other Bush court nominees.

What's driving the increasingly partisan fights over judges are two things, Gray said. With Republicans controlling both the presidency and Congress, Democrats want to prevent the GOP from taking over the third branch of government, the courts. And they are sending a warning to the president over any potential Supreme Court nominees.

The entire federal judiciary now is almost evenly divided between judges appointed by Democratic presidents and those appointed by Republicans. The appeals courts, one step below the Supreme Court, are a key battleground. That's because several of the 12 appeals courts could tilt one way or the other depending on who fills the seats. Appointments are for life.

While the Supreme Court decides fewer than 100 cases a year, courts of appeals decide 27,000 cases. "The courts of appeals, including the 6th Circuit Court of Appeals, often are rendering the law of the land in cases affecting the environment, workers rights and the right to reproductive choice," said Nan Aron, president of the liberal Alliance for Justice.

That's one reason "we expect a very strong show of opposition" to Sutton, she said.

Both sides are bracing for a feisty debate. Sutton's confirmation hearing earlier this year had to be moved to a larger room to accommodate the dozens of disabled activists sporting "Stop Sutton" stickers. Many came in wheelchairs or brought seeing-eye dogs. Sutton's opponents plan to lobby senators, hold news conferences and rally Tuesday outside the Capitol.

The 42-year-old lawyer never has served as a judge, but both sides consider him to have a sharp legal mind. He has argued 12 cases before the Supreme Court, including one that led to a weakening of the Americans with Disabilities Act. That's what has enraged activists for the disabled.

"I think it will be a very tough debate," said Sen. Mike DeWine, R-Ohio, a member of the Senate Judiciary Committee and a Sutton supporter.

"I think it's likely he will pass."

Opponents such as Aron say Sutton adheres to a judicial philosophy that sees Congress as constantly overreaching into areas of law that should be left to the states.

His most controversial case involved an Alabama nurse named Patricia Garrett. She lost her job at a state hospital in Birmingham after taking medical leave to treat her breast cancer. She sued the state under the Americans with Disabilities Act.

Sutton argued against Garrett, telling the Supreme Court that Congress had gone too far when it wrote the Americans with Disabilities Act. Constitutionally, he said Congress couldn't give state employees the right to sue for damages.

The Supreme Court agreed.

"In Mr. Sutton's eyes, I and others with disabilities seem to be pawns in a game of power between the federal government and the states," Garrett said at a Washington news conference last month.

"Although some of his clients and positions might seem controversial, the consensus in a lot of legal circles is that he is a very good lawyer and has a good legal mind," said Barbara Reed, director of the courts initiative at the nonpartisan Washington-based Constitution Project.

What's important to the public is that federal courts have enough judges, she said. And just as important: that judges not have specific policy agendas.

Sutton told the Senate Judiciary Committee that if confirmed, he would make decisions based on Supreme Court precedents and keep an open mind. But Democrats were not convinced. All but one of committee Democrat, California's Dianne Feinstein, voted against him.

"The Sutton nomination has been divisive because he epitomizes the kind of judicial activism that some in the right wing of the Republican Party have been advocating," said David Carle, spokesman for the Senate Judiciary Committee's top Democrat, Patrick Leahy of Vermont. Sutton is the latest in a series of controversial nominees that have revolted and galvanized environmentalists, civil rights groups and other liberal lobbying organizations.

The one bit of good news for Sutton is that Democrats do plan to vote on him. They do not plan to filibuster, dragging out the debate endlessly to prevent a vote.

Democrats have this year filibustered one Bush nominee, Miguel Estrada. Republicans have neither conceded defeat nor succeeded in ending the filibuster.

Sixty votes can stop a filibuster in the Senate. That means that any truly controversial judge will require 60 votes in the future, not the simple majority of 51 votes specified in the Constitution.

"All of this is a prelude to establishing precedent -- a 60-vote barrier to a Supreme Court nominee," Gray said. "That's the big game."

Other divisive nominees

Besides Jeffrey Sutton, other controversial appeals court nominees set to come up for votes this spring include these: Deborah Cook. An Ohio Supreme Court justice, she, too, has been criticized for ruling too often in favor of business against the powerless. Nominated for the same 6th Circuit bench as Sutton, she is expected to come up for a vote before the end of the month, DeWine said. She is expected to pass without a filibuster.

Priscilla Owen. The Texas Supreme Court justice was rejected last year for a seat on a New Orleans-based 5th Circuit when Democrats controlled the Senate Judiciary Committee. The committee, now under GOP control, approved her nomination last month. But she could face a filibuster on the Senate floor. Opponents say her record is too pro-business and anti-abortion.

Bill Pryor. Alabama's attorney general is an advocate of relaxing the wall between church and state and a champion of Judge Roy Moore, the Alabama chief justice who suggested the Sept. 11, 2001, terrorist attacks may be a consequence of America's turning away from God, and who put a monument to the Ten Commandments in the Alabama judicial building. Pryor also has called *Roe v. Wade*, the Supreme Court decision that legalized abortion, "the worst abomination of constitutional law in our history." Bush nominated him for the Atlanta-based 11th U.S. Circuit Court of Appeals. He hasn't yet had a hearing before the Senate Judiciary Committee.

Charles Pickering. Like Owen, the Senate Judiciary Committee turned him down when Democrats controlled it. Bush has nominated him again for the New Orleans-based appeals court, but he has not come up for a new hearing yet. Democrats opposed him, saying he was insensitive to the rights of women and minorities.

Carolyn Kuhl. A Superior Court judge in Los Angeles, she is in trouble because of something she did when she served in Ronald Reagan's Justice Department. She urged the attorney general to reinstate the tax-exempt status of South Carolina's Bob Jones University, which at that time banned interracial dating. Bush has nominated her for the 9th Circuit Court of Appeals, based in San Francisco. She has had her hearing, but the Judiciary Committee has not voted on her. She, too, could face a filibuster.

Sean Rushton
Executive Director
Committee for Justice

1275 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC< font size=2 face=Arial> 20004
202-481-6850 phone
PRA 6 mobile
www.committeeforjustice.org

From: Viana, Mercedes M.
To: scastillo@rnchq.org <Kavanaugh, Brett M.>
CC: <Mehlman, Ken>;<Rodriguez, Leonard B.>;<Viana, Mercedes M.>;scastillo@rnchq.org
<scastillo@rnchq.org>;scastillo@rnchq.org <Rodriguez, Noelia>
Sent: 4/28/2003 1:22:51 PM
Subject: Re: Hispanic media training

perfect. let's schedule for the summer.

Brett M. Kavanaugh

04/28/2003 01:21:01 PM

Record Type: Record

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

cc:

bcc:

Subject: Re: Hispanic media training



It is ok for RNC to run such a media training program for political appointees. Also ok for Levine to run such a program here.

Ken Mehlman

04/28/2003 01:13:19 PM

Record Type: Record

To: Leonard B. Rodriguez/WHO/EOP@EOP

cc: brett m. kavanaugh/who/eop@eop, mercedes m. viana/who/eop@eop, scastillo@rnchq.org @ inet, noelia rodriguez/who/eop@exchange@eop

bcc:

Subject: Re: Hispanic media training



Or could we have Adam Levine do this?

Leonard B. Rodriguez

04/28/2003 09:46:24 AM

Record Type: Record

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

cc: Mercedes M. Viana/WHO/EOP@EOP, Ken Mehlman/WHO/EOP@EOP, scastillo@rnchq.org @ inet, Noelia Rodriguez/WHO/EOP@Exchange@EOP

Subject: Hispanic media training

Brett-

Following our Hispanic appointees conference call, the following inquiry below came to our attention.

Mercy has been talking with Nicolle in making this happen. Is it possible to coordinate this training at the RNC???

Q:

Possibly hold a media training for all Hispanic Spokespersons (with special emphasis on Spanish-language interviews) and mid and/or high

level Administration officials often called to do Spanish-language interviews.

I have had the benefit of getting some media training at work and have found it to be quite helpful. It has made me pretty confident and able

when called to do an interview in Spanish. I now even sometimes coach and brief other attorneys for Spanish and English mainstream interviews.

Message Sent To: _____

Ken Mehlman/WHO/EOP@EOP

leonard b. rodriguez/who/eop@eop

brett m. kavanaugh/who/eop@eop

mercedes m. viana/who/eop@eop

scastillo@rnchq.org @ inet

noelia rodriguez/who/eop@exchange@eop

From: CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/28/2003 9:27:41 AM
Subject: : RE: what's tim's phone #

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:28-APR-2003 13:27:41.00
SUBJECT:: RE: what's tim's phone #
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

212-424-1363 (w)

PRA 6

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Monday, April 28, 2003 1:24 PM
To: Montiel, Charlotte L.
Subject: what's tim's phone #

From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 4/28/2003 1:28:10 PM
Subject: RE: what's tim's phone #

212-424-1363 (w)

PRA 6

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

From: Kavanaugh, Brett M.
Sent: Monday, April 28, 2003 1:24 PM
To: Montiel, Charlotte L.
Subject: what's tim's phone #

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/28/2003 10:52:41 AM
Subject: : FW: LRM EPH45 - - Testimony on Veterans Procurement Legislation
Attachments: P_0BMYF003_WHO.TXT_1.wpd

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:28-APR-2003 14:52:41.00
SUBJECT:: FW: LRM EPH45 - - Testimony on Veterans Procurement Legislation
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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

From: Hassing, Erin P.
Sent: Monday, April 28, 2003 2:45 PM
To: dodlrs@osdgc.osd.mil; CLRM@doc.gov; ogc_legislation@ed.gov;
ocf@ios.doi.gov; justice.lrm@usdoj.gov; dol-sol-leg@dol.gov; cla@sba.gov;
info@jwod.gov
Cc: Cleveland, Robin; Peroff, Kathleen; Carson, Karyn T.; Siclari,
Mary Jo; Husted, Toni S.; Benson, Shalini M.; Chang, Winifred Y.;
Seastrom, Mark R.; Hagen, Kelli A.; Sastry, Narahari; Ermann, Danny A.;
Costello, Daniel J.; Grayton, Arcia A.; Aguilera, Ricardo A.; Waites,
Wendell H.; Goldberg, Robert H.; Morales, Gloria L.; McVay, William; Lyon,
Randolph M.; Rasetti, Lorenzo; Stack, Kathryn B.; Rowe, David; Irwin,
Janet E.; Bloomquist, Lauren E.; Walsh, Maureen; Kitti, Carole; McDonald,
Katrina A.; Dennis, Yvette M.; Shea, Robert J.; Conley, Sheila; Ramsey,
Terrill W.; Styles, Angela B.; Gerich, Michael D.; Blum, Mathew C.; Alesi,
Susan E.; Crilley, Joseph; Lee, Sarah S.; Gilbert, Alan; Hall, Philo D.;
Skelly, Layton; Cea Lrm; Nec Lrm; Ovp Lrm; Perry, Philip J.; Wood, John
F.; Luczynski, Kimberley S.; Whgc Lrm; Cox, Christopher C.; Dove, Stephen
W.; Lobrano, Lauren C.; Jukes, James J.; Schroeder, Ingrid M.; Messenger,
P. Thaddeus; Hassing, Erin P.; Newman, Kimberly A.; Halaska, Terrell L.;
Justesen, Troy; Liu, Lin
Subject: LRM EPH45 - - Testimony on Veterans Procurement
Legislation

LRM ID: EPH45
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, April 28, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Ingrid M. Schroeder (for) Assistant Director for
Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: Testimony on Veterans Procurement Legislation

DEADLINE: COB Monday, April 28, 2003

In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts.

COMMENTS: : Attached for your review, please find draft OMB (Styles)
testimony for an April 30th hearing before the House Veterans' Affairs
Committee, Subcommittee on Benefits. VA is also testifying at this

REV_00234896

hearing and their statement has been circulated under LRM PTM 39.

Please provide your comments by COB TODAY, Monday, April 28th. This deadline is firm. If we do not receive your comments by that time, we will assume you have no objection to the document as drafted.

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107-Small Business Administration - Richard Spence - (202) 205-6700
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Maureen Walsh
Carole Kittti
Katrina A. McDonald
Yvette M. Dennis
Robert J. Shea
Sheila Conley
Terrill W. Ramsey
Angela B. Styles
Michael D. Gerich
Mathew C. Blum
Susan E. Alesi
Joseph Crilley
Sarah S. Lee
Alan Gilbert
Philo D. Hall
Layton Skelly
CEA LRM
NEC LRM
OVP LRM
Philip J. Perry
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P. Thaddeus Messenger
Erin P. Hassing
Kimberly A. Newman
Terrell L. Halaska
Troy Justesen
Lin Liu

LRM ID: EPH45 SUBJECT: Testimony on Veterans Procurement
Legislation
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148
Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_OBMYF003_WHO.TXT_1>

DRAFT 4/28/03

STATEMENT OF ANGELA B. STYLES
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 30, 2003

Chairman Brown and Members of the Subcommittee, I am pleased to be here today to discuss H.R.1460, the Veterans Entrepreneurship Act of 2003, and H.R.1712 the Veterans Federal Procurement Opportunity Act of 2003. I welcome the opportunity to collaborate with you on these very important issues. The bills contain a variety of provisions related to small business programs but today I would like to focus my comments on veterans in the federal procurement process.

Both bills would establish mechanisms for creating opportunities for participation by veterans in federal contracting. H.R. 1460 would authorize sole source awards to service-disabled veteran-owned small businesses up to \$5 million for manufacturing contracts and \$3 million for non- manufacturing contracts. The legislation would also establish a set-aside for competition limited to just these businesses. H.R. 1460 focuses on setting-aside contracts for small businesses owned and controlled by service-disabled veterans, whereas H.R. 1712 would

be broad reaching in its effect on all federal small business procurement programs. For example, H.R. 1712 would increase the overall small business procurement goal from 23 percent to 28 percent and require every agency to have agency-specific goals at least equal to the cumulative, government-wide small business procurement goals prescribed in the Small Business Act. H.R. 1712 would also alter the manner in which achievements against these goals are measured and impose inflexible contracting restrictions on agencies if they don't meet any of these goals.

The federal government has done an abysmal job of providing federal contracting opportunities for our veterans. On February 5, 2003, I testified before the Committee on agency implementation of section 502 of Public Law 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999. That law sets a 3 percent government-wide goal for participation by small businesses owned and controlled by service-disabled veterans in federal contracting and subcontracting. As I testified then, the statistics from the Federal Procurement Data System reflected that agencies were not doing a good job of meeting veterans procurement goals.

[As an the initial step to rectify this situation, OMB issued a memorandum to all agencies reminding them of their goals and asking them to focus their attention on this segment of the commercial market. To assist in locating veteran-owned small businesses, agencies were informed that the Department of Veterans Affairs is creating the VETBIZ Vendor Information Pages which will identify about five thousand veteran-owned businesses. Attached to my testimony is a copy of that memo. We hope this is an effective first step in solving the problem. I would also like to emphasize that this is just a first step.]

Friday of last week, I talked to Frank Ramos, the Director of the Small and

Disadvantaged Business Utilization Office of the Defense Department. We agreed to establish an interagency working group to address several issues that may be directly impacting veteran-owned small business participation in the federal procurement system. Although we have not yet identified members, we plan on addressing a wide-range of issues, including proper

identification of veteran-owned small businesses already participating in the federal procurement system. There are a host of other issues this group can identify and address. This interagency group will work under the leadership of my office and the newly established Federal Acquisition Council. In the near term, we will be establishing short- and long-term plans for the veteran-owned small business community and the small business community. On Monday of this week, I also addressed these issues with the newly established Small Business Procurement Advisory Council.

I believe we have the recognition and understanding from small business offices within agencies that these numbers must improve. I also believe that two ongoing initiatives will have a significant impact on contracting opportunities available for veteran-owned small business in the executive branch: contract bundling and competitive sourcing. We are increasing federal contracting opportunities for small businesses by eliminating unnecessary contract bundling. Substantially fewer small businesses are receiving federal contracts, and as a result, the federal government is suffering from a smaller supplier base. To aggressively resolve this problem, the Administration has unveiled a strategy to address contract bundling. With successful implementation of this strategy, we will have reduced a significant barrier to entry and, in doing so, allowed veteran-owned and other small businesses to bring their innovation, creativity, and lower costs to the federal marketplace. We are also in the process of revising the rules governing competition for commercial activities between public and private sources. This would help small businesses which, on average, receive more than 60 percent of the awards made to private sector firms through the OMB Circular A-76 public-private competition process.

The contract bundling and competitive sourcing initiatives promote access to the federal marketplace through competition and provide the framework for delivery of better value for

agencies and the taxpayer. I have encouraged restructuring of the current system to allow for greater participation for small and first-time contractors to the federal marketplace. In this context, the Administration strongly supports open competition among qualified firms in the awarding of government contracts. Open competition for government contracts under our free market system ensures that American taxpayers receive the best possible value at the lowest possible price.

Unfortunately, the statutes, judicial interpretations, and regulations have in the small business arena become so confusing and difficult for our procurement people that I am concerned about the ramifications of creating new statutory preference programs. Given the confusing state of small business requirements, and the difficulty in reconciling each program, our contracting people have become overburdened. I sense an increasingly negative culture toward small business that could be exacerbated by additional statutory requirements. I am also concerned that the procurement preferences that would be created by H.R. 1460 might not achieve the long-term increase in contract awards to firms owned by service-disabled veterans that both the Committee and the Administration would like to see. However, recognizing the need to provide agencies with additional tools for contracting with these businesses, we support section 4 of H.R. 1460. I would caution that as we contemplate increasing the number of preference programs that the government should always err towards open competition among qualified firms. Only through open competition using our free market system can we ensure that we are receiving the highest quality goods and services at the lowest price. Statutory changes could provide a quick short-term fix without consideration of long-term ramifications.

The addition of statutory tools must go hand-in-hand with significant implementation

efforts. We need to incentivize and train our contracting people to recognize the positive benefits and value of actively including small businesses and particularly veteran-owned small businesses in our procurement process. Often forgotten in the rush to fill agency needs, are the small businesses that can provide many of our agency needs for goods and services. Often times, it is these small businesses alone that bring innovation, creativity and a new perspective to the federal marketplace. It is these businesses that often bring the best value solution to our federal agencies.

There is no question that this Administration is committed to ensuring that veterans are provided every opportunity to fully integrate themselves in their communities upon return from service, and I am personally committed to ensuring that we continue to focus agency performance on improving contracting opportunities for veterans. We must demonstrate to our service personnel that we support them in all that they do and appreciate the sacrifices they have made on our behalf. I look forward to our continued collaboration on veterans issues.

From: Bumatay, Patrick J.
To: <Ullyot, Theodore W.>;<Addington, David S.>;<Bartolomucci, H. Christopher>;<Bellinger, John B.>;<Brilliant, Hana F.>;<Brosnahan, Jennifer R.>;<Bumatay, Patrick J.>;<Carroll, James W.>;<Everson, Nanette>;<Farrell, J. Elizabeth>;<Francisco, Noel J.>;<Ganter, Jonathan F.>;<Jucas, Tracy>;<Kavanaugh, Brett M.>;<McNally, Edward>;<Montiel, Charlotte L.>;<Nelson, Carolyn>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 4/28/2003 3:56:28 PM
Subject: David G. Campbell - ABA

David G. Campbell, USDC, Distirct of Arizona, is unanimously rated "Well Qualified" by the ABA.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/28/2003 12:09:47 PM
Subject: : FW: LRM EPH45 - - Testimony on Veterans Procurement Legislation
Attachments: P_1ARYF003_WHO.TXT_1.wpd

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:28-APR-2003 16:09:47.00
SUBJECT:: FW: LRM EPH45 - - Testimony on Veterans Procurement Legislation
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Just a reminder, this is due COB today.

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

From: Hassing, Erin P.
Sent: Monday, April 28, 2003 2:45 PM
To: dodlrs@osdgc.osd.mil; CLRM@doc.gov; ogc_legislation@ed.gov;
ocl@ios.doi.gov; justice.lrm@usdoj.gov; dol-sol-leg@dol.gov; cla@sba.gov;
info@jwod.gov
Cc: Cleveland, Robin; Peroff, Kathleen; Carson, Karyn T.; Siclari,
Mary Jo; Husted, Toni S.; Benson, Shalini M.; Chang, Winifred Y.;
Seastrom, Mark R.; Hagen, Kelli A.; Sastry, Narahari; Ermann, Danny A.;
Costello, Daniel J.; Grayton, Arcia A.; Aguilera, Ricardo A.; Waites,
Wendell H.; Goldberg, Robert H.; Morales, Gloria L.; McVay, William; Lyon,
Randolph M.; Rasetti, Lorenzo; Stack, Kathryn B.; Rowe, David; Irwin,
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W.; Lobrano, Lauren C.; Jukes, James J.; Schroeder, Ingrid M.; Messenger,
P. Thaddeus; Hassing, Erin P.; Newman, Kimberly A.; Halaska, Terrell L.;
Justesen, Troy; Liu, Lin
Subject: LRM EPH45 - - Testimony on Veterans Procurement
Legislation

LRM ID: EPH45
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, April 28, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Ingrid M. Schroeder (for) Assistant Director for
Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: Testimony on Veterans Procurement Legislation

DEADLINE: COB Monday, April 28, 2003

In accordance with OMB Circular A-19, OMB requests the views of your
agency on the above subject before advising on its relationship to the
program of the President. Please advise us if this item will affect
direct spending or receipts.

COMMENTS: : Attached for your review, please find draft OMB (Styles)

REV_00234911

testimony for an April 30th hearing before the House Veterans' Affairs Committee, Subcommittee on Benefits. VA is also testifying at this hearing and their statement has been circulated under LRM PTM 39.

Please provide your comments by COB TODAY, Monday, April 28th. This deadline is firm. If we do not receive your comments by that time, we will assume you have no objection to the document as drafted.

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Kathryn B. Stack
David Rowe
Janet E. Irwin
Lauren E. Bloomquist
Maureen Walsh
Carole Kitty
Katrina A. McDonald
Yvette M. Dennis
Robert J. Shea
Sheila Conley
Terrill W. Ramsey
Angela B. Styles
Michael D. Gerich
Mathew C. Blum
Susan E. Alesi
Joseph Crilley
Sarah S. Lee
Alan Gilbert
Philo D. Hall
Layton Skelly
CEA LRM
NEC LRM
OVP LRM
Philip J. Perry

DRAFT 4/28/03

STATEMENT OF ANGELA B. STYLES
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 30, 2003

Chairman Brown and Members of the Subcommittee, I am pleased to be here today to discuss H.R.1460, the Veterans Entrepreneurship Act of 2003, and H.R.1712 the Veterans Federal Procurement Opportunity Act of 2003. I welcome the opportunity to collaborate with you on these very important issues. The bills contain a variety of provisions related to small business programs but today I would like to focus my comments on veterans in the federal procurement process.

Both bills would establish mechanisms for creating opportunities for participation by veterans in federal contracting. H.R. 1460 would authorize sole source awards to service-disabled veteran-owned small businesses up to \$5 million for manufacturing contracts and \$3 million for non- manufacturing contracts. The legislation would also establish a set-aside for competition limited to just these businesses. H.R. 1460 focuses on setting-aside contracts for small businesses owned and controlled by service-disabled veterans, whereas H.R. 1712 would

be broad reaching in its effect on all federal small business procurement programs. For example, H.R. 1712 would increase the overall small business procurement goal from 23 percent to 28 percent and require every agency to have agency-specific goals at least equal to the cumulative, government-wide small business procurement goals prescribed in the Small Business Act. H.R. 1712 would also alter the manner in which achievements against these goals are measured and impose inflexible contracting restrictions on agencies if they don't meet any of these goals.

The federal government has done an abysmal job of providing federal contracting opportunities for our veterans. On February 5, 2003, I testified before the Committee on agency implementation of section 502 of Public Law 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999. That law sets a 3 percent government-wide goal for participation by small businesses owned and controlled by service-disabled veterans in federal contracting and subcontracting. As I testified then, the statistics from the Federal Procurement Data System reflected that agencies were not doing a good job of meeting veterans procurement goals.

[As an the initial step to rectify this situation, OMB issued a memorandum to all agencies reminding them of their goals and asking them to focus their attention on this segment of the commercial market. To assist in locating veteran-owned small businesses, agencies were informed that the Department of Veterans Affairs is creating the VETBIZ Vendor Information Pages which will identify about five thousand veteran-owned businesses. Attached to my testimony is a copy of that memo. We hope this is an effective first step in solving the problem. I would also like to emphasize that this is just a first step.]

Friday of last week, I talked to Frank Ramos, the Director of the Small and

Disadvantaged Business Utilization Office of the Defense Department. We agreed to establish an interagency working group to address several issues that may be directly impacting veteran-owned small business participation in the federal procurement system. Although we have not yet identified members, we plan on addressing a wide-range of issues, including proper

identification of veteran-owned small businesses already participating in the federal procurement system. There are a host of other issues this group can identify and address. This interagency group will work under the leadership of my office and the newly established Federal Acquisition Council. In the near term, we will be establishing short- and long-term plans for the veteran-owned small business community and the small business community. On Monday of this week, I also addressed these issues with the newly established Small Business Procurement Advisory Council.

I believe we have the recognition and understanding from small business offices within agencies that these numbers must improve. I also believe that two ongoing initiatives will have a significant impact on contracting opportunities available for veteran-owned small business in the executive branch: contract bundling and competitive sourcing. We are increasing federal contracting opportunities for small businesses by eliminating unnecessary contract bundling. Substantially fewer small businesses are receiving federal contracts, and as a result, the federal government is suffering from a smaller supplier base. To aggressively resolve this problem, the Administration has unveiled a strategy to address contract bundling. With successful implementation of this strategy, we will have reduced a significant barrier to entry and, in doing so, allowed veteran-owned and other small businesses to bring their innovation, creativity, and lower costs to the federal marketplace. We are also in the process of revising the rules governing competition for commercial activities between public and private sources. This would help small businesses which, on average, receive more than 60 percent of the awards made to private sector firms through the OMB Circular A-76 public-private competition process.

The contract bundling and competitive sourcing initiatives promote access to the federal marketplace through competition and provide the framework for delivery of better value for

agencies and the taxpayer. I have encouraged restructuring of the current system to allow for greater participation for small and first-time contractors to the federal marketplace. In this context, the Administration strongly supports open competition among qualified firms in the awarding of government contracts. Open competition for government contracts under our free market system ensures that American taxpayers receive the best possible value at the lowest possible price.

Unfortunately, the statutes, judicial interpretations, and regulations have in the small business arena become so confusing and difficult for our procurement people that I am concerned about the ramifications of creating new statutory preference programs. Given the confusing state of small business requirements, and the difficulty in reconciling each program, our contracting people have become overburdened. I sense an increasingly negative culture toward small business that could be exacerbated by additional statutory requirements. I am also concerned that the procurement preferences that would be created by H.R. 1460 might not achieve the long-term increase in contract awards to firms owned by service-disabled veterans that both the Committee and the Administration would like to see. However, recognizing the need to provide agencies with additional tools for contracting with these businesses, we support section 4 of H.R. 1460. I would caution that as we contemplate increasing the number of preference programs that the government should always err towards open competition among qualified firms. Only through open competition using our free market system can we ensure that we are receiving the highest quality goods and services at the lowest price. Statutory changes could provide a quick short-term fix without consideration of long-term ramifications.

The addition of statutory tools must go hand-in-hand with significant implementation

efforts. We need to incentivize and train our contracting people to recognize the positive benefits and value of actively including small businesses and particularly veteran-owned small businesses in our procurement process. Often forgotten in the rush to fill agency needs, are the small businesses that can provide many of our agency needs for goods and services. Often times, it is these small businesses alone that bring innovation, creativity and a new perspective to the federal marketplace. It is these businesses that often bring the best value solution to our federal agencies.

There is no question that this Administration is committed to ensuring that veterans are provided every opportunity to fully integrate themselves in their communities upon return from service, and I am personally committed to ensuring that we continue to focus agency performance on improving contracting opportunities for veterans. We must demonstrate to our service personnel that we support them in all that they do and appreciate the sacrifices they have made on our behalf. I look forward to our continued collaboration on veterans issues.

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>
Sent: 4/28/2003 5:22:25 PM
Subject:

when are they releasing press release

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/28/2003 5:26:53 PM
Subject: RE:

They are awaiting Joe Hagin's approval. Not sure what the hang up is (if any)

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

From: Kavanaugh, Brett M.
Sent: Monday, April 28, 2003 5:22 PM
To: Bumatay, Patrick J.
Subject:

when are they releasing press release

From: Leitch, David G.
To: <Kavanaugh, Brett M.>
Sent: 4/28/2003 6:57:36 PM
Subject: RE:

Can you or John, or me if you return them to me, pull the good quotes on not answering questions about cases, so we can send to Roberts?

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

From: Kavanaugh, Brett M.
Sent: Monday, April 28, 2003 6:55 PM
To: Leitch, David G.
Cc: Ganter, Jonathan F.
Subject: Re:

I do.

From: David G. Leitch/WHO/EOP@Exchange on 04/28/2003 06:54:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Jonathan F. Ganter/WHO/EOP@EOP
cc:
Subject:

Do either one of you have the Ginsburg hearing transcripts that were in my office?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>
CC: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>
Sent: 4/29/2003 8:17:26 AM
Subject: : Re: Amber Alert bill / signing statement

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 29-APR-2003 12:17:26.00
SUBJECT: : Re: Amber Alert bill / signing statement
TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

No; I sure hope no one out there is proposing to say anything negative about that positive aspect of the bill.

Jennifer G. Newstead
04/29/2003 12:07:54 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc: Patrick J. Bumatay/WHO/EOP@Exchange@EOP
Subject: Amber Alert bill / signing statement

David Leitch would like to know if anyone in our office has worked on, or is working on, an issue in the Amber Alert bill which involves taking sentencing discretion away from judges -- this has been a subject of debate in the press. There is apparently a signing statement going around on the bill.

Please let me know -- thanks

Jen

Message Sent

To: _____
Brett M. Kavanaugh/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Jennifer R. Brosnahan/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Benjamin A. Powell/WHO/EOP@EOP
Theodore W. Ullyot/WHO/EOP@EOP

REV_00235005

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Snee, Ashley>;<Grubbs, Wendy J.>
Sent: 4/29/2003 8:50:12 AM
Subject: diversity of court of appeals nominees

fyi that the diversity of the President's court of appeals nominees is extraordinarily high when placed in historical context. Of the 42 circuit nominees, 5 have been African-American (12%), 4 have been Hispanic (10%), and 10 have been women (24%). The only President who nominated minorities and women to the courts of appeals in numbers anywhere close to these percentages was President Clinton. The increasing numbers in the last decade reflect of course the positive change in the legal profession over the last generation (and thus the changing pool of lawyer-candidates eligible for judgeships), but the diversity of President Bush's circuit nominees still seems rather noteworthy.

From: Kavanaugh, Brett M.
To: <Mamo, Jeanie S.>
CC: <Snee, Ashley>
Sent: 4/29/2003 9:33:55 AM
Subject: Re: Raleigh News & Observer (4/29/03) re: Bush names lawyer, ex-Helms aide to court

thought these stories were pretty good. thanks.

Jeanie S. Mamo

04/29/2003 09:04:54 AM

Record Type: Record

To: Ashley Snee/WHO/EOP@Exchange@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Raleigh News & Observer (4/29/03) re: Bush names lawyer, ex-Helms aide to court

Tuesday, April 29, 2003 12:00AM EDT

Bush names lawyer, ex-Helms aide to court

By JOHN WAGNER, Washington Correspondent

WASHINGTON - President Bush nominated a Raleigh lawyer and a former aide to U.S. Sen. Jesse Helms on Monday for seats on the U.S. 4th Circuit Court of Appeals, a federal panel that has been bereft of North Carolina judges because of a standoff between the state's senators.

The nomination of Allyson Duncan, a Raleigh lawyer with Kilpatrick Stockton, had been expected for months and drew praise Monday night from the offices of both U.S. Sen. John Edwards, a Democrat, and U.S. Sen. Elizabeth Dole, a Republican.

Bush also nominated Claude Allen, a top official at the U.S. Department of Health and Human Services who attended college in North Carolina and served as Helms' press secretary during his 1984 re-election campaign.

Allen currently lives in Virginia, so neither North Carolina senator could block his nomination under a Senate tradition that has effectively allowed members to veto picks from their home states.

REV_00235020

Edwards spokesman Mike Briggs said Edwards, who sits on the Judiciary Committee, will reserve judgment on Allen's nomination. Dole's office said that Allen deserves a confirmation hearing, and that Allen's "ties to North Carolina are as strong as his ties to Virginia."

The 4th Circuit, which hears appeals from five Southeastern states, is the last stop for federal cases before they reach the U.S. Supreme Court.

Both Duncan and Allen are Republicans. If confirmed, they would be just the second and third black judges to sit on a court that had been long criticized by Democrats as a conservative, all-white bastion.

Feuding between North Carolina's senators has kept the state from having a single judge on the 15-member panel since 1999. The nomination of another North Carolinian, U.S. District Court Judge Terrence Boyle, has been stalled since May 2001. Edwards has not consented to the nomination, partly in response to the blockage of a string of North Carolina nominees by Helms, Dole's Republican predecessor, during the Clinton administration.

Briggs said that Edwards believes Duncan, a former state appeals court judge, is "the kind of mainstream North Carolinian that would be a good addition to the 4th Circuit."

Still, it remained unclear Monday how quickly the Senate would move to confirm her nomination. Edwards would prefer the Senate move first because both senators support her.

Dole spokeswoman Mary Brown Brewer said Monday night, though, "Senator Dole continues to believe that Judge Boyle, Allyson Duncan and Claude Allen should receive hearings in the order of their nominations and based upon how long they have been waiting for a hearing."

Duncan, a Duke University law school graduate, has also served stints at a professor at the N.C. Central University School of Law and on the N.C. Utilities Commission. A list of her supporters released by the White House includes Julius Chambers, N.C. Central's former chancellor who is serving as treasurer of Edwards' presidential campaign.

Allen, a Pennsylvania native, served as Helms' campaign press secretary shortly after graduating from UNC-Chapel Hill. After the 1984 campaign, he got his law degree from Duke University. He since has worked as a lawyer in private practice, for the Virginia attorney general's office and as secretary for Health & Human Resources in Virginia. Bush named him deputy secretary at the federal Department of Health and Human Services in 2001.

Allen has no previous experience as a judge.

On Monday, Bush also announced two nominees to the U.S. District Court for the Western District of North Carolina: Robert J. Conrad Jr., currently U.S. attorney for the Western District of North Carolina; and H. Brent McKnight, current a U.S. Magistrate Judge.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>
CC: ashley snee/who/eop@exchange@eop [WHO] <ashley snee>
Sent: 4/29/2003 5:34:20 AM
Subject: : Re: Raleigh News & Observer (4/29/03) re: Bush names lawyer, ex-Helms aide to court

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 29-APR-2003 09:34:20.00
SUBJECT: : Re: Raleigh News & Observer (4/29/03) re: Bush names lawyer, ex-Helms aide to court
TO: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: ashley snee (CN=ashley snee/OU=who/O=eop@exchange@eop [WHO])
READ: UNKNOWN
End Original ARMS Header

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Jeanie S. Mamo
04/29/2003 09:04:54 AM
Record Type: Record

To: Ashley Snee/WHO/EOP@Exchange@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Raleigh News & Observer (4/29/03) re: Bush names lawyer, ex-Helms aide to court

Tuesday, April 29, 2003 12:00AM EDT

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From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/29/2003 10:11:51 AM
Subject: Thank you (Judges).doc

Brett,
would this be an appropriate response to Terry Boyle's letter thanking ARG for his letter to Sen. Edwards?

April 29, 2003

Dear Chief Judge Boyle:

Thank you for your recent letter. It was my pleasure writing Senator Edwards on behalf of your nomination. The President nominated you because of your exemplary service to your country and your high standards of ethics. We strongly believe that you deserve a hearing and a vote before the full Senate. I am hopeful that this matter will be resolved in a timely manner.

Thanks again for your writing and I look forward to your service on the Fourth Circuit. All the best.

Sincerely,

Alberto R. Gonzales
Counsel to the President

The Honorable Terrence W. Boyle
Chief Judge
United States District Court
Eastern District of North Carolina
Post Office Box 306
Elizabeth City, NC 27907-0306

REV_00235025

From: Kavanaugh, Brett M.
To: <Grubbs, Wendy J.>
Sent: 4/29/2003 11:10:35 AM
Subject: Re: Have you told Sutton about the vote? Should I call him? Or wait until after..

I plan to call him right after. He knows about it. We will get all R's, correct?

From: Wendy J. Grubbs/WHO/EOP@Exchange on 04/29/2003 11:09:09 AM

Record Type: Record

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

cc:

Subject: Have you told Sutton about the vote? Should I call him? Or wait until after..

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 4/29/2003 7:46:17 AM
Subject: : RE: sutton vote at noon; we are preparing statement by President

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:29-APR-2003 11:46:17.00
SUBJECT:: RE: sutton vote at noon; we are preparing statement by President
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Good!

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 11:30 AM
To: Leitch, David G.
Cc: Gonzales, Alberto R.
Subject: Re: sutton vote at noon; we are preparing statement by President

No, one statement, he has the votes.

From: David G. Leitch/WHO/EOP@Exchange on 04/29/2003 11:30:34 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@Exchange
cc:
Subject: Re: sutton vote at noon; we are preparing statement by President

Are e preparing 2 alternaivw statements?

.

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

From: Kavanaugh, Brett M. <bkavanau@who.eop.gov>
To: Gonzales, Alberto R. <Alberto_R_Gonzales@who.eop.gov>; Leitch, David G. <David_G_Leitch@who.eop.gov>
Sent: Tue Apr 29 11:23:21 2003
Subject: sutton vote at noon; we are preparing statement by President

From: Miers, Harriet
To: <Kavanaugh, Brett M.>
Sent: 4/29/2003 11:57:32 AM
Subject: FW: Law Day 2003

Brett, Dave would probably not anticipate that I would forward this email. However, I think it is important to do so because they are the keepers of tradition. I have already received other comment about using the Proclamation for in essence clear, political purposes. How strongly do we feel?

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

From: Kabaugh, David E.
Sent: Tuesday, April 29, 2003 11:02 AM
To: Miers, Harriet; Torgerson, Karin B.
Cc: Saunders, G. Timo
Subject: Law Day 2003

In the "for what it's worth category" hortatory proclamations are traditionally not the vehicle by which policy/political statements are made. This years Law Day, while not overly political, does make statements that could be construed as such. Acknowledging that this year's theme is centered on the independence of the courts, I still must question if this is the appropriate vehicle to discuss the issue of the judicial nomination and confirmation process. Thank you.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 4/29/2003 12:09:45 PM
Subject: Sutton status

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/29/2003 12:09 PM -----

From: Wendy J. Grubbs/WHO/EOP@Exchange on 04/29/2003 12:07:56 PM

Record Type: Record

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

cc:

Subject: Re: can we confirm asap what Reid said about cloture on owen -- relevant for draft Presidential statement

Sutton vote at 12:15 now. Still close but our guys are in line.

.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
Sent: 4/29/2003 8:17:27 AM
Subject: : RE: sutton vote at noon; we are preparing statement by President

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 29-APR-2003 12:17:27.00
SUBJECT: : RE: sutton vote at noon; we are preparing statement by President
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

amend that; he had only 1 D vote in committee: feinstein

From: David G. Leitch/WHO/EOP@Exchange on 04/29/2003 11:54:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Alberto R. Gonzales/WHO/EOP@Exchange
Subject: RE: sutton vote at noon; we are preparing statement by President

I was mostly joking, but let's hope it holds.

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 11:48 AM
To: Leitch, David G.
Cc: Gonzales, Alberto R.
Subject: RE: sutton vote at noon; we are preparing statement by President

recall that he received 2 D votes in committee, which is ordinarily an indicator that he likely would get 10-15 on floor; that said, Daschle/Reid are making big push.

From: David G. Leitch/WHO/EOP@Exchange on 04/29/2003 11:46:14 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: Alberto R. Gonzales/WHO/EOP@Exchange
Subject: RE: sutton vote at noon; we are preparing statement by President

Good!

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 11:30 AM
To: Leitch, David G.
Cc: Gonzales, Alberto R.
Subject: Re: sutton vote at noon; we are preparing statement by President

No, one statement, he has the votes.

From: David G. Leitch/WHO/EOP@Exchange on 04/29/2003 11:30:34 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Alberto R.
Gonzales/WHO/EOP@Exchange
cc:
Subject: Re: sutton vote at noon; we are preparing statement by
President

Are e preparing 2 alternaivw statements?

.

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

From: Kavanaugh, Brett M. <bkavanau@WHO.eop.gov>
To: Gonzales, Alberto R. <Alberto_R_Gonzales@who.eop.gov>; Leitch, David
G. <David_G_Leitch@who.eop.gov>
Sent: Tue Apr 29 11:23:21 2003
Subject: sutton vote at noon; we are preparing statement by President

REV_00235064

From: CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2003 8:52:57 AM
Subject: : RE: POTUS Statement on Jeff Sutton (Judicial Nominee)

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:29-APR-2003 12:52:57.00
SUBJECT:: RE: POTUS Statement on Jeff Sutton (Judicial Nominee)
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Excellent--

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 12:51 PM
To: Snee, Ashley
Cc: Miers, Harriet; Burks, Jonathan W.; Bird, Debra D.; Cleveland, Carolyn E.
Subject: Re: POTUS Statement on Jeff Sutton (Judicial Nominee)

He was just confirmed 52-41.

From: Ashley Snee/WHO/EOP@Exchange on 04/29/2003 12:31:19 PM
Record Type: Record

To: Harriet Miers/WHO/EOP@Exchange, Jonathan W.
Burks/WHO/EOP@Exchange, Debra D. Bird/WHO/EOP@Exchange, Carolyn E.
Cleveland/WHO/EOP@Exchange
cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: POTUS Statement on Jeff Sutton (Judicial Nominee)

The vote is taking place right now and he is expected to be confirmed.
Please put Ashley Snee (ASAP) down for the contact. Ph: 62115 and Fax:
60126.

I will bring hard copies down. Thank you.

<< File: 4-29 sutton confirmation.doc >>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Erin P. Hassing/OMB/EOP@EOP [OMB] <Erin P. Hassing>;Patrick J. Bumatay/WHO /EOP@Exchange [WHO] <Patrick J. Bumatay>
Sent: 4/29/2003 1:55:10 PM
Subject: : Re: FW: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms
Attachments: P_32D0G003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 29-APR-2003 17:55:10.00
SUBJECT:: Re: FW: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms
TO: Erin P. Hassing (CN=Erin P. Hassing/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
TO: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

No objection.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 04/29/2003 05:47:20 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

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

From: Hassing, Erin P.
Sent: Tuesday, April 29, 2003 5:38 PM
To: ca.legislation@gsa.gov; dodlrs@osdgc.osd.mil; CLRM@doc.gov; NASA_LRM@hq.nasa.gov
Cc: Whgc Lrm; Ovp Lrm; Cea Lrm; Styles, Angela B.; Blum, Mathew C.; Gerich, Michael D.; McMillin, Stephen S.; Schwartz, Kenneth L.; Lyon, Randolph M.; Rasetti, Lorenzo; Dennis, Yvette M.; Kelly, John W.; Benson, Meredith G.; Mertens, Steven M.; Goldberg, Robert H.; Morales, Gloria L.; Dove, Stephen W.; Lobrano, Lauren C.; Schroeder, Ingrid M.; Jukes, James J.; Gonzalez, Oscar; Aitken, Steven D.; Rostker, David
Subject: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

LRM ID: EPH48
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 29, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202) 395-3459 FAX: (202) 395-6148
SUBJECT: Small Business Administration Testimony on Diversion of

REV_00235069

Small Business Contracts to Larger Firms

DEADLINE: COB Friday, May 2, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Attached for your review is SBA testimony for a Wednesday, May 7th hearing before the House Small Business Committee. GSA will also be testifying at this hearing. Please provide your comments by COB Friday, May 2, 2002. If we do not receive your comments by that time, we will assume you have no objection to the document as drafted.

- GCBD HSBC Testimony May 7 2003.doc

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EOP:

WHGC LRM
OVP LRM
CEA LRM
Angela B. Styles
Mathew C. Blum
Michael D. Gerich
Stephen S. McMillin
Kenneth L. Schwartz
Randolph M. Lyon
Lorenzo Rasetti
Yvette M. Dennis
John W. Kelly
Meredith G. Benson
Steven M. Mertens
Robert H. Goldberg
Gloria L. Morales
Stephen W. Dove
Lauren C. Lobrano
Ingrid M. Schroeder
James J. Jukes
Oscar Gonzalez
Steven D. Aitken
David Rostker

LRM ID: EPH48 SUBJECT: Small Business Administration Testimony on
Diversion of Small Business Contracts to Larger Firms
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148
Office of Management and Budget

FROM: _____ (Date)

_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur
_____ No Objection
_____ No Comment
_____ See proposed edits on pages _____
_____ Other: _____
_____ FAX RETURN of _____ pages, attached to this response sheet

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_32D0G003_WHO.TXT_1>

**Statement of Fred C. Armendariz
Associate Deputy Administrator for
Government Contracting and Business Development
U.S. Small Business Administration
Small Business Status
House Committee on Small Business
May 7, 2003**

Good afternoon, Chairman Manzullo, Ranking Member Velazquez, and distinguished Members of this Committee. Thank you for inviting me to discuss concerns regarding large businesses obtaining Federal contracts intended for small businesses and the accuracy of small business information contained in databases maintained by the U.S. Small Business Administration (SBA) and the General Services Administration (GSA).

The Small Business Act defines a small business as one that is independently owned and operated, not dominant in its field of operation, and meets the detailed definitions or size standards established by the Administrator of the SBA. To be eligible as a small business on a Federal procurement, a business must not exceed the size standard designated for the procurement. The applicable size standard is determined by identifying the North American Industry Classification System (NAICS) industry that best describes the principle purpose of the goods or services being acquired. The SBA has established a size standard for each private sector NAICS industry.

Each year, the Federal Government awards over \$200 billion in contracts. In fiscal year 2001, small businesses received about \$50 billion dollars, or 22.81 percent. In addition, large businesses subcontracted approximately \$35.5 billion in Federal work to small businesses. However, small businesses have complained that large businesses are receiving Federal contracts

intended for small businesses. Part of this concern is related to ~~a problem of having a number of~~ large businesses inappropriately included in the Procurement Marketing and Access Network (PRO-Net) a small business database administered by the SBA.

The SBA developed ~~the Procurement Marketing and Access Network (PRO-Net)~~ as a self-certified database of small businesses. ~~PRO-Net functions as a broad-scope marketing tool for small businesses.~~ Business profiles in PRO-Net include business and marketing information. Businesses can also link their PRO-Net profiles to their home pages. Presently, PRO-Net holds records of more than 150,000 small businesses. In December 2002, the SBA partnered with the Department of Defense to integrate PRO-Net and the Central Contractor Registration (CCR) systems to create a single point of vendor registration.

The Federal acquisition community, state and local governments, and prime contractors use PRO-Net in identifying preliminary identification of qualified small business vendors. Contracting officers can search businesses profiled in PRO-Net based on NAICS codes; key words; location; certifications; business type; ownership demographics; electronic data interchange capability, etc.

PRO-Net is a marketing tool that is designed to assist small businesses with presenting their capabilities to Federal agencies and other organizations as potential sources of goods and services. ~~It should be clearly understood that PRO-Net is not designed to be a source database of only certified small businesses. PRO-Net is a marketing tool to assist small businesses with presenting their capabilities to Federal agencies and other organizations as potential sources of~~

~~goods and services.~~ It is not designed or intended to ~~evaluate-validate~~ the small business eligibility of a registrant. ~~Rather, small business status is evaluated on a procurement specific basis.~~ PRO-Net, however, does serve as the authoritative source of eligibility information on firms certified by SBA ~~as~~ under the 8(a) Business Development and HUBZone Programs, and small disadvantaged businesses.

For each Federal procurement solicitation, an offeror must represent in good faith that it is a small business at the time it submits its initial bid. Except for 8(a) BD and HUBZone program participants, and certified Small Disadvantaged Businesses, ~~a~~ contracting officer cannot assume nor is there guidance that suggests - that a business listed on PRO-Net is an eligible small business for a specific procurement. Because size standards vary by NAICS industry, a business can be small under some NAICS industries but not others. A contracting officer shall accept an offeror's small business representation unless a size protest is received from other offerors or if other information causes the contracting officer to question the offeror's small business representation.

The SBA has a well established process for resolving questions concerning the small business eligibility of an offeror on a Federal procurement. The small business representation of an offeror may be protested by the contracting officer, another offeror, or by the SBA. These size protests are submitted to one of the SBA's Government Contracting Area Offices for a formal size determination. In most cases, the SBA makes a decision within ten working days. If a business is determined to be other than small, the contracting officer cannot ~~not~~ award the contract to that business. The parties to a size protest may appeal a formal size determination to

the SBA's Office of Hearings and Appeals. However, a contracting officer has the discretion to continue with an award of a contract to another offeror or to wait for the outcome of a size appeal.

A business determined to be "other than small" as a result of a formal size determination is notified that it cannot represent itself as a small business on future procurements which specify a size standard at or below the size standard it had been found other than small. In addition, the business is notified that the Small Business Act prescribes severe penalties for misrepresenting itself as small. If the business' size status changes, it must request that the SBA conduct a new size determination and be certified as a small business before representing itself as small on Federal procurement sopportunities.

In fiscal year 2003, the SBA has received 193 size protests. Of these, 68 businesses were determined not to be small. During fiscal year 2002, the SBA received 383 size protests. Of these, 110 were dismissed on procedural grounds. Of these cases accepted for review, 85 firms were found to be other than small.

In cases where SBA has evidence that a business knowingly misrepresents itself as a small business, the SBA refers the case to the Office of the Inspector General (OIG). Because of the burden of proof required in establishing fraudulent intent, a relatively few number of cases have been referred to the OIG.

The SBA takes very seriously its responsibility for ensuring that only small businesses obtain Federal contracts and other Federal assistance intended for small businesses. The SBA views its responsibility in this area as one of providing a sound process to review protests; not to police small business representations. In Federal contracting, the SBA must rely on contracting officers and ~~offerors~~ other interested parties to bring these challenges to SBA for resolution. There ~~exists~~ is no mechanism for advising the SBA of which businesses are bidding on procurements or ~~of to provide~~ timely receiving notification of the successful offeror. The procedures to file a size protest are not complicated. It only requires that a ~~protester~~ protestor provide specific information suggesting why an offeror may not be small. The size protest must also be filed within 5 business days after award. However, size protests filed by the contracting officer or the SBA may be filed at any time.

We are aware that some businesses previously listed on PRO-Net do not meet the SBA's criteria for small business status. SBA conducts periodic searches of businesses on PRO-Net to find large businesses. In addition, we examine a business' PRO-Net profile in response to information provided to us from the public that questions the small business status of a particular business. Over the past six months, more than 600 businesses have been removed from PRO-Net because they are not small businesses according to the SBA's size standards. Thousands of others businesses have been removed because they did not update their PRO-Net profile within past 18 months.

While these efforts have led to the removal of many large businesses from PRO-Net, we are pursuing other actions that will more effectively address this problem. We are developing an

automated check of size information of new PRO-Net registrants. If the submitted information shows that a business exceeds the applicable SBA size standards, it will not be listed in PRO-Net. We will also be adding information on the criteria for determining small business status to ensure that a registrant is fully aware of size standards and other eligibility criteria, such as including the size of all affiliates in calculating business size. We will request a registrant to verify the accuracy of the submitted business size information and acknowledge that it understands the penalties associated with falsely certifying as a small business on Government contracts and subcontracts. We believe these actions will significantly reduce the number of large businesses on PRO-Net.

The SBA is also providing a letter to Federal agencies concerning the proper use of PRO-Net and advising them to be more conscientious in reviewing the small business representations of an offeror. As described above, an offeror must make a representation that it is a small business as part of its bid proposal. A business listed on PRO-Net may or may not be small for that particular procurement. However, PRO-Net may assist contracting officers in deciding whether to accept the small business representation or file a size protest with SBA by reviewing the information contained in the offeror's PRO-Net profile. To further assist Federal agencies with questions regarding the small business status of an offeror, the SBA is listing on its web site (www.sba.gov) information on the businesses that have been determined to be other than small through a formal size determination.

One of the major sources of complaints that large businesses are receiving Federal contracts intended for small businesses involves awards made through GSA Multiple Award

Schedule (MAS) Program (including Federal Supply Schedule (FSS)), and other multiple award and Governmentwide Acquisition contracts (GWAC). Under the SBA's regulations, a business that obtains a contract as a small business remains classified as a small business for the duration of the contract. On MAS and other multiple award GWAC contracts, the initial contract period and subsequent options can last anywhere from 5 to 20 years. Consequently, successful small businesses that outgrow the size standards, or who merge or are acquired by large businesses, are still considered small for the purposes of that contract until it expires or is otherwise terminated many years. ~~This For the limited number of MAS and other multiple award contracts that are set aside for small business, our current size regulations result in large and mid-sized businesses competing against small businesses. For all other MAS and multiple award contracts, Federal agencies also have been able to take credit for making small business awards to those large and mid-sized businesses.~~ ~~THE UNDERLINED PASSAGES ARE NOT CLEAR~~

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WHAT IS THE INTENT?

policy has resulted in small businesses competing against, and sometimes losing opportunities to, businesses that exceed the SBA's small business criteria. In addition, Federal agencies have been able to take small business credit for awards to other than small businesses.

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The SBA, GSA, and the Office of Management and Budget have been working together to develop a new policy which will require recertification of small business status during the term of a MAS, FSS, multiple award, and GWAC contract. Accordingly, on April 25, 2003 [the Federal Register's scheduled publication date], the SBA published a proposed rule to require an annual recertification of small business status on these types of contracts. The proposed rule also presents alternative approaches on recertifying small business status. We encourage the

Committee and the public to assist us in developing a new small business certification policy on MAS and other multiple award contracts by reviewing the proposed rule and providing us comments on the feasibility of the proposed and alternative approaches.

The SBA is committed to the President's Small Business Agenda and his proposals to create jobs and growth through the small business sector. We must ensure that ~~intended~~ small businesses receive their fair share of contract opportunities. Since small businesses are the engines that drive the economy, increased opportunities for these businesses will result in savings to the taxpayers, a stronger economy, and a stronger America. This concludes my remarks, and I will be able to respond to any questions that you may have.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/29/2003 2:56:08 PM
Subject: RE: do you have Owen's work number?

512-463-1344

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

From: Kavanaugh, Brett M.
Sent: Tuesday, April 29, 2003 2:53 PM
To: Bumatay, Patrick J.
Subject: do you have Owen's work number?

From: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Brian Benczkowski (E-mail) <Brian.A.Benczkowski@usdoj.gov>
Sent: 4/29/2003 1:31:07 PM
Subject: : FW: The Owen Filibuster -- Unprecedented in a Brand New Way

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])
CREATION DATE/TIME:29-APR-2003 17:31:07.00
SUBJECT:: FW: The Owen Filibuster -- Unprecedented in a Brand New Way
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Brian Benczkowski (E-mail)" <Brian.A.Benczkowski@usdoj.gov> ("Brian Benczkowski (E-mail)" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

FYI

> April 29, 2003
> TO: Republican Judiciary Legislative Assistants and Counsel
> FR: Steven J. Duffield -- Judiciary Policy Analyst & Counsel
> RE: The Owen Filibuster -- Unprecedented in a Brand New Way
>
> When Democrats announced the filibuster of Priscilla Owen's nomination this morning, they entered brand new territory: a filibuster on the "merits" of the nominee. Recall that the 1968 Fortas filibuster was due in significant part to allegations of cronyism and ethical transgressions. And Democrats have always claimed that they are filibustering Estrada because he has not been forthcoming. But with Justice Owen? The opposition is simple: they want to stop her because they believe she is too conservative.
>
> This rationale is all the more puzzling given comments made on the Senate floor by Senator Richard Durbin back on February 14. At that time, Senator Durbin said that as far as he was concerned, the only thing standing between Mr. Estrada and a final up-or-down vote was that he produce the Solicitor General memos and answer all questions. The opposition was procedural, he explained, and no filibuster should be sustained if the "needed" information was before the Senate. Senator Durbin said:
>
> If [Mr. Estrada] is honest and cooperate[s] in producing the information and answering the questions, he deserves a vote.
>
> But Senator Durbin did not stop there. He explained that the opposition within the Democrats' caucus was due to lack of information, not due to Mr. Estrada's beliefs. Senator Durbin continued:
>
> I went to a number of Democrats and said: Do you feel as I do? If he will disclose his legal memoranda, and if he will answer the questions that might arise from that, and perhaps a few that he avoided in the course of the hearing, would you vote to give him a vote? The answer was affirmative to a person; because, frankly, then we would know for whom we are voting.
>
> Senator Richard Durbin, Congressional Record, February 14, 2003 (emphasis added).
>
> Given that Justice Owen has appeared at two Judiciary hearings and has a substantial record to review, there has been no allegation that Senators lack ample information. So in today's context, the Senate record from February 14 can mean only one thing. Senator Durbin should oppose

REV_00235097

the current filibuster, as should all those other Senators who "to a person" said that they opposed Estrada only due to lack of information.

>

> Of course, Senator Durbin and his colleagues may need to be reminded of the standard they attempted to set in the Estrada context prior to their first vote on cloture.

>

>

>

> _____
> Steven J. Duffield

> Judiciary Policy Analyst & Counsel

> Senate Republican Policy Committee

> 347 Russell Senate Office Building

> (202) 224-3463 Fax (202) 224-1235

>

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/29/2003 1:46:52 PM
Subject: : FW: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms
Attachments: P_PLCOG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:29-APR-2003 17:46:52.00
SUBJECT:: FW: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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

From: Hassing, Erin P.
Sent: Tuesday, April 29, 2003 5:38 PM
To: ca.legislation@gsa.gov; dodlrs@osdgc.osd.mil; CLRM@doc.gov; NASA_LRM@hq.nasa.gov
Cc: Whgc Lrm; Ovp Lrm; Cea Lrm; Styles, Angela B.; Blum, Mathew C.; Gerich, Michael D.; McMillin, Stephen S.; Schwartz, Kenneth L.; Lyon, Randolph M.; Rasetti, Lorenzo; Dennis, Yvette M.; Kelly, John W.; Benson, Meredith G.; Mertens, Steven M.; Goldberg, Robert H.; Morales, Gloria L.; Dove, Stephen W.; Lobrano, Lauren C.; Schroeder, Ingrid M.; Jukes, James J.; Gonzalez, Oscar; Aitken, Steven D.; Rostker, David
Subject: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

LRM ID: EPH48
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, April 29, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

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LRM ID: EPH48 SUBJECT: Small Business Administration Testimony on
Diversion of Small Business Contracts to Larger Firms
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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Please include the LRM number and subject shown above.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148
Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on
the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_PLCOG003_WHO.TXT_1>

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Associate Deputy Administrator for
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U.S. Small Business Administration
Small Business Status
House Committee on Small Business
May 7, 2003**

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mechanism for advising the SBA of which businesses are bidding on procurements or to provide timely receiving notification of the successful offeror. The procedures to file a size protest are not complicated. It only requires that a protestor provide specific information suggesting why an offeror may not be small. The size protest must also be filed within 5 business days after award. However, size protests filed by the contracting officer or the SBA may be filed at any time.

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We are aware that some businesses previously listed on PRO-Net do not meet the SBA's criteria for small business status. SBA conducts periodic searches of businesses on PRO-Net to find large businesses. In addition, we examine a business' PRO-Net profile in response to information provided to us from the public that questions the small business status of a particular business. Over the past six months, more than 600 businesses have been removed from PRO-Net because they are not small businesses according to the SBA's size standards. Thousands of others businesses have been removed because they did not update their PRO-Net profile within past 18 months.

While these efforts have led to the removal of many large businesses from PRO-Net, we are pursuing other actions that will more effectively address this problem. We are developing an automated check of size information of new PRO-Net registrants. If the submitted information shows that a business exceeds the applicable SBA size standards, it will not be listed in PRO-Net. We will also be adding information on the criteria for determining small business status to ensure that a registrant is fully aware of size standards and other eligibility criteria, such as including the size of all affiliates in calculating business size. We will request a registrant to verify the accuracy of the submitted business size information and acknowledge that it

understands the penalties associated with falsely certifying as a small business on Government contracts and subcontracts. We believe these actions will significantly reduce the number of large businesses on PRO-Net.

The SBA is also providing a letter to Federal agencies concerning the proper use of PRO-Net and advising them to be more conscientious in reviewing the small business representations of an offeror. As described above, an offeror must make a representation that it is a small business as part of its bid proposal. A business listed on PRO-Net may or may not be small for that particular procurement. However, PRO-Net may assist contracting officers in deciding whether to accept the small business representation or file a size protest with SBA by reviewing the information contained in the offeror's PRO-Net profile. To further assist Federal agencies with questions regarding the small business status of an offeror, the SBA is listing on its web site (www.sba.gov) information on the businesses that have been determined to be other than small through a formal size determination.

One of the major sources of complaints that large businesses are receiving Federal contracts intended for small businesses involves awards made through GSA Multiple Award Schedule (MAS) Program (including Federal Supply Schedule (FSS)), and other multiple award and Governmentwide Acquisition contracts (GWAC). Under the SBA's regulations, a business that obtains a contract as a small business remains classified as a small business for the duration of the contract. On MAS and other multiple award GWAC contracts, the initial contract period and subsequent options can last anywhere from 5 to 20 years. Consequently, successful small businesses that outgrow the size standards, or who merge or are acquired by large businesses, are

still considered small for the purposes of that contract until it expires or is otherwise terminated,

Deleted: many years

This policy has resulted in small businesses competing against, and sometimes losing opportunities to, businesses that exceed the SBA's small business criteria. In addition, Federal agencies have been able to take small business credit for awards to other than small businesses.

Deleted: For the limited number of MAS and other multiple award contracts that are set aside for small business, our current size regulations result in large and mid-sized businesses competing against small businesses. For all other MAS and multiple award contracts, Federal agencies also have been able to take credit for making small business awards to those large and mid-sized businesses. THE UNDERLINED PASSAGES ARE NOT CLEAR---WHAT IS THE INTENT?*

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The SBA, GSA, and the Office of Management and Budget have been working together to develop a new policy which will require recertification of small business status during the term of a MAS, FSS, multiple award, and GWAC contract. Accordingly, on April 25, 2003 [the Federal Register's scheduled publication date], the SBA published a proposed rule to require an annual recertification of small business status on these types of contracts. The proposed rule also presents alternative approaches on recertifying small business status. We encourage the Committee and the public to assist us in developing a new small business certification policy on MAS and other multiple award contracts by reviewing the proposed rule and providing us comments on the feasibility of the proposed and alternative approaches.

The SBA is committed to the President's Small Business Agenda and his proposals to create jobs and growth through the small business sector. We must ensure that small businesses receive their fair share of contract opportunities. Since small businesses are the engines that drive the economy, increased opportunities for these businesses will result in savings to the taxpayers, a stronger economy, and a stronger America. This concludes my remarks, and I will be able to respond to any questions that you may have.

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From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 4/29/2003 5:47:20 PM
Subject: FW: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms
Attachments: GCBD HSBC Testimony May 7 2003.doc

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

From: Hassing, Erin P.
Sent: Tuesday, April 29, 2003 5:38 PM
To: ca.legislation@gsa.gov; dodtrs@osdgc.osd.mil; CLRM@doc.gov; NASA_LRM@hq.nasa.gov
Cc: Whgc Lrm; Ovp Lrm; Cea Lrm; Styles, Angela B.; Blum, Mathew C.; Gerich, Michael D.; McMillin, Stephen S.; Schwartz, Kenneth L.; Lyon, Randolph M.; Rasetti, Lorenzo; Dennis, Yvette M.; Kelly, John W.; Benson, Meredith G.; Mertens, Steven M.; Goldberg, Robert H.; Morales, Gloria L.; Dove, Stephen W.; Lobrano, Lauren C.; Schroeder, Ingrid M.; Jukes, James J.; Gonzalez, Oscar; Atken, Steven D.; Rostker, David
Subject: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

LRM ID: EPH48

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Tuesday, April 29, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference
OMB CONTACT: Erin P. Hassing
PHONE: (202)395-3459 FAX: (202)395-6148
SUBJECT: **Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms**

DEADLINE: **COB Friday, May 2, 2003**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Attached for your review is SBA testimony for a Wednesday, May 7th hearing before the House Small Business Committee. GSA will also be testifying at this hearing. Please provide your comments by COB Friday, May 2, 2002. If we do not receive your comments by that time, we will assume you have no objection to the document as drafted.

- GCBD HSBC Testimony May 7 2003.doc <>

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Lauren C. Lobrano

Ingrid M. Schroeder

James J. Jukes

Oscar Gonzalez

Steven D. Aitken

David Rostker **LRM ID: EPH48** **SUBJECT:** Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

**Statement of Fred C. Armendariz
Associate Deputy Administrator for
Government Contracting and Business Development
U.S. Small Business Administration
Small Business Status
House Committee on Small Business
May 7, 2003**

Good afternoon, Chairman Manzullo, Ranking Member Velazquez, and distinguished Members of this Committee. Thank you for inviting me to discuss concerns regarding large businesses obtaining Federal contracts intended for small businesses and the accuracy of small business information contained in databases maintained by the U.S. Small Business Administration (SBA) and the General Services Administration (GSA).

The Small Business Act defines a small business as one that is independently owned and operated, not dominant in its field of operation, and meets the detailed definitions or size standards established by the Administrator of the SBA. To be eligible as a small business on a Federal procurement, a business must not exceed the size standard designated for the procurement. The applicable size standard is determined by identifying the North American Industry Classification System (NAICS) industry that best describes the principle purpose of the goods or services being acquired. The SBA has established a size standard for each private sector NAICS industry.

Each year, the Federal Government awards over \$200 billion in contracts. In fiscal year 2001, small businesses received about \$50 billion dollars, or 22.81 percent. In addition, large businesses subcontracted approximately \$35.5 billion in Federal work to small businesses. However, small businesses have complained that large businesses are receiving Federal contracts

intended for small businesses. Part of this concern is related to ~~a problem of having a number of large businesses inappropriately included in the Procurement Marketing and Access Network (PRO-Net)~~ a small business database administered by the SBA.

The SBA developed ~~the Procurement Marketing and Access Network (PRO-Net)~~ as a self-certified database of small businesses. ~~PRO-Net functions as a broad-scope marketing tool for small businesses.~~ Business profiles in PRO-Net include business and marketing information. Businesses can also link their PRO-Net profiles to their home pages. Presently, PRO-Net holds records of more than 150,000 small businesses. In December 2002, the SBA partnered with the Department of Defense to integrate PRO-Net and the Central Contractor Registration (CCR) systems to create a single point of vendor registration.

The Federal acquisition community, state and local governments, and prime contractors use PRO-Net in identifying preliminary identification of qualified small business vendors. Contracting officers can search businesses profiled in PRO-Net based on NAICS codes; key words; location; certifications; business type; ownership demographics; electronic data interchange capability, etc.

PRO-Net is a marketing tool that is designed to assist small businesses with presenting their capabilities to Federal agencies and other organizations as potential sources of goods and services. ~~It should be clearly understood that PRO-Net is not designed to be a source database of only certified small businesses. PRO-Net is a marketing tool to assist small businesses with presenting their capabilities to Federal agencies and other organizations as potential sources of~~

~~goods and services. It is not designed or intended to evaluate-validate the small business eligibility of a registrant. Rather, small business status is evaluated on a procurement specific basis.~~ PRO-Net, however, does serve as the authoritative source of eligibility information on firms certified by SBA ~~as~~ under the 8(a) Business Development and HUBZone Programs, and small disadvantaged businesses.

For each Federal procurement solicitation, an offeror must represent in good faith that it is a small business at the time it submits its initial bid. Except for 8(a) BD and HUBZone program participants, and certified Small Disadvantaged Businesses, ~~a~~ contracting officer cannot assume nor is there guidance that suggests - that a business listed on PRO-Net is an eligible small business for a specific procurement. Because size standards vary by NAICS industry, a business can be small under some NAICS industries but not others. A contracting officer shall accept an offeror's small business representation unless a size protest is received from other offerors or if other information causes the contracting officer to question the offeror's small business representation.

The SBA has a well established process for resolving questions concerning the small business eligibility of an offeror on a Federal procurement. The small business representation of an offeror may be protested by the contracting officer, another offeror, or by the SBA. These size protests are submitted to one of the SBA's Government Contracting Area Offices for a formal size determination. In most cases, the SBA makes a decision within ten working days. If a business is determined to be other than small, the contracting officer cannot ~~not~~ award the contract to that business. The parties to a size protest may appeal a formal size determination to

the SBA's Office of Hearings and Appeals. However, a contracting officer has the discretion to continue with an award of a contract to another offeror or to wait for the outcome of a size appeal.

A business determined to be "other than small" as a result of a formal size determination is notified that it cannot represent itself as a small business on future procurements which specify a size standard at or below the size standard it had been found other than small. In addition, the business is notified that the Small Business Act prescribes severe penalties for misrepresenting itself as small. If the business' size status changes, it must request that the SBA conduct a new size determination and be certified as a small business before representing itself as small on Federal procurement sopportunities.

In fiscal year 2003, the SBA has received 193 size protests. Of these, 68 businesses were determined not to be small. During fiscal year 2002, the SBA received 383 size protests. Of these, 110 were dismissed on procedural grounds. Of these cases accepted for review, 85 firms were found to be other than small.

In cases where SBA has evidence that a business knowingly misrepresents itself as a small business, the SBA refers the case to the Office of the Inspector General (OIG). Because of the burden of proof required in establishing fraudulent intent, a relatively few number of cases have been referred to the OIG.

The SBA takes very seriously its responsibility for ensuring that only small businesses obtain Federal contracts and other Federal assistance intended for small businesses. The SBA views its responsibility in this area as one of providing a sound process to review protests; not to police small business representations. In Federal contracting, the SBA must rely on contracting officers and ~~offerors~~ other interested parties to bring these challenges to SBA for resolution. There ~~exists~~ is no mechanism for advising the SBA of which businesses are bidding on procurements or ~~of to provide~~ timely receiving notification of the successful offeror. The procedures to file a size protest are not complicated. It only requires that a ~~protester~~ protestor provide specific information suggesting why an offeror may not be small. The size protest must also be filed within 5 business days after award. However, size protests filed by the contracting officer or the SBA may be filed at any time.

We are aware that some businesses previously listed on PRO-Net do not meet the SBA's criteria for small business status. SBA conducts periodic searches of businesses on PRO-Net to find large businesses. In addition, we examine a business' PRO-Net profile in response to information provided to us from the public that questions the small business status of a particular business. Over the past six months, more than 600 businesses have been removed from PRO-Net because they are not small businesses according to the SBA's size standards. Thousands of others businesses have been removed because they did not update their PRO-Net profile within past 18 months.

While these efforts have led to the removal of many large businesses from PRO-Net, we are pursuing other actions that will more effectively address this problem. We are developing an

automated check of size information of new PRO-Net registrants. If the submitted information shows that a business exceeds the applicable SBA size standards, it will not be listed in PRO-Net. We will also be adding information on the criteria for determining small business status to ensure that a registrant is fully aware of size standards and other eligibility criteria, such as including the size of all affiliates in calculating business size. We will request a registrant to verify the accuracy of the submitted business size information and acknowledge that it understands the penalties associated with falsely certifying as a small business on Government contracts and subcontracts. We believe these actions will significantly reduce the number of large businesses on PRO-Net.

The SBA is also providing a letter to Federal agencies concerning the proper use of PRO-Net and advising them to be more conscientious in reviewing the small business representations of an offeror. As described above, an offeror must make a representation that it is a small business as part of its bid proposal. A business listed on PRO-Net may or may not be small for that particular procurement. However, PRO-Net may assist contracting officers in deciding whether to accept the small business representation or file a size protest with SBA by reviewing the information contained in the offeror's PRO-Net profile. To further assist Federal agencies with questions regarding the small business status of an offeror, the SBA is listing on its web site (www.sba.gov) information on the businesses that have been determined to be other than small through a formal size determination.

One of the major sources of complaints that large businesses are receiving Federal contracts intended for small businesses involves awards made through GSA Multiple Award

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WHAT IS THE INTENT?

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Committee and the public to assist us in developing a new small business certification policy on MAS and other multiple award contracts by reviewing the proposed rule and providing us comments on the feasibility of the proposed and alternative approaches.

The SBA is committed to the President's Small Business Agenda and his proposals to create jobs and growth through the small business sector. We must ensure that ~~intended~~ small businesses receive their fair share of contract opportunities. Since small businesses are the engines that drive the economy, increased opportunities for these businesses will result in savings to the taxpayers, a stronger economy, and a stronger America. This concludes my remarks, and I will be able to respond to any questions that you may have.

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>;<Hassing, Erin P.>
Sent: 4/29/2003 5:54:42 PM
Subject: Re: FW: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms
Attachments: GCBD HSBC Testimony May 7 2003.doc

No objection.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 04/29/2003 05:47:20 PM

Record Type: Record

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

cc:

Subject: FW: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

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

From: Hassing, Erin P.

Sent: Tuesday, April 29, 2003 5:38 PM

To: ca.legislation@gsa.gov; dodlrs@osdgc.osd.mil; CLRM@doc.gov; NASA_LRM@hq.nasa.gov

Cc: Whgc Lrm; Ovp Lrm; Cea Lrm; Styles, Angela B.; Blum, Mathew C.; Gerich, Michael D.; McMillin, Stephen S.; Schwartz, Kenneth L.; Lyon, Randolph M.; Rasetti, Lorenzo; Dennis, Yvette M.; Kelly, John W.; Benson, Meredith G.; Mertens, Steven M.; Goldberg, Robert H.; Morales, Gbria L.; Dove, Stephen W.; Lobrano, Lauren C.; Schroeder, Ingrid M.; Jukes, James J.; Gonzalez, Oscar; Aitken, Steven D.; Rostker, David

Subject: LRM EPH48 - - Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

LRM ID: EPH48

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Tuesday, April 29, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

REV_00235120

FROM: Ingrid M. Schroeder (for) Assistant Director for Legislative Reference

OMB CONTACT: Erin P. Hassing

PHONE: (202)395-3459 FAX: (202)395-6148

SUBJECT: **Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms**

DEADLINE: **COB Friday, May 2, 2003**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Attached for your review is SBA testimony for a Wednesday, May 7th hearing before the House Small Business Committee. GSA will also be testifying at this hearing. Please provide your comments by COB Friday, May 2, 2002. If we do not receive your comments by that time, we will assume you have no objection to the document as drafted.

- GCBD HSBC Testimony May 7 2003.doc <>

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LRM ID: EPH48 **SUBJECT:** Small Business Administration Testimony on Diversion of Small Business Contracts to Larger Firms

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

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You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Erin P. Hassing Phone: 395-3459 Fax: 395-6148

Office of Management and Budget

FROM: _____ (Date)
_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

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Associate Deputy Administrator for
Government Contracting and Business Development
U.S. Small Business Administration
Small Business Status
House Committee on Small Business
May 7, 2003**

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Each year, the Federal Government awards over \$200 billion in contracts. In fiscal year 2001, small businesses received about \$50 billion dollars, or 22.81 percent. In addition, large businesses subcontracted approximately \$35.5 billion in Federal work to small businesses. However, small businesses have complained that large businesses are receiving Federal contracts

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While these efforts have led to the removal of many large businesses from PRO-Net, we are pursuing other actions that will more effectively address this problem. We are developing an automated check of size information of new PRO-Net registrants. If the submitted information shows that a business exceeds the applicable SBA size standards, it will not be listed in PRO-Net. We will also be adding information on the criteria for determining small business status to ensure that a registrant is fully aware of size standards and other eligibility criteria, such as including the size of all affiliates in calculating business size. We will request a registrant to verify the accuracy of the submitted business size information and acknowledge that it

understands the penalties associated with falsely certifying as a small business on Government contracts and subcontracts. We believe these actions will significantly reduce the number of large businesses on PRO-Net.

The SBA is also providing a letter to Federal agencies concerning the proper use of PRO-Net and advising them to be more conscientious in reviewing the small business representations of an offeror. As described above, an offeror must make a representation that it is a small business as part of its bid proposal. A business listed on PRO-Net may or may not be small for that particular procurement. However, PRO-Net may assist contracting officers in deciding whether to accept the small business representation or file a size protest with SBA by reviewing the information contained in the offeror's PRO-Net profile. To further assist Federal agencies with questions regarding the small business status of an offeror, the SBA is listing on its web site (www.sba.gov) information on the businesses that have been determined to be other than small through a formal size determination.

One of the major sources of complaints that large businesses are receiving Federal contracts intended for small businesses involves awards made through GSA Multiple Award Schedule (MAS) Program (including Federal Supply Schedule (FSS)), and other multiple award and Governmentwide Acquisition contracts (GWAC). Under the SBA's regulations, a business that obtains a contract as a small business remains classified as a small business for the duration of the contract. On MAS and other multiple award GWAC contracts, the initial contract period and subsequent options can last anywhere from 5 to 20 years. Consequently, successful small businesses that outgrow the size standards, or who merge or are acquired by large businesses, are

still considered small for the purposes of that contract until it expires or is otherwise terminated,

Deleted: many years

This policy has resulted in small businesses competing against, and sometimes losing opportunities to, businesses that exceed the SBA's small business criteria. In addition, Federal agencies have been able to take small business credit for awards to other than small businesses.

Deleted: For the limited number of MAS and other multiple award contracts that are set aside for small business, our current size regulations result in large and mid-sized businesses competing against small businesses. For all other MAS and multiple award contracts, Federal agencies also have been able to take credit for making small business awards to those large and mid-sized businesses. THE UNDERLINED PASSAGES ARE NOT CLEAR---WHAT IS THE INTENT?*

Formatted: No underline

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The SBA, GSA, and the Office of Management and Budget have been working together to develop a new policy which will require recertification of small business status during the term of a MAS, FSS, multiple award, and GWAC contract. Accordingly, on April 25, 2003 [the Federal Register's scheduled publication date], the SBA published a proposed rule to require an annual recertification of small business status on these types of contracts. The proposed rule also presents alternative approaches on recertifying small business status. We encourage the Committee and the public to assist us in developing a new small business certification policy on MAS and other multiple award contracts by reviewing the proposed rule and providing us comments on the feasibility of the proposed and alternative approaches.

The SBA is committed to the President's Small Business Agenda and his proposals to create jobs and growth through the small business sector. We must ensure that small businesses receive their fair share of contract opportunities. Since small businesses are the engines that drive the economy, increased opportunities for these businesses will result in savings to the taxpayers, a stronger economy, and a stronger America. This concludes my remarks, and I will be able to respond to any questions that you may have.

Deleted: intended

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
Sent: 4/29/2003 2:45:19 PM
Subject: : pdf of letter from Judge Gonzales last week on Fourth Circuit
Attachments: P_BQF0G003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:29-APR-2003 18:45:19.00
SUBJECT:: pdf of letter from Judge Gonzales last week on Fourth Circuit
TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_BQF0G003_WHO.TXT_1>

THE WHITE HOUSE

WASHINGTON

April 23, 2003

Dear Senators Allen, Dole, Edwards, Mikulski, Sarbanes, and Warner:

I write about the status of the four vacancies on the U.S. Court of Appeals for the Fourth Circuit.

There are 15 authorized seats on the Court of Appeals. Federal law imposes only one requirement for allocation of seats within a circuit -- that each State have at least one judge. Each State in a circuit often has a number of judges sitting in that State that corresponds at least roughly to the State's percentage of the overall population in the circuit or to the percentage of the circuit's caseload that arises from that State. To be sure, such geographic balance is not established in law or binding on the President or Senate. And there often are deviations in some circuits for a variety of historical and other reasons. (I would note, in addition, that judges can move from one State to another State in the circuit after their appointment, as has happened on some occasions in the past.) But this measure is generally a rough baseline for assessing the geographic allocation of seats within a circuit.

Based on this measure, of the 15 authorized seats, it appears that the allocation would roughly resemble the following: North Carolina: 4 or 5, Virginia: 4 or 5, South Carolina: 2 or 3, Maryland: 2 or 3, and West Virginia: 1 or 2. As of now, taking into account that Judge Widener recently notified the President of his intended retirement, the Fourth Circuit is significantly out of geographic balance:

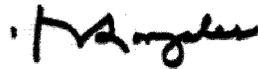
	Baseline Allocation	Current Number of Judges
North Carolina:	4 or 5	0
Virginia:	4 or 5	3
South Carolina	2 or 3	4
Maryland:	2 or 3	2
West Virginia:	1 or 2	2

There are four current vacancies on the Court. The four judges who previously occupied these seats maintained their chambers in North Carolina, Virginia, and Maryland (which is why I have sent this letter to you as the Senators from those States). Judge Terry Boyle of North Carolina was nominated for one vacancy in May 2001. For the three additional vacancies, the President intends to nominate well-qualified and well-respected individuals in a manner that will bring the circuit closer to geographic balance, recognizing that it would take several years and additional vacancies for the circuit to achieve balance and recognizing further that absolute geographic balance is neither legally nor historically required. In particular, the President intends to nominate two such individuals on Monday, April 28 -- one who currently lives in Virginia and has strong roots in and ties to both Virginia and North Carolina and one who currently lives in North Carolina and has served on the state judiciary in North Carolina. Both

are African-American, and their confirmations by the Senate will further dismantle an historic barrier. For the last remaining vacancy, the President would intend to submit a nomination no later than September 2003, consistent with the President's commitment to submit nominations within 180 days of receiving notice of an intended retirement or vacancy.

I remain disappointed that Judge Boyle's nomination has been pending for two years. But I am pleased that we otherwise have been able to consult extensively and work cooperatively on other circuit and district nominees in Virginia, North Carolina, and Maryland. Please feel free to contact me at any time with your thoughts regarding the Fourth Circuit or other issues of concern to you.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable George Allen
The Honorable Elizabeth Dole
The Honorable John R. Edwards
The Honorable Barbara A. Mikulski
The Honorable Paul S. Sarbanes
The Honorable John W. Warner
United States Senate
Washington, D.C. 20510

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>
Sent: 4/29/2003 7:57:58 PM
Subject: Feinstein returned blue slip on Bea

From: Kavanaugh, Brett M.
To: <Bumatay, Patrick J.>;<Brown, James A.>
Sent: 4/29/2003 8:32:33 PM
Subject: Re: FW: LRM JAB63 - - Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003
Attachments: Snow letter re HR205.doc

No policy objection. Defer to Leg Affairs on Senator Snowe's interest in this.

From: Patrick J. Bumatay/WHO/EOP@Exchange on 04/25/2003 10:47:21 AM

Record Type: Record

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

cc:

Subject: FW: LRM JAB63 - - Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003

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

From: Brown, James A.

Sent: Friday, April 25, 2003 10:38 AM

To: justice.lrm@usdoj.gov; do-soleg@dol.gov; epalm@epamail.epa.gov; Ceq Lrm; ltr@do.treas.gov; Jacqueline.Sierodzinski@sba.gov

Cc: McMillin, Stephen S.; Rhinesmith, Alan B.; Lyon, Randolph M.; Dennis, Yvette M.; Rasetti, Lorenzo; Rostker, David; Hill, Jefferson B.; Noe, Paul R.; Vargas, Veronica; Graham, John; Perry, Philip J.; Schneider, Matthew J.; Wood, John F.; Joseffer, Daryl L.; Addington, David S.; Whgc Lrm; Blum, Mathew C.; Gerich, Michael D.; Arbuckle, Donald R.; Nec Lrm; Lobrano, Lauren C.; Jukes, James J.; Green, Richard E.

Subject: LRM JAB63 - - Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003



- Snow letter re HR205.doc <>

LRM ID: JAB63

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Friday, April 25, 2003

REV_00235136

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003

DEADLINE: 10:00 A.M. Wednesday, April 30, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: If we do not hear from you by the deadline, we will assume that you have no objection to clearance of this letter.

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WHGC LRM
Mathew C. Blum
Michael D. Gerich
Donald R. Arbuckle
NEC LRM
Lauren C. Lobrano
James J. Jukes
Richard E. Green

LRM ID: JAB63 **SUBJECT:** Small Business Administration Report on HR205 National Small Business Regulatory Assistance Act of 2003

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)
_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

The Honorable Olympia J. Snowe
Chair, Committee on Small Business
and Entrepreneurship
United States Senate
Washington, DC 20510

Dear Madam Chairman:

This letter is to express the concerns of the U.S. Small Business Administration (SBA) on H.R. 205, the National Small Business Regulatory Assistance Act of 2003. While SBA recognizes the need and importance of providing assistance to small businesses, we do not support these amendments to the Small Business Act.

H.R. 205 would establish a pilot program under which Small Business Development Centers (SBDCs) would provide regulatory compliance assistance to small business concerns. SBA recognizes the importance of providing assistance to small businesses to help them comply with regulatory issues and believes that SBDCs can continue to play a useful role in bringing small businesses together with subject matter experts in the regulatory agencies who can assist them with their particular problems. However, expecting SBDCs to provide such expert guidance themselves, on a broad range of Federal regulatory questions would be at best duplicate assistance provided by the regulatory agencies, and could result in the provisions of contradictory or erroneous guidance that would harm small businesses and expose the SBDCs to liability.

Thank you for the opportunity to express our concerns regarding these proposed amendments to the Small Business Act.

Sincerely,

Hector V. Barreto
Administrator

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/30/2003 7:24:58 AM
Subject: : FW: Confirmed Judge

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:30-APR-2003 11:24:58.00
SUBJECT:: FW: Confirmed Judge
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Ok to appoint?

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

From: McCathran, William W.
Sent: Wednesday, April 30, 2003 11:22 AM
To: Bumatay, Patrick J.; Sampson, Kyle
Cc: Saunders, G. Timo; Kalbaugh, David E.
Subject: Confirmed Judge

Jeffrey S. Sutton, USCJ, Sixth Circuit was confirmed by the Senate last night. Ok to appoint?

Please advise.

tk,
Bill

Clerk's Office

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 4/30/2003 3:25:32 AM
Subject: : fcfnnn043003 Inside: John Nowacki's Commentary: Senate Hard-liners Start New Filibuster: Continuing To Trash Two Centuries Of Precedent

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2003 07:25:32.00
SUBJECT:: fcfnnn043003 Inside: John Nowacki's Commentary: Senate Hard-liner s Start New Filibuster: Continuing To Trash Two Centuries Of Precedent
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

well done

tsg

----- Forwarded by Tim Goeglein/WHO/EOP on 04/30/2003
07:24 AM -----

Notable News Now <NotableNewsNow@freecongress.org>
04/29/2003 07:46:48 PM
Record Type: Record

To:
cc:
Subject: fcfnnn043003 Inside: John Nowacki's Commentary: Senate Hard-liner s Start New Filibuster: Continuing To Trash Two Centuries Of Precedent

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Americans For Tax Reform's Dan Clifton
Discusses Health Care Ideas That Will Allow The
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-
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-
Free Congress Foundation's
Notable News Now
April 30, 2003

The Free Congress Commentary
Senate Hard-liners Start New Filibuster:
Continuing To Trash Two Centuries Of Precedent
By John Nowacki

"Priscilla Owen will not be approved . . . people should understand that and not waste the time of the Senate."

That was the gist of Senator Harry Reid's announcement that the Democrats are now filibustering the Texas Supreme Court Justice's nomination to the U.S. Court of Appeals for the Fifth Circuit. It's the Democrats' second filibuster - they've been blocking a vote on Miguel Estrada's D.C. Circuit nomination since February. And it's another groundbreaking moment for the Democrats, who have already mounted the first filibuster of a circuit court nominee in the history of the Republic and are now simultaneously launching the second.

If you can believe the Senate Minority Whip, that's the most reasonable thing in the world. Observing that President Bush once owned a baseball team and that small percentages in that game make for a great record, Reid argued that Bush ought to be happy that only two of his nominees are being denied a vote.

Let's get this straight. The exceptionally well-qualified Miguel Estrada is supported by more than enough Senators for confirmation - including several Democrats - but is denied a vote because the hard-liners in the Democrat caucus know they haven't made their case. But that's only fair, right?

Then the exceptionally well-qualified Priscilla Owen, also supported by more than enough Senators for confirmation - including at least one Democrat - is denied a vote because, yet again, the hard-liners in the Democrat caucus cannot make their case. Why all the fuss?

Well, to begin with, this is nothing less than an attempt to rewrite the Constitution and toss out two centuries of precedent - a point Senator Kay Bailey Hutchison of Texas has been making since Day One of the Estrada filibuster. Wherever the Constitution requires a supermajority, it says so.

Clearly. Confirmations only need a simple majority, and it's been that way since the Washington Administration. But filibusters cannot be broken without 60 votes, and the Democrat leaders have effectively said that, minority party or not, no one will be confirmed by a simple majority vote unless they decide it's okay.

Second, the Democrat leadership is fighting to keep the people's elected representatives from doing the will of those who voted them into office. Remember how the President's party is supposed to lose mid-term elections? There was a reason the American people handed Senate control back to the Republicans at the first opportunity: Democrat obstruction. And in his final campaign swing where he highlighted that obstruction, one of the first examples George W. Bush would raise each time was the Democrats' systematic obstruction of his judicial nominees.

Which raises a third point - these are hardly a couple of isolated cases, not that filibustering nominees can be dismissed so cavalierly to begin with. There has been a systematic obstruction of Bush's nominees, circuit court nominees in particular.

Five of his 11 original nominees - sent up on May 9, 2001, nearly two years ago - still have not had been confirmed. All of the first nominees put forward by former Presidents Carter, Reagan, Bush, and Clinton were confirmed, quickly.

During his first two years, when the Senate is usually more accommodating, President Bush saw just 53 percent of his circuit court nominees confirmed. In the same periods of their administrations, all of the previous four Presidents had much higher confirmation rates for the same level nominees.

For Jimmy Carter, it was 100 percent. Ronald Reagan, 95 percent. George H.W. Bush, with a Democrat-controlled Senate, saw 96 percent confirmed. For Bill Clinton, with a Senate of his own party, the number was 86 percent.

Shortly after Bush's inauguration, liberal Democrats in the Senate announced that the President's nominees would have to pass a political litmus test.

A little later, they declared that it was up to otherwise qualified nominees to prove they deserve confirmation, meaning a refusal to play the political game would not meet the new burden of proof. Many of the lucky circuit court nominees who received hearings found themselves subjected to campaigns of character assassination run by outside groups with lots of clout but no credibility, and with Judiciary Committee Democrats acting as willing accomplices in the attacks.

New York Senator Charles Schumer argues that this is all justified as part of a noble cause. "I would argue that we're checking an arrogance in the White House . . . [history] will look at this as fair," he recently declared on the Senate floor. That so-called arrogance is Bush's decision to nominate men and women who share his constitutionalist judicial philosophy instead of the "living, breathing Constitution" views endorsed by Al Gore.

A few weeks ago, columnist Robert Novak reported that some Republicans are tiring of the confirmation battles and that Democrat leaders like Ted Kennedy had counted on this all along. If those Republicans decide to fold, this is what they can look forward to for the remainder of Bush's presidency, regardless of whether that lasts one term or two. And these are just the battles over circuit court of appeals seats. Just imagine how the Democrats will handle a nominee to the Supreme Court.

Well. Harry Reid has told the Republicans what to do. The question is whether they're going to sit down and take it.

John Nowacki is Director of Legal Policy at the Free Congress Foundation.

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Free Congress Foundation * 717 Second Street, NE * Washington, DC 20002 *
Phone: 202.546.3000 * Fax: 202.544.2819

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From: Leitch, David G.
To: <Kavanaugh, Brett M.>;<Bartolomucci, H. Christopher>;<Gonzales, Alberto R.>
Sent: 4/30/2003 12:08:29 PM
Subject:

Schumer to propose modifying confirmation process to have Commissions in every state and for every circuit.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>
Sent: 4/30/2003 12:17:21 PM
Subject: : lawday.prc
Attachments: P_R2M1G003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2003 16:17:21.00
SUBJECT:: lawday.prc
TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

this is on legal size, which i cant print out. can you do so?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
04/30/2003 04:03 PM -----

From: Karin B. Torgerson/WHO/EOP@Exchange on 04/30/2003 03:53:02 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: lawday.prc

Here is the current draft.;

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_R2M1G003_WHO.TXT_1>

LAW DAY, U.S.A., 2003

- - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

America was founded on the ideals of liberty and equality for all, and the Framers of the Constitution created three branches of Government to uphold these principles. ~~One of these branches~~The third branch, the Judicial, is responsible for administering justice fairly and efficiently impartially and ensuring that the Constitution is followed. On Law Day, we recognize the ~~merits~~ achievements of our Nation's legal system in maintaining "checks and balances" and in sustaining the rights we cherish.

George Washington ~~once~~ wrote, "The administration of justice is the firmest pillar of government." Our Judicial branch upholds the rule of law in our society and strengthens our democracy. Under the Constitution, judges ~~have been~~ are granted the significant responsibility of providing fair and impartial resolution ~~when disputes arise or when individuals are charged with breaking the law~~ of criminal and civil disputes.

This year's Law Day theme, "Independent Courts Protect Our Liberties," focuses on one of the ~~most important tenets~~ foundations of our ~~legal~~ constitutional system: judicial independence. ~~In order to~~ It also reminds us that in order to ensure fairness and equality for all citizens, our judges must

serve as impartial arbiters who do not have a stake in their
decisions or seek to achieve a biased the outcome of in the court
decisions cases they oversee.

~~Judicial independence upholds the separation of powers among~~
~~our three branches of Government, and helps ensure that lawmakers~~
~~create laws that do not favor one individual over another.~~ By
applying careful limits on the powers of judges and separating
the responsibilities of making laws and ~~applying~~ interpreting laws
between the legislative and judicial branches, our Constitution
assures that no one branch of government holds too much power.
Judicial independence preserves this separation of powers by
providing Federal judges the autonomy to make decisions
unfettered by influences from the executive and legislative
branches. ~~legal system encourages integrity and fulfills the~~
~~promises of the Constitution~~ In this way, we are assured that are
laws will be drafted fairly, interpreted justly, and applied with
uniformity. State systems provide for judicial independence by
modeling their own systems after the Federal division of power
and through their ethical cannons.

~~Because judges enjoy autonomy once they are appointed,~~
~~it is~~ Our Nation's judges must be crucial that men and women of
exemplary character. ~~are selected.~~ The Both the nomination
process of our federal system and the election process utilized
by many of our States ~~nomination and confirmation process must~~
should strive to identify ~~capable yet humble~~ well-qualified
individuals with wisdom, experience, good temperament, and energy
who will honor the public office

From: CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 4/30/2003 1:02:29 PM
Subject: : CA4 MD vs. VA seat at Ari's briefing

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2003 17:02:29.00
SUBJECT:: CA4 MD vs. VA seat at Ari's briefing
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

You may already be aware of this, but interesting that the issue of the CA4 "Maryland seat" made it into today's press briefing. See the relevant portion below.

Q Ari, back on the judicial nominations, now. A new controversy may be cropping up because the two Maryland senators are concerned about the Claude Allen nomination. Grant you, they might not have voted for Owen and Estrada anyway, but they're upset about the Claude Allen nomination because he's a Virginian, and they consider that to be a Maryland seat on the 4th Circuit. Does the President have any feeling of obligation to hold to those kinds of gentlemen's agreements?

MR. FLEISCHER: Well, we always try to work with various changing types of requests from senators for consideration. And it's a process that we try to work very collegially with the Senate. So we'll just continue to work on behalf of all the President's nominees with all those involved.

Q Would he not consider that to be a Maryland seat?

MR. FLEISCHER: Let me take a look at the specifics of it to see if I can offer you more on it.

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>;<Bumatay, Patrick J.>
Sent: 4/30/2003 2:38:05 PM
Subject: speechwriting form
Attachments: judges SPEECHWRITING FORM 4 30 03.doc

please have judge review and file ASAP today; thanks

<>

**THE WHITE HOUSE
WASHINGTON**

PRESIDENTIAL SPEECHWRITING FORM

TODAY'S DATE: 4/30/03

TO: Michael J. Gerson
Assistant to the President for Speechwriting
and Policy Advisor

FROM: Alberto R. Gonzales

NAME, DATE, TIME,
& LOCATION OF EVENT: Remarks on Judicial Independence and Judicial
Confirmation Process, May 9, 2003, Rose Garden.

LENGTH AND
TYPE OF REMARKS: Speech for 15 minutes.

TOPIC OF REMARKS: The President will focus on the broken judicial
confirmation process and the problems caused as a result of
it, reiterate his plan for repairing it, and call on Senators
(especially freshmen Senators) to join him in repairing the
process.

POINT IN PROGRAM WHEN
THE PRESIDENT WILL SPEAK: At outset.

PERSON WHO WILL
INTRODUCE THE PRESIDENT: None. (alternatively, Judge Gonzales)

OTHERS THE PRESIDENT
SHOULD ACKNOWLEDGE IN
HIS OPENING REMARKS: Senators and bar leaders tbd.

SIZE AND TYPE OF AUDIENCE: approximately 200 people, including Senators, bar leaders,
and others involved in the process.

BACKGROUND ON THE EVENT: May 9 is the 2-year anniversary of the President's initial 11
nominations. The Senate is currently filibustering two of
the May 9, 2001, nominees: Miguel Estrada and Priscilla
Owen. Overall, five of those 11 nominees still have not
received votes. Also, May 1 is Law Day, so the President
can make reference to the theme of Law Day, which is
judicial independence.

POINTS OF CONTACT: Carolyn Nelson, 456-2632.

From: Kavanaugh, Brett M.
To: <Snee, Ashley>
Sent: 4/30/2003 3:50:41 PM
Subject: RE: important op-ed of support for Carolyn Kuhl

It ran today in LA Daily Journal (legal daily newspaper).

From: Ashley Snee/WHO/EOP@Exchange on 04/30/2003 03:50:59 PM

Record Type: Record

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

cc:

Subject: RE: important op-ed of support for Carolyn Kuhl

Did this run?

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

From: Kavanaugh, Brett M.

Sent: Wednesday, April 30, 2003 3:32 PM

To: Grubbs, Wendy J.; Snee, Ashley; Goeglein, Tim; Smith, Matthew E.; Schlapp, Matthew A.

Subject: important op-ed of support for Carolyn Kuhl

April 30, 2003

NOMINEE DOESN'T DESERVE CALUMNY HEAPED ON HER

Forum Column

By Vilma S. Martinez

As a member of Sen. Barbara Boxer's judicial screening committee during the Clinton administration, I was proud to recommend Judge Richard Paez for the 9th U.S. Circuit Court of Appeals. President Clinton nominated Paez, but his nomination languished for four years, and he was subjected to a campaign of half-truths and cruel caricatures.

California Superior Court Judge Carolyn Kuhl, characteristic of her sense of fairness and respect for an independent judiciary, stepped up to

REV_00235192

the plate. She wrote letters, made phone calls and exhorted her fellow Republicans to confirm Paez and other Clinton nominees.

Now that President Bush has nominated Kuhl to the 9th Circuit, many of the groups that supported Paez, ironically, have turned their fire on Kuhl, apparently to exact payback against Senate Republicans. This turnabout is not fair play. It is the continuation of a vicious cycle that punishes worthy judicial candidates in a misguided effort to use the judiciary to further narrow political ends.

I generally identify myself as a Democrat, am a veteran of civil rights battles and testified against Judge Robert Bork's nomination to the U.S. Supreme Court (on the basis of his inadequate judicial temperament). Like others dedicated to the independence of our judiciary, I certainly do not want ideologues serving as judges on our federal courts. That is why I think that Kuhl would make a great addition to the 9th Circuit.

Kuhl has served for seven years on the Los Angeles County Superior Court. Before that, she and I were law partners for nine years. Kuhl is what I think of as an "old fashioned" judge. She cares about due process for everyone. In her seven years on the Superior Court, she has shown that she is careful to hear both sides. She does not try to influence the outcome of a case to favor one side or the other. She is serious about her oath to follow the law, whatever the result. Kuhl takes as her guide the words of Justice Felix Frankfurter that the highest calling of a judge is to subordinate the judge's personal views to the law.

Kuhl hardly can be described as being on "the fringe" of the Los Angeles legal community. She is the first woman to serve as the supervising judge of the civil departments of the Los Angeles Superior Court, a court system that is larger than the entire federal trial court nationwide. She served as the supervising judge of that court's very successful complex litigation program in its experimental phase.

Both the plaintiff and defense bars in Los Angeles actively support Kuhl, even though she primarily represented defendants when she practiced law. California Supreme Court Justice Carlos Moreno, more than a dozen

justices of the Court of Appeal and almost 100 judges of the Superior Court (including more than 25 women) have signed letters in support of Kuhl. Many of these supporters are active Democrats. They know Kuhl and, like me, they know that she has not been, and would not be, a result-oriented judge.

Prof. Erwin Chemerinsky recently argued, in the pages of this publication, that the battle over judges that was so unfair to nominees of Clinton should continue against Bush's nominees. "Look Closely," Forum, April 17. He also takes the position that candidates for judicial office should be judged by who their clients are and what positions they took on behalf of those clients.

The Los Angeles County Bar Association strongly disagrees. In its March 28 letter to the members of the Senate Judiciary Committee, the County Bar stated: "The recent trend in attacking the qualifications of judicial candidates on the basis of positions advocated on behalf of clients is misguided [W]e urge that the Judiciary Committee give due consideration to those issues that are critical to assessing a nominee's qualifications - the nominee's professional abilities, intelligence, integrity, experience and judicial temperament - and not to those positions taken by nominees on behalf of their clients."

The letter explains that because of a lawyer's responsibility to explore and present all arguments that may advance a client's cause, "neither the identity of a lawyer's clients nor the zealous advocacy of their causes necessarily provides any insight into the lawyer's personal beliefs, nor do they necessarily provide any indication of how a nominee may view a particular case presented to him or her as a judge." The letter also notes that the type of personal attacks on candidates that have become common may discourage candidates from pursuing judicial nominations and discourage lawyers from taking on unpopular or controversial clients or causes.

I call on fellow members of the bar, both Democrats and Republicans, to step up to the plate to support Kuhl, just like she went to bat for Paez and other Clinton nominees. It is shameful that her generosity and

dedication to an independent judiciary are being repaid with the same sort of calumny that Paez suffered. Until the politicians decide to play fair with judicial candidates, our system of justice will suffer grievously.

Vilma S. Martinez has been a partner at Munger, Tolles & Olson for 20 years.

Previously, she served as president and general counsel of the Mexican American Legal Defense and Educational Fund.

From: Bumatay, Patrick J.
To: <Ullyot, Theodore W.>;<Addington, David S.>;<Bartolomucci, H. Christopher>;<Bellinger, John B.>;<Brilliant, Hana F.>;<Brosnahan, Jennifer R.>;<Bumatay, Patrick J.>;<Carroll, James W.>;<Everson, Nanette>;<Farrell, J. Elizabeth>;<Francisco, Noel J.>;<Ganter, Jonathan F.>;<Jucas, Tracy>;<Kavanaugh, Brett M.>;<McNally, Edward>;<Montiel, Charlotte L.>;<Nelson, Carolyn>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 4/30/2003 3:59:08 PM
Subject: Lawrence S. Coogler - aBA

Lawrence S. Coogler, USDC, Northern District of Alabama, is unanimously rated "Qualified" by the ABA.

Patrick

From: Torgerson, Karin B.
To: <Kavanaugh, Brett M.>
Sent: 4/30/2003 4:44:15 PM
Subject: RE: sent over some suggested changes; use as you see fit; thanks

Got them. Thanks. I do not think the attempt to incorporate State issues here works. Most states elect their judges -- the antithesis of independent judges it seems to me. What do you think?

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

From: Kavanaugh, Brett M.
Sent: Wednesday, April 30, 2003 4:36 PM
To: Torgerson, Karin B.
Subject: sent over some suggested changes; use as you see fit; thanks

From: Kavanaugh, Brett M.
To: <Torgerson, Karin B.>
Sent: 4/30/2003 4:49:00 PM
Subject: RE: sent over some suggested changes; use as you see fit; thanks

Agree. That also makes my suggestion to mention life tenure somewhat problematic since many states do not have life tenured judges. On the other hand, that was the Framers primary way to ensure judicial independence for federal judges, along with no salary diminution.

From: Karin B. Torgerson/WHO/EOP@Exchange on 04/30/2003 04:44:15 PM

Record Type: Record

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

cc:

Subject: RE: sent over some suggested changes; use as you see fit; thanks

Got them. Thanks. I do not think the attempt to incorporate State issues here works. Most states elect their judges -- the antithesis of independent judges it seems to me. What do you think?

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

From: Kavanaugh, Brett M.

Sent: Wednesday, April 30, 2003 4:36 PM

To: Torgerson, Karin B.

Subject: sent over some suggested changes; use as you see fit; thanks

From: Ulyot, Theodore W.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Kavanaugh, Brett M.>
Sent: 4/30/2003 4:58:22 PM
Subject: CA4 MD vs. VA seat at Ari's briefing

You may already be aware of this, but interesting that the issue of the CA4 "Maryland seat" made it into today's press briefing. See the relevant portion below.

Q Ari, back on the judicial nominations, now. A new controversy may be cropping up because the two Maryland senators are concerned about the Claude Allen nomination. Grant you, they might not have voted for Owen and Estrada anyway, but they're upset about the Claude Allen nomination because he's a Virginian, and they consider that to be a Maryland seat on the 4th Circuit. Does the President have any feeling of obligation to hold to those kinds of gentlemen's agreements?

MR. FLEISCHER: Well, we always try to work with various changing types of requests from senators for consideration. And it's a process that we try to work very collegially with the Senate. So we'll just continue to work on behalf of all the President's nominees with all those involved.

Q Would he not consider that to be a Maryland seat?

MR. FLEISCHER: Let me take a look at the specifics of it to see if I can offer you more on it.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>
Sent: 4/30/2003 1:49:18 PM
Subject: : Re: PRESS BRIEFING BY ARI FLEISCHER

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2003 17:49:18.00
SUBJECT:: Re: PRESS BRIEFING BY ARI FLEISCHER
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes with ashley snee. He is briefed up.

.
----- Original Message -----
From:David G. Leitch/WHO/EOP@Exchange
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 04/30/2003 05:18:25 PM
Subject: Fw: PRESS BRIEFING BY ARI FLEISCHER

Trust you're working with Ari on the nominations questions. Likely to be more tomorrow.

.
-----Original Message-----
From: Donnan, Elizabeth H. <EDonnan@WHO.eop.gov>
Sent: Wed Apr 30 16:42:08 2003
Subject: PRESS BRIEFING BY ARI FLEISCHER

;;;;;; THE WHITE HOUSE

;;;;;; Office of the Press Secretary

For Immediate Release;; April 30, 2003;;;

;;;;;;
;;;;;; PRESS BRIEFING BY
;;;;;; ARI FLEISCHER

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Statement on judicial nominees.....2-3, 8, 13, 15-16, 18
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vision of two states, a secure state of Israel and a viable, peaceful, democratic Palestine, that I set out on June 24, 2002.; It is a framework for progress toward lasting peace and security in the Middle East.; Implementing the road map will be dependent upon the good-faith efforts and contributions of both sides.; The pace of progress will depend strictly on the performance of the parties.;

;;;;;;

;;;;;; I urge Israelis and Palestinians to work with us and with other members of the international community, and above all, directly with each other, to immediately end the violence and return to a path of peace, based on the principles and objectives outlined in my statement of June 24, 2002.; Both Israelis and Palestinians have suffered from the terror and violence, and from the loss of hope and a better future of peace and security.; An opportunity now exists to move forward.;

;;;;;;

;;;;;; The United States will do all it can to seize this opportunity.; To that end, I've asked Secretary Powell to travel to the region to begin working with parties so that we may take advantage of this moment.";

;;;;;;

;;;;;; End of statement.; That will be released in print to you immediately following the meeting.

;;;;;; And, finally, yesterday, Senate Democrats announced that they will filibuster another one of President Bush's very qualified nominees; --; in this case, Texas Supreme Court Justice Priscilla Owen, who is the nominee for the 5th Circuit.; Miguel Estrada has also been the subject of a Senate filibuster.; They were both originally nominated on May 9, 2001, and have been waiting almost two years for a vote.; Both were rated well-qualified from the American Bar Association.; That is the highest possible rating that the American Bar Association gives.; It is also, according to Democrats, the gold standard that they would use to judge whether nominees were qualified.; Both enjoy strong bipartisan support within their states.; Both have majority votes available, bipartisan, on the floor of the Senate if the obstruction were to cease.

;;;;;; The Senate has a constitutional responsibility to hold an up or down vote on all judicial nominees within a reasonable amount of time.; But some Democrats have abandoned that responsibility in favor of partisan politics and obstructionism.; The Constitution is clear.; A majority is required to confirm judicial nominees.; A minority of Senate Democrats are effectively changing the law with their obstructionist tactics.; The President's nominees are highly-qualified and not only do they deserve a vote, they deserve to be confirmed.; The President again calls on the Senate to end these obstructionist tactics and to allow a vote on these two nominees.

;;;;;; And with that, I'm happy to take questions.; Helen.

;;;;;; Q;;;;;; What has been the original; --; not original; --; initial reaction to the road map?

;;;;;; MR. FLEISCHER:; Well, it's just been received this morning.; I would allow the Israelis and the Palestinians to speak for themselves and not express their thoughts for them, they're capable of doing that.; From the President's point of view, he welcomes their contributions to this, whatever ideas they have, and he looks forward to working with them on it.;

;;;;;;

;;;;;; The State Department can give you information about the Secretary's itinerary, future travels.; It's not an immediate trip that the Secretary will be taking, but the United States, the President, and the Secretary of State will devote considerable time and energy to helping the parties to achieve peace.

;;;;;; Q;;;;;; What does he hope to accomplish when he goes to Syria?

;;;;;; MR. FLEISCHER:; I would refer you directly to the State Department on it, but the message to Syria is that Syria is a terrorist country, that

Syria has supported terrorists, Syria occupies a considerable portion of Lebanon through the Hezbollah, and Syria needs to reassess its role in the world.; We hope that Syria, under the relatively new leadership of a relatively untested leader, will choose a different direction than it has in the past.; Syria also; --; it's important that they continue to receive the message that they have been receiving in regard to not harboring anybody who is trying to leave Iraq.;

;;;;;; Q;;;;;; Does the President support the idea of lifting sanctions against Iraq, vis-a-vis its status as a terrorist state?

;;;;;; MR. FLEISCHER;; Yes, and Secretary Powell discussed that up on the Hill today.; Iraq no longer is a terrorist state.; The chief terrorist and his cronies have been removed.

;;;;;; Q;;;;;; How quickly can you lift the sanctions?

;;;;;; MR. FLEISCHER;; Through the United Nations you're asking about?

;;;;;; Q;;;;;; No, no, no, terrorist state.

;;;;;; MR. FLEISCHER;; That's, I believe; --; I don't know if that's a legislative matter or an administrative matter, so I'd have to refer you to the experts at State for that.

;;;;;; Q;;;;;; You're saying now the President was trying to build up support for his tax cut with the Republican leadership.; Alan Greenspan was on the Hill again expressing opposition to it, saying; --

;;;;;; MR. FLEISCHER;; That's not what he said.

;;;;;; Q;;;;;; He said his position hasn't changed; --

;;;;;; MR. FLEISCHER;; That's correct.

;;;;;; Q;;;;;; --; since he testified the last time.; The last time he was not encouraging it when it passed.; Does the President; --

;;;;;; MR. FLEISCHER;; That's not a fair characterization of what the Chairman has said about the question of providing tax cuts.; He has had a very nuanced statement about it, but certainly he never said he was opposed to it.

;;;;;; Q;;;;;; He's expressed that this is probably not a good time to pass a tax cut of that magnitude, is my understanding of what he said.

;;;;;; MR. FLEISCHER;; You have to take a look at what he said in its entirety, because he has expressed his concerns about spending and he has said that tax cuts have a stimulative effect on the economy, and he has expressed support for stimulus of a; nature of the tax cut, without defining specifically what should be in it.; So, again, I think you have to take a look at what he said in its entirety, but that's not a fair characterization.

;;;;;; Q;;;;;; Does the President feel that his case is somewhat undercut by the Fed Chairman's position, especially since the Fed Chairman, as the President suggested he will reappoint him; --

;;;;;; MR. FLEISCHER;; No, because that's not the Fed Chairman's position, as you've expressed it.; So, no.

;;;;;; Q;;;;;; Can I go back to the road map and Helen's question?; There has already been some initial reaction.; Abu Mazen, the Palestinian Prime Minister, has said he would accept it with no changes.; The Israelis have suggested about a dozen changes they would like to see to the document, itself.; Is the administration encouraging the Israelis to accept it as is, or are you willing to play with it a little bit to make whatever changes the Israelis want?

;;;;;; MR. FLEISCHER:; Well, now the difficult process begins again, in terms of finding a way for the parties who have differing approaches to come together.; And what the President is hopeful is there's been such a changed environment because of the last several years, a new, more optimistic, more hopeful environment can take hold.

;;;;;; And so we received preliminary comments from the Israelis; the document has now been formally released to the Israelis.; And as the President said, we welcome their contributions to the document.; The Palestinians have made similar preliminary comments about it.; We look forward to hearing more detailed comments.

;;;;;; If the current comments hold, then it's no surprise, the work will begin of trying to help the Israelis and the Palestinians to bridge their differences about the document.; What's important is that they both share the outcome of the document, which is the path to peace and the path to statehood for Palestinians, and security for Israel.

;;;;;; Make no mistake, it will be hard work.; There will be a lot of hand-holding required.; The President is prepared to invest the time and the energy into it.; Still, it does fundamentally come down to the two parties.; But nobody would expect that the initial comments one hour after release is going to be the final comments.

;;;;;; Q;;;;;; But fair or not, there has been somewhat of a perception up until this point that the President wasn't really committed to this.; Is there a; --; well, not willing to send the Secretary of State to the region and show the level of commitment we're seeing now, after the war in Iraq.; Is it fair to say that the success in Iraq has given Israel another level of security so that the administration would expect them to be willing to make the sacrifices that both sides are needing to make in order for this to work?

;;;;;; MR. FLEISCHER:; I think two points; one is the biggest holdup was the fact that Yasser Arafat was still in charge of the Palestinian Authority.; The administration was unequivocal; President Bush said repeatedly that the road map would be released upon a confirmation of Abu Mazen's cabinet and as reforms in the Palestinian Authority move forward.; That just took place this very week.; So the administration has been timely in its release of the road map.

;;;;;; The fact that one of the lead sponsors of violence has been removed from the scene, Saddam Hussein, is an important piece of the prospects for peace in the Middle East, but it's not the only one.; Certainly, there are indigenous issues between the Israelis and the Palestinians.; There are root causes of violence and historical differences between the Israelis and Palestinians that have to be resolved, that are, indeed, separate and apart from a successful completion of the war.; But make no mistake, the fact that Saddam Hussein has been removed from power does remove one source of instability that paid for suicide homicide bombers to cross into Israel and take innocent lives.

;;;;;; Q;;;;;; When does the President expect to see results as the road map lays out the mutual steps that each side should take, the cracking down on militancy and freeing up of the hold that Israel has had on the Palestinian community?

;;;;;; MR. FLEISCHER:; It's a process.; And the process began this morning as the parties formally received the road map for the first time in the formal sense.; From here, it will be a question now of the willingness of the parties to face a different type of future; the willingness of the Palestinians to forego violence as a way of settling disputes; the willingness of the Israelis to reach out and work with the Palestinians to resolve political disputes, land disputes, and enter into a permanent era where two states can live side-by-side.; And that process will now move forward.

;;;;;;;;

;;;;;;;; I'm not going to put an artificial time on any one element of that process.; Certainly not today, the day the plan has just been released to them.; But hopefully, today will mark the beginning of a new way of doing business between the Israelis and the Palestinians, with the release of the road map which focuses them on peaceful settlement of disputes, not violent settlement of disputes.

;;;;;;;;

;;;;;;;; Q;;;;;;;; And to follow up on Tom's question on Greenspan's comments.; He wasn't only focusing on the problem of spending.; He was saying long-term deficits will impact long-term interest rates, and he said that while he has favored a dividend tax cut, he believes it's very important that there's a pay-as-you-go or discretionary spending restraint in order not to increase the deficit.; And the Congressional Budget Office is saying this tax cut and the spending together will cause deficits long, far into the future.; Doesn't that undermine the case of a tax cut?

;;;;;;;;

;;;;;;;; MR. FLEISCHER;; Well, the President believes very strongly that we need to reduce the deficit.; His budget focuses on doing that.; But the President also is very concerned about the state of the economy here and now, today, for the unemployed, for people who are looking for work and can't find it.; And certainly, as unemployment still is at about a 5.8 percent level, what we've seen increasingly is people who are leaving the labor force and not even looking for work, which doesn't show up in the unemployment statistics.

;;;;;;;;

;;;;;;;; The President has a lot of concern about those families, those people who want a job.; And there are different issues to be approached, they're both important, about how to make sure there is no deficit.; But his first focus is helping people to find a job.; And he knows we can reduce the deficit over time.; He also knows that the best way to reduce the deficit is to hold the line on spending.; And he's very pleased that the budget resolution that was just passed does have a good, tight control over domestic discretionary spending.; And the meeting the President had with congressional leaders today, they did talk about adhering to the spending discipline of the budget resolution.

;;;;;;;;

;;;;;;;; Q;;;;;;;; So you disagree in the emphasis that Chairman Greenspan has put on get control of the deficit before you do anything on spending or taxes?

;;;;;;;;

;;;;;;;; MR. FLEISCHER;; The President wants to focus on growth, on creation of jobs for the American people, and on deficit reduction.

;;;;;;;;

;;;;;;;; Q;;;;;;;; And then, on the judicial nominations, where precisely in the Constitution is the Senate required to hold an up or down vote on every judicial nominee?

;;;;;;;;

;;;;;;;; MR. FLEISCHER;; I said that the Constitution is clear, a majority is required to confirm judicial nominees.; The Senate process has now moved to a point where it's becoming almost a matter of routine; --

;;;;;;;;

;;;;;;;; Q;;;;;;;; You said that they were required to hold an up or down vote.

;;;;;;;;

;;;;;;;; MR. FLEISCHER;; I said, the Constitution is clear, a majority is required to confirm; --

;;;;;;;;

;;;;;;;; Q;;;;;;;; Just prior to that, you said that they are required to hold an up or down vote.;

;;;;;;;;

;;;;;;;; MR. FLEISCHER;; You can check the transcript, but when I cited on the Constitution, I said just what I said verbatim on the Constitution.;

;;;;;;;;

;;;;;;;; Q;;;;;;;; Ari, what would the President like to see the Israelis and the Palestinians do first, now that the road map has been presented?

;;;;;;;;

;;;;;;;; MR. FLEISCHER;; The President would like to see them study the

road map.; We'd like to see them demonstrate a willingness to work with each other to bridge the differences between their opening points of views about the road map.; And he would like to see the Palestinians provide security so that homicide bombings are, indeed and in fact, stopped; a crackdown by the Palestinian Authority on those who would seek to oppose peace from within Palestinian ranks.; And the President would like to see the Israelis work with the Palestinian Authority to promote political agreements and political settlements of disputes.

;;;;;;;;;

;;;;;;;;; Q;;;;;;;;; What about settlement activity?;

;;;;;;;;;

;;;;;;;;; MR. FLEISCHER;; Absolutely, the President believes that as security is improved, settlement activity must stop.

;;;;;;;;;

;;;;;;;;; Q;;;;;;;;; How much personal time will the President invest in this?; And do you see an early Middle East conference?

;;;;;;;;;

;;;;;;;;; MR. FLEISCHER;; I'm not going to speculate too far down the line.; As the President says in his statement, Secretary Powell will travel to the region shortly, so there will be any number of opportunities to have conversations.; You may want to talk to the Secretary about any contacts he may have had today in the region.

The Secretary is working the phones.; This is important.; And this administration, this President are dedicating to helping the parties find a new way.

;;;;;;;;;

;;;;;;;;; Q;;;;;;;;; And his own time?

;;;;;;;;;

;;;;;;;;; MR. FLEISCHER;; The President?

;;;;;;;;;

;;;;;;;;; Q;;;;;;;;; Yes.

;;;;;;;;;

;;;;;;;;; MR. FLEISCHER;; Absolutely, he's going to spend considerable time on it.; And I want to remind you that in the run-up to the war, in many of the meetings the President had, he always brought up the subject of Middle East peace with European leaders.; And the President has invested considerable time with Arab leaders in the region, working to advance peace between the Israelis and the Palestinians, which also is another hopeful sign, because there are Arab nations in the region that would like to see progress be made and are working, actually, very diligently and quietly to help achieve those goals.

;;;;;;;;;

;;;;;;;;; Q;;;;;;;;; Republicans on the Hill are talking about a variety of mechanisms or gimmicks, some might call them, to keep the size of the tax cut down to a level that can pass the Senate.; Among them is making some aspects of this temporary.; Would the President be prepared to accept a tax cut package that made, for example, the dividend exclusion temporary or less than 100 percent?

;;;;;;;;;

;;;;;;;;; MR. FLEISCHER;; Well, there are a number of ideas that are now starting to publicly float off of Capitol Hill.; I anticipate that there will be a markup in both the Ways and Means Committee and the Finance Committee next week, and so, obviously, this will come to some form of a concrete proposal prior to that.; And that's one of the reason the President met today with the leadership.; He'll have continued conversations.; He's spoken with the leaders; many meetings take place.;

;;;;;;;;;

;;;;;;;;; And I'm not going to be able to negotiate the President's position publicly, but there are a variety of different ways when it comes to tax policy to achieve the President's goals and the President is going to work productively with the Congress to find those ways.

;;;;;;;;;

;;;;;;;;; Q;;;;;;;;; So he's open to these kinds of ideas?

;;;;;;;;;

;;;;;;;;; MR. FLEISCHER;; I'm not going to negotiate in public, but there are a good variety of ways to accomplish all of the objectives of the President's proposal; --; including a 100-percent dividend exclusion.

;;;;;;;;;

;;;;;; Q;;;;; You talked a moment ago about the problem of unemployment being an immediate problem and suggested that the deficit is something that would have to be dealt with a little bit further down the road.; At what point does the deficit become an immediate problem?; It's reaching levels that some economists say over the next year or two could even be 5 percent of GDP, which is typically a level at which other countries would be told they have a huge, major, immediate problem.

;;;;;; MR. FLEISCHER;; Well, first of all, the trend line in the deficit is that it is going down.; Second of all, you have to examine what caused the deficit.; And it still remains numerically and empirically the fact that the deficit has been caused by the recession that took place beginning in January of 2001 as a result of the slowdown in the economy that began in the summer of 2000, or the stock market decline, which began in March of 2000.; That, combined with the September 11th attacks and the war and the subsequent spending required to fight the war and to react to September 11th, is what caused the deficit.;

;;;;;; That is empirically the case.; Even if there had been no tax cut, for example, we would still have a deficit today, without the tax cut.; So first things first is what caused the deficit.; And clearly, the international situation, as it increasingly improves, helps to reduce the deficit.;

;;;;;; But the greatest factor is the economy is emerging from a recession.; Nothing hurts revenue growth more than a recession.; And what's particularly interesting to note is that the greatest source of revenues from the dramatic upswing in revenues in the late '90s was something that people started to refer to as the market factor.; The dramatic surge in the stock market led to a dramatic surge in revenues.; And so much of this was the result of factors that are now increasingly fading from the economy.; We hope the deficit will react to this.

;;;;;; Q;;;;; But this, again, is \$400 billion, \$500 billion an acceptable level for this economy?

;;;;;; MR. FLEISCHER;; Well, clearly, when it comes to fighting the war, whatever it took to fight the war was necessary to protect our force, to protect our troops and to achieve our objectives.; The war is now; --; as the President has said, the major combat operations; --; the President has been told major combat operations have ended.; So all these factors, the recession and the war and 9/11, have helped to drive the deficit to where it is.

;;;;;; Q;;;;; Ari, critics are saying that the atmosphere for this road map would have happened earlier if President Bush would have sat down with Yasser Arafat a long time ago.

;;;;;; MR. FLEISCHER;; No.

;;;;;; Q;;;;; Why?

;;;;;; MR. FLEISCHER;; Because Yasser Arafat was not a party to peace.; Yasser Arafat was a part of the problem.; I think Yasser Arafat had his chance and he walked away with it; --; walked away from it when he walked away from an agreement that President Clinton worked very hard to reach.; That was Yasser Arafat's moment of truth.; And then the moment of truth became even worse when Yasser Arafat lied to President Bush about the Karine-A and actively worked on behalf of the terrorists, lying to the President of the United States about Palestinian support, led by Yasser Arafat, for terrorism.

;;;;;; Q;;;;; But once again, the critics are saying Yasser Arafat was reaching out.; The White House has said he talked to Colin Powell and talked to other people instead of President Bush.; Do you think that interaction with two leaders could have helped at all in anything, resolve any type of; --;

;;;;;; MR. FLEISCHER:; I think the best, most accurate way to describe Yasser Arafat's manner of reaching out was he reached out to terrorists to import weapons for the Palestinian terrorists.; That's what the lesson of the Karine-A was.;

;;;;;; Q;;;;;; Another thing, on another subject.; The NRA, Charleton Heston has left.; Many are wondering about a statement that was said that the assault weapons ban will not continue once it expires.; The administration has said something different.; How is this meshing with a group that is friend to the Bush administration?

;;;;;; MR. FLEISCHER:; I think the administration is already on record about the assault weapon ban.; The President has said that he supports the current assault weapons ban, and he would support the reauthorization of the current assault weapons ban.;

;;;;;; Q;;;;;; So the NRA is just out in left field then?

;;;;;; MR. FLEISCHER:; The President approaches every issue on the merits of the issue.; Sometimes he agrees with different people on different issues, but I think when it comes to virtually all the issues that have been presented, the President has strong agreement with the National Rifle Association.; The President's position on the current assault weapons ban is known.

;;;;;; Q;;;;;; Ari, tomorrow the President is going to announce that major combat operations are over in Iraq.; At what point is it; appropriate criteria to meet; --; to legally declare that the war with Iraq is over, and in doing so, under international law, meet requirements as an occupying force?

;;;;;; MR. FLEISCHER:; Well, number one, as the liberators of Iraq, the administration has, you should note, been releasing POWs.; The administration continues to address exactly what the President promised, the security concerns, the health and the welfare concerns of the Iraqi people.; All that continues.;

;;;;;; I can't make a prediction about the legal matters, about when, from a formal, legal sense, hostilities will be deemed to be over.; That will be something the President, again, gets guidance from, from the commanders in the field.; So that will be driven by events on the ground, and the reaction of the commanders on the ground to those events.

;;;;;; Q;;;;;; But why isn't this the time to legally declare that it's over?

;;;;;; MR. FLEISCHER:; Because as events are very visible, as you all have covered this morning, hostilities remain.; There are pockets of resistance.; There continue to be Iraqis who shoot at America's Armed Forces.; It happened again in Fallajah.;

;;;;;; Q;;;;;; Can you speak to the significance of the capture of the al Qaeda, half a dozen out of Pakistan, one believed to be responsible for perhaps the bombing of the USS Cole?

;;;;;; MR. FLEISCHER:; It's been another strong day of Pakistani cooperation in the war against terror, with a helpful and significant capture.; And the President is appreciative to President Musharraf and the Pakistani people for their continued strong efforts to fight terror.

;;;;;; Q;;;;;; Is there any information on this alleged handwritten note from Saddam Hussein in this London Arabic paper, whether it's legitimate or authentic?

;;;;;; MR. FLEISCHER:; I have no way; --; I've received no evaluations from it.; You can take it for what you want.

;;;;;; Q;;;;;; Ari, on judicial nominations, it seems the issue is

utterly gridlocked.; Does the President have some ideas of how to get this thing kind of moving again, beyond just having tantrums?

;;;;; MR. FLEISCHER:; The President will continue to speak out and make the case.; He will continue to stand strong, shoulder-to- shoulder, by his nominees, because he believes they are qualified.; But if you really want to measure what's going on here, I think you have to measure the will of a bipartisan majority versus the role of a slender obstructionist minority.; And that's the problem when people want to employ the 60-vote device that the Senate makes available to its members to force their ideology on a majority.;

;;;;; And what's happening now is that there are a few liberal Democrats who want to enforce their ideology on a bipartisan majority that can govern, that can appoint judicial nominees.; There are a bipartisan majority of votes for Priscilla Owen.; There are a bipartisan majority of votes for Miguel Estrada.; They are being blocked and obstructed by a liberal, partisan, obstructionist minority.

;;;;; Q;;;;; Why is the President giving this speech now?; What significance should we read into this?

;;;;; MR. FLEISCHER:; Well, the President is giving the speech now because of the successful operations that have been carried out, the significant accomplishments in achieving the mission, and because he wants to explain to the American people, having risked lives and treasure in pursuit of our goals in Iraq, what the present results are.; And that's something that the President began with his speech to the country about, and he wants to, again, now bring it to a conclusion with a speech to the country.; The war on terror will continue.; Iraq was a phase in the war on terror.; And the President wants to discuss all of this with the American people.

;;;;; Q;;;;; Why not just declare victory?

;;;;; MR. FLEISCHER:; Well, I would urge you to listen to the President's words tomorrow night.; But the President knows that while major combat operations have ended, and while the next phase has begun with the reconstruction of Iraq, there continue to be threats to the security and the safety of the American people.; And he will describe that.; There continues to be great progress in protecting the American people from those threats.; But threats do indeed remain.

;;;;; Q;;;;; Full victory, you've indicated before, I believe, would include all of the President's objectives having been met, including finding weapons of mass destruction and rounding up all the leadership of the previous regime.; Is that; --

;;;;; MR. FLEISCHER:; Well, I'll let you judge the President's words tomorrow for what they represent, what topics he covers.; Certainly Deputy Secretary Armitage's speech this morning about weapons of mass destruction covered much of that ground.

;;;;; Q;;;;; But the President's not going all the way.

;;;;; MR. FLEISCHER:; Again, I'll urge you to listen to his remarks tomorrow, and you'll form your own basis.

;;;;; Q;;;;; One other thing.; Do this have; --; do his remarks have any legal impact whatsoever?

;;;;; MR. FLEISCHER:; No, the remarks tomorrow will be; --; as the President has a habit of doing; --; speaking in direct, plain English to the American people, so they can understand what was at stake, what has been accomplished, and so we can all join together in saying thanks to the men and women of our Armed Forces who helped achieve this remarkable success with so little loss of life.; From a legal point of view, the remarks tomorrow do not change any legal matters.;

;;;;;; Q;;;;; Getting back to the Greenspan testimony.; Greenspan, as Terry pointed out, has said he would like to see offsets for any dividend tax cut.; You all did not propose offsets.; So getting back to Tom's question, do you think that his testimony today, in the way of not changing his position, has undermined you all's argument on the Hill to pass the dividend tax repeal without offsets?

;;;;;; MR. FLEISCHER;; No, I think that members of Congress always enjoy and benefit from hearing from Chairman Greenspan.; They use their own independent judgments.; And we are; --; the President remains confident that at the end of the day a majority will be assembled in the House and the Senate to pass his proposals.

;;;;;; Q;;;;; Does the President intend now to get; --; he's obviously shown that he's; --; in the last two meetings, he is getting more personally involved.; Are we to see more of that, when it comes to the tax plan?

;;;;;; MR. FLEISCHER;; Well, the President has long been directly and personally involved, and he will continue to be.; The President met for an hour and a quarter on the Truman Balcony last night with the Speaker of the House and the Majority Leader of the Senate.; Then he had the 45-minute meeting today with the elected leadership.; I think you can anticipate the President will travel the country to continue to make his case.; He will continue to work the phones and meet with members.

;;;;;; Q;;;;; Did he, in either of those meetings, give the leadership of Congress some insight into whether he wants phase-ins, he would accept phase-ins; --;

;;;;;; MR. FLEISCHER;; No, they didn't get into that level of detail.

;;;;;;

;;;;;; Q;;;;; Why not?

;;;;;; MR. FLEISCHER;; Because it's not that type of meeting.; They had a broad agenda to cover, including prescription drugs for seniors, Medicare; --;

;;;;;; Q;;;;; But aren't we at the point where; --; the committees about to meet, these decisions will be made soon.; So when will the President tell them what he would like, how he'd like those decisions; --;

;;;;;; MR. FLEISCHER;; It's all part of a process that involves the President, that involves others in the administration working directly with Chairman Thomas and Chairman Grassley, as well as the leadership.; So I think you can anticipate that process will continue between now and when the markup is revealed.

;;;;;; Q;;;;; Two questions.; One a follow on your colloquy with Terry.; Your exact words at the top were, "The Senate has a constitutional responsibility to hold an up or down vote."

;;;;;; Q;;;;; Thank you.

;;;;;; Q;;;;; Are you now walking yourself back from that, and saying that you didn't mean to say that?; Or are you saying that there is; --; are you saying that there is something in the Constitution that requires the Senate to hold an up or down vote on every judicial nomination?

;;;;;; MR. FLEISCHER;; I said; --; you're correct, I said, the Senate has a constitutional responsibility to hold an up or down vote on all judicial nominees within a reasonable time, and that's because advice and consent is the prerogative of the Senate, and it is to be given.

;;;;;; Q;;;;; Prerogative of the Senate.; They're a co-equal branch of government that interprets their own constitutional responsibility.

;;;;;; MR. FLEISCHER;; Clearly, if the Senate made the decision that they

do not want to seat anybody in the federal court system, it would be a constitutional crisis.

;;;;;;;;

;;;;;;;; Q;;;;;;;; That's not the decision they're making.

;;;;;;;;

;;;;;;;; MR. FLEISCHER;; But there is a vacancy crisis in the Senate.; It is uniquely the role of the Senate, under the Constitution, to confirm judges.; And if the Senate engages in filibusters for the confirmation of judges, then clearly the nation would not be well served.

;;;;;;;; Q;;;;;;;; The question is, is there something in the Constitution that requires an up or down vote on every nomination, because as you know, there are many judicial nominations that; --;

;;;;;;;; MR. FLEISCHER;; Only the fact that if the Senate doesn't do it, nobody else will.; And so, therefore, the President calls on the Senate to exercise its constitutional prerogative to confirm his nominees.

;;;;;;;; Q;;;;;;;; But it's not in the Constitution, correct?; There's nothing in the Constitution; --;

;;;;;;;; MR. FLEISCHER;; They have a responsibility to hold an up or down vote.; Nobody else, other than the Senate, per the Constitution, has that responsibility.; Now, it is certainly the right of the Senate to walk away from their responsibilities.; But I don't back off at all from saying that under the Constitution, the Senate has that responsibility.

;;;;;;;; Q;;;;;;;; That's different from saying they have to hold an up or down vote on every nomination; --;

;;;;;;;; MR. FLEISCHER;; They have a responsibility to hold an up or down vote.

;;;;;;;; Q;;;;;;;; It all depends on what your definition of the word, "responsibility" is.;

;;;;;;;; Q;;;;;;;; On Iraq, the United States went to war; --; this administration went to war in Iraq for the very specific reasons that the President is very clear.; One of them was weapons of mass destruction.; One of them was alleged links between Saddam Hussein's regime and terrorists.; A third reason which the President stated many times was that Iraq's military strength and Hussein's use of it posed a threat to its neighbors in the region.; We're now, as you say, at the end of major combat operations.; No significant finds of weapons of mass destruction have been found to date.; No significant evidence has been found linking Saddam Hussein's regime to al Qaeda beyond what we knew at the start of this war.; And Saddam Hussein's military looks like; --; hardly looks like a threat to anyone.;

;;;;;;;;

;;;;;;;; Is the President going to address this in his speech tomorrow?; And beyond that, is there any sense of embarrassment in the administration that the three major prongs of a policy haven't, at least as yet, haven't really been; --

;;;;;;;; MR. FLEISCHER;; Heavens no, on your last point.; And certainly the President has said, and you've heard him say it many times, that we continue to have high confidence that the weapons of mass destruction will be found.; Iraq is a regime that was a master at hiding it, and there are thousands and thousands of sites where it could be hidden, and they will be pursued as increasing evidence comes along.

;;;;;;;; On the ties to al Qaeda, I think that's been well-documented and known.; And when you talk about the military threat, they may not have been much of a military threat for our Armed Forces as the war was engaged, but for the neighborhood, they were one powerful military threat, and they proved that by attacking their neighbors multiple times.;

;;;;;;;;

;;;;;;;; Again, tomorrow the President will give the speech, and you'll be

able to hear it all in its entirety.

;;;;;; Q;;;;; Ari, going back to the Middle East, is there any plan by the President to nominate or name a new Middle East envoy to the peace talks?

;;;;;; MR. FLEISCHER;; Nothing that's crossed my radar.

;;;;;; Q;;;;; General Zinni, is he still the Middle East envoy?

;;;;;; MR. FLEISCHER;; Let me try to get an update on that.; Nothing has crossed my radar, though.;

;;;;;; Q;;;;; Ari, back on the judicial nominations, now.; A new controversy may be cropping up because the two Maryland senators are concerned about the Claude Allen nomination.; Grant you, they might not have voted for Owen and Estrada anyway, but they're upset about the Claude Allen nomination because he's a Virginian, and they consider that to be a Maryland seat on the 4th Circuit.; Does the President have any feeling of obligation to hold to those kinds of gentlemen's agreements?;

;;;;;; MR. FLEISCHER;; Well, we always try to work with various changing types of requests from senators for consideration.; And it's a process that we try to work very collegially with the Senate.; So we'll just continue to work on behalf of all the President's nominees with all those involved.

;;;;;; Q;;;;; Would he not consider that to be a Maryland seat?

;;;;;; MR. FLEISCHER;; Let me take a look at the specifics of it to see if I can offer you more on it.

;;;;;; Q;;;;; Back on the road map, isn't the goal to have the first phase completed by next month?; And is that really a realistic expectation considering that you're calling for Israeli withdrawal from Palestinian occupied territories?

;;;;;; MR. FLEISCHER;; Well, the framework and the road map does outline certain time periods, the key one being the creation of an independent Palestinian state in 2005 that lives in peace and security with their neighbor, Israel.; And all events leading up to that help to support that goal.; What's going to happen now is we'll see how actively and how quickly the parties can work together to make all of this happen.; We'll see what the exact time table is.

;;;;;; Q;;;;; So you're not necessarily firm in the insistence that Israel withdraw by next month?

;;;;;; MR. FLEISCHER;; Today is the beginning of the process.; And let's wait and hear how the parties react to it.; Let's see what efforts they undertake.; And we're going to continue to work with them toward the achievement of those goals.

;;;;;; Q;;;;; Was the deadline always the end of May, or was that changed because of the delay in the appointment of Abu Mazen?

;;;;;; MR. FLEISCHER;; No, I don't; --; this road map was prepared late last year, and it was released today as is from late last year.; But this is where we welcome the contributions from the parties to it.

;;;;;; Q;;;;; The visit to the ship tomorrow, can you describe some of the logistics for us, and tell us if the President is looking forward to or dreading his first carrier landing?; (Laughter.)

;;;;;; MR. FLEISCHER;; The President is eagerly anticipating this trip.; I think he's very excited about the process of being directly with many of the sailors and the Marines who helped make the success of the mission possible.; He's also looking forward to addressing the nation from the

deck of a moving aircraft carrier.; That's a wonderful metaphor for the return of our troops from combat back to their families.

;;;;;; The President will fly out to the aircraft carrier on Navy One, after he departs Air Force One, lands in San Diego and then transfers.; And it's a very exciting voyage, a very exciting trip, but nowhere near as exciting as the voyage that the sailors and the Marines are taking, because they're coming home to see their families.

;;;;;; Q;;;;;; Obviously, the President's a former pilot.; Can you talk about the plane itself and where he's going to be?

;;;;;; MR. FLEISCHER;; The President will be sitting in the front seat, next to the pilot of the Navy aircraft.; He is a former pilot.; For the sake of the landing, I'm sure he will be doing no piloting.; (Laughter.); I hope he's not watching today's briefing.; (Laughter.);

;;;;;; Q;;;;;; Ari, two more Colombian journalists have been assassinated in Colombia.; What does the President plan to do to try and restore security in that country?

;;;;;; MR. FLEISCHER;; The United States is working directly with the Colombians.; And we have a presence in the region authorized by the Congress to help with the narco-terrorist war that the government of Colombia and President Uribe are fighting.; The President looks forward to his meeting this evening to talk to President Uribe about the steps that are being taken to fight the terrorism there.; And it's important.; The people of Colombia have been long; --; long been struggling against terrorism there.; That's sapping the strength of the country, and they deserve the support of the world.;

;;;;;; Q;;;;;; The press secretary in Doha says U.S. forces will be leaving Saudi Arabia by the end of the summer.; Will this improve U.S.-Saudi relations?

;;;;;; MR. FLEISCHER;; Number one, U.S.-Saudi relations are strong.; Saudi Arabia is an ally of the United States, has been a partner with the United States.; And that is how this President views our relationship with Saudi Arabia.; As for any type of military deployments or basing issues, you need to talk to the Department of Defense for the specifics of them.; We regularly review and are undergoing currently a review of our deployments worldwide.

;;;;;; Q;;;;;; I'd like to follow up on my question from yesterday about reports of French aid to Saddam's regime.; Is there anything new on that, or our relationship with France in general?

;;;;;; MR. FLEISCHER;; Well, on the reports, I've noticed many of these reports, different accounts, some relating to documents that were found in Iraq, and I have nothing to offer on that.; I think it's something that the French can answer to explain any relationship.; That's for France to address.;

;;;;;; Q;;;;;; In his Sunday column, Tom Friedman cited the atrocities that occurred in Iraq, and said, "We do not need to find any weapons of mass destruction to justify this war."; Does the President agree with that sentiment?

;;;;;; MR. FLEISCHER;; Well, the President is confident that we're going to find weapons of mass destruction.; So I think it's not an immediate relevant issue to the President because, based on everything that he knows going into the war, he has continued to express that confidence.

;;;;;; Q;;;;;; And a follow-up.; You've said earlier that; --; he used the word "embarrassed," but you indicated that the President is not concerned that a lot of things have not occurred yet, the finding of the weapons of mass destruction.; Yet, there does seem to be a feeling in some places, particularly Europe and some of the Arab countries, that the President may have intentionally deceived the public by overstating the

threat posed by the Iraqis.; Are you at least concerned that this perception is rising in some areas?

;;;;;; MR. FLEISCHER:; The statue fell just three weeks ago.; And Saddam Hussein has had some 14 years in which he had worked to hide his weapons of mass destruction, and in particularly the four years when the inspectors were out of the country.; And so, no, this is not a serious issue or a credible issue.; This is an issue that will be addressed over time, and with confidence, because it will be found.

;;;;;; Q;;;;;; Ari, you talked about Yasser Arafat and the President's view that he was an impediment for peace.; Under the road map, what future is envisioned for Yasser Arafat?

;;;;;; MR. FLEISCHER:; The future envisioned for the road map is for the Palestinian people and the Israeli people.; And there's a place for all those who will live in peace, and the work to be done by those who believe in peace will be done by others, because he had his chance, he failed to take that chance to lead the way for peace.;

;;;;;;

;;;;;; Q;;;;;; His day is done?

;;;;;;

;;;;;; MR. FLEISCHER:; I think that you can refer to what the President said on June 24th, 2002 about his role.

;;;;;; Q;;;;;; Can I just ask you about the speech tomorrow, Ari?; You said he's not going to say the war is over, but is there not some element of victory inherent in his speech?

;;;;;; MR. FLEISCHER:; You know, I've gone probably as far as I can go this far in advance of a speech.; The President will address it in its entirety tomorrow.

;;;;;; Q;;;;;; On Iraq, how are you assessing the validity of the statements by Tariq Aziz regarding Saddam Hussein, and regarding Scott Speicher?; And do you have any theory on the whereabouts of Baghdad Bob?

;;;;;; MR. FLEISCHER:; Well, I'm not going to comment on any of the reports about what we are hearing in the course of our interrogations.; Just as a matter of policy, this is not something that we discuss.; And Baghdad Bob; --; which Baghdad Bob?; (Laughter.)

;;;;;; Q;;;;;; The one that wants to replace you if he gets a chance.; He's the Information Minister in Iraq.

;;;;;; MR. FLEISCHER:; Oh, I wasn't aware.; No, I don't; --; I have not heard anything other than the President's flavorful description of him.;

;;;;;; Q;;;;;; What do you see as the impact of Hamas' rejection of the road map and the latest suicide bombing on prospects for what you described as a new and more optimistic environment?; How can such an environment take hold in that kind of an atmosphere?

;;;;;; MR. FLEISCHER:; This is the very challenge that the parties face. Hamas, violence, homicide attacks, and the other terrorist groups that operate in the region are the greatest challenge to peace there is.; And this is why it's so imperative for the Palestinian people to join together and say that if they want to be a state, if they want a bright, peaceful future, security has got to be brought under control, and these groups have got to be brought under control.; Because this type of terrorism is a setback to the cause of the Palestinian people, and a setback to statehood.; And that is one of the biggest sources of trouble and concern.;

;;;;;; And so, security becomes very quickly an important point in events on the ground and the ability of Israelis and Palestinians to work arrangements and work agreements.; The President will continue to fight for this.; And it's important now for the Palestinian Authority to take

every step possible and to crack down so these type of terrorist attacks cannot be repeated.

;;;;;; Q;;;;; Do you think this emerging government has a capacity to bring them under control?

;;;;;; MR. FLEISCHER;; They certainly, per the Oslo Agreement, per statements that have been made, and per a sense of desire for peace, have an obligation to take every step in that direction, yes.

;;;;;; Q;;;;; A different topic.; The tobacco treaty at the U.N., the U.S. wants some changes to it that critics say will weaken it significantly.; What's the administration's; --

;;;;;; MR. FLEISCHER;; Well, this is this is; --; if ever there was an issue involving standard language in treaties, this is it.; We wanted to be a signatory to this treaty.; We have made clear that we want to sign it, we want to ratify it.; The language here deals with what's called the reservations clause, which is a standard procedure in treaties.; And this reservation; --; the reservation clause simply prohibits signatories from making reservations of sections of the treaty.; Reservations is a standard part of treaties.; So you really haven't seen anything different in our approach to this treaty.; It is a treaty we want to sign, we want to ratify with the standard language.

;;;;;; Q;;;;; I have a question regarding the French papers reporting on chemical weapons in Iraq.; They are saying that so far there is nothing there, and the troops there want to find anything.; And if they find something, the French media is saying the CIA has; --; is going to put it there.; Do you have any response to this kind of; --

;;;;;; MR. FLEISCHER;; Well, just again, I've addressed here earlier, the President has high confidence that it will be found.; A mere three weeks after the fall of the statue, it's unreasonable to expect that a decade of Saddam Hussein's ability to deceive and to deny and to build up a giant infrastructure built to hide, can be pierced in three weeks time.; Again, Secretary Armitage addressed this at some length this morning.

;;;;;; Q;;;;; Ari, now that we're entering phase two in the Iraqi situation, what is the United States' position on the United Nations and NGOs taking a stronger, or more up-front role in the reconstruction process?; Do we still want to have the major say?

;;;;;; MR. FLEISCHER;; Well, as a technical matter, it's referred to as phase four.; Phase three was the military phase.; Phase two was the lead-up phase.; I don't remember what phase one was.; (Laughter.); But the President believes that the United Nations should have a vital role in reconstruction efforts in Iraq and the humanitarian relief programs in Iraq.; And that's important.; The United Nations is a major representative to the deliberations inside Iraq.;

;;;;;; And I would note that USAID in its granting of contracts, is granting contracts to NGOs who are helping to improve the security situation and the humanitarian situation inside Iraq.

;;;;;; Q;;;;; Ari, will we defer to the United Nations, though, in terms of what projects to pursue and all that, given the fact that they never supported the war?

;;;;;; MR. FLEISCHER;; The lead will continue to be the coalition with the help of all those who want to play a constructive role, including the United Nations.;

;;;;;; Q;;;;; The Washington Post quoted the Associated Press' corporate spokesman, Jack Stokes, in New York as saying with regard to their interview of Senator Santorum, "Any of our reporter's marital status has nothing to do with their stories."; And my question is, do you, as the President's chief media spokesman, believe that there would be no conflict

of interest seen if AP hired that brilliant writer Lynne Cheney to be their White House Bureau Chief, or to cover Senator Kerry's campaign?

;;;;;; MR. FLEISCHER;; Lester, I think these are matters that the media wrestles with, and it's appropriate to let them handle it, not the White House spokesman.

;;;;;; Q;;;;;; The Council on American-Islamic Relations has asked the President to rescind the nomination of Dr. Daniel Pipes to the U.S. Institute of Peace.; Does the White House regard this organization with enough respect to withdraw Dr. Pipes' nomination?

;;;;;; MR. FLEISCHER;; The nomination continues to stand.;

;;;;;; Q;;;;;; Ari, North Korea has mentioned any intervention attempted by the United Nations with North Korea nuclear issues will be regarded as a prelude to the war.; What is your comment?

;;;;;; MR. FLEISCHER;; Well, that's, frankly, absolutely nothing new for North Korea.; North Korea has had a history of saying inflammatory statements.; In fact, they said that very statement on; --; in 1994.; So this is a pattern that North Korea has about engaging in rather hot rhetoric, and it does not contribute to advancing the cause for peace on the Peninsula.

;;;;;; Q;;;;;; Does the President view his speech tomorrow night as an opportunity to inform the nation about; --; specifically about the future course of the war on terrorism, and exactly what his intentions might be towards the other members of the axis of evil?

;;;;;; MR. FLEISCHER;; Let me just repeat what I said earlier.; The President will talk about the ongoing war against terrorism in his speech tomorrow night.

;;;;;; Thank you.;;;;;

;;;;;; END;;;;; 1:19 P.M. EDT

From: Kavanaugh, Brett M.
To: <Ullyot, Theodore W.>
CC: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 4/30/2003 6:30:01 PM
Subject: Re: CA4 MD vs. VA seat at Ari's briefing

We had briefed him up on this yesterday, although he decided not to repeat the talkers (2 great nominees, diversity, geographic balance, etc.). Ashley Snee talked to Ari again on Allen afterwards and got info to questioner. She was not thrilled about this Ari answer, but ok overall since no harm done and since he led off the briefing with extensive comments on judges issues as we had suggested/requested.

Theodore W. Ullyot

04/30/2003 05:01:58 PM

Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange@EOP, David G. Leitch/WHO/EOP@Exchange@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: CA4 MD vs. VA seat at Ari's briefing

You may already be aware of this, but interesting that the issue of the CA4 "Maryland seat" made it into today's press briefing. See the relevant portion below.

Q Ari, back on the judicial nominations, now. A new controversy may be cropping up because the two Maryland senators are concerned about the Claude Allen nomination. Grant you, they might not have voted for Owen and Estrada anyway, but they're upset about the Claude Allen nomination because he's a Virginian, and they consider that to be a Maryland seat on the 4th Circuit. Does the President have any feeling of obligation to hold to those kinds of gentlemen's agreements?

MR. FLEISCHER: Well, we always try to work with various changing types of requests from senators for consideration. And it's a process that we try to work very collegially with the Senate. So we'll just continue to work on behalf of all the President's nominees with all those involved.

Q Would he not consider that to be a Maryland seat?

REV_00235235

MR. FLEISCHER: Let me take a look at the specifics of it to see if I can offer you more on it.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
CC: david g. leitch/who/eop@exchange@eop [WHO] <david g. leitch>;alberto r. gonzales/who/eop@exchange@eop [WHO] <alberto r. gonzales>
Sent: 4/30/2003 2:30:26 PM
Subject: : Re: CA4 MD vs. VA seat at Ari's briefing

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-APR-2003 18:30:26.00
SUBJECT:: Re: CA4 MD vs. VA seat at Ari's briefing
TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:david g. leitch (CN=david g. leitch/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
CC:alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@exchange@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

We had briefed him up on this yesterday, although he decided not to repeat the talkers (2 great nominees, diversity, geographic balance, etc.). Ashley Snee talked to Ari again on Allen afterwards and got info to questioner. She was not thrilled about this Ari answer, but ok overall since no harm done and since he led off the briefing with extensive comments on judges issues as we had suggested/requested.

Theodore W. Ulyot
04/30/2003 05:01:58 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange@EOP, David G. Leitch/WHO/EOP@Exchange@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: CA4 MD vs. VA seat at Ari's briefing

You may already be aware of this, but interesting that the issue of the CA4 "Maryland seat" made it into today's press briefing. See the relevant portion below.

Q Ari, back on the judicial nominations, now. A new controversy may be cropping up because the two Maryland senators are concerned about the Claude Allen nomination. Grant you, they might not have voted for Owen and Estrada anyway, but they're upset about the Claude Allen nomination because he's a Virginian, and they consider that to be a Maryland seat on the 4th Circuit. Does the President have any feeling of obligation to hold to those kinds of gentlemen's agreements?

MR. FLEISCHER: Well, we always try to work with various changing types of requests from senators for consideration. And it's a process that we try to work very collegially with the Senate. So we'll just continue to work on behalf of all the President's nominees with all those involved.

Q Would he not consider that to be a Maryland seat?

MR. FLEISCHER: Let me take a look at the specifics of it to see if I can offer you more on it.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: david g. leitch/who/eop@exchange@eop [WHO] <david g. leitch>;h. christopher
bartolomucci/who/eop@eop [WHO] <h. christopher bartolomucci>;alberto r. gonzales/who
/eop@exchange@eop [WHO] <alberto r. gonzales>
Sent: 4/30/2003 4:24:10 PM
Subject: : CORRECTION: NO AGREEMENT ON TIMING FOR PRADO VOTE

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 30-APR-2003 20:24:10.00

SUBJECT:: CORRECTION: NO AGREEMENT ON TIMING FOR PRADO VOTE

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: david g. leitch (CN=david g. leitch/OU=who/O=eop@exchange@eop [WHO])

READ: UNKNOWN

CC: h. christopher bartolomucci (CN=h. christopher bartolomucci/OU=who/O=eop@eop [WHO])

READ: UNKNOWN

CC: alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@exchange@eop [WHO])

READ: UNKNOWN

End Original ARMS Header

Brett M. Kavanaugh
04/30/2003 07:24:41 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange@EOP, David G.
Leitch/WHO/EOP@Exchange@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP
cc:
Subject: vote on Prado is after Owen cloture vote tomorrow

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2003 3:53:39 AM
Subject: : RE: AP story on pledge case

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 1-MAY-2003 07:53:39.00
SUBJECT:: RE: AP story on pledge case
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

What's the WH role in this - if any?

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

From: Kavanaugh, Brett M.
Sent: Wednesday, April 30, 2003 4:05 PM
To: Snee, Ashley
Subject: AP story on pledge case

By ANNE GEARAN

The Associated Press

Wednesday, April 30, 2003; 3:28 PM

WASHINGTON - The Bush administration appealed to the Supreme Court on Wednesday to preserve the phrase "under God" in the Pledge of Allegiance recited by school children.

The reference does not amount to unconstitutional government promotion of religion, the administration's top Supreme Court lawyer wrote in a court filing.

"Whatever else the (Constitution's) establishment clause may prohibit, this court's precedents make clear that it does not forbid the government from officially acknowledging the religious heritage, foundation and character of this nation," Solicitor General Theodore Olson wrote in a court filing.

"That is what the Pledge of Allegiance does. The pledge is therefore constitutional."

The Justice Department and a California school district asked the high court to reverse a federal appeals court ruling last year that banned the teacher-led pledge in public schools.

The Constitution says the government may not establish religion. In practice that has meant the government cannot endorse or promote religion in general, or favor one religion over another.

The Supreme Court has twice declared the pledge is constitutional, and numerous justices have assumed as much in other writings, Olson argued. The administration asked the court to hear its appeal in the term that begins in the fall. The court could decide before summer whether to take the case.

The 9th U.S. Circuit Court of Appeals was so far out of bounds that the Supreme Court could simply strike down the ruling without even hearing arguments on the case, Olson suggested.

In March, the sharply divided San Francisco appeals court voted not to reconsider its earlier ruling on the pledge. In the initial ruling last June, two judges on a three-judge panel ruled that the regular morning classroom salute to the American flag is unconstitutional because of the phrase "one nation, under God."

The ban is on hold while the school district appeals. The Bush administration joined the case and filed its own appeal. If allowed to take effect in the nine states covered by the 9th Circuit, the pledge ban would affect 9.6 million children in public schools.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Wendy J. Grubbs/WHO/EOP@Exchange@EOP [WHO] <Wendy J. Grubbs>
Sent: 5/1/2003 8:24:42 AM
Subject: : Nelson and Breaux
Attachments: P_8BL2G003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2003 12:24:42.00
SUBJECT: : Nelson and Breaux
TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

from Kay Daly.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/01/2003 12:24 PM -----

PRA 6
05/01/2003 12:18:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Nelson and Breaux

what happened there?

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_8BL2G003_WHO.TXT_1>

what happened there?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/1/2003 8:27:46 AM
Subject: : Owen vote was 52-44 but 3 D's were missing so effectively it was 53-47. Need 7 more votes. We lost Breaux and Bill Nelson from Estrada vote.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2003 12:27:46.00
SUBJECT:: Owen vote was 52-44 but 3 D's were missing so effectively it was 53-47. Need 7 more votes. We lost Breaux and Bill Nelson from Estrada vote.
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2003 8:30:41 AM
Subject: : RE: AP story on Owen

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 1-MAY-2003 12:30:41.00
SUBJECT:: RE: AP story on Owen
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I basically just left it. First took out most of the 'Chief Justice of the ABA' line but left it.

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

From: Kavanaugh, Brett M.
Sent: Thursday, May 01, 2003 12:25 PM
To: Snee, Ashley
Subject: RE: AP story on Owen

how does it look? (I will not mind if it's much shorter; just interested)

From: Ashley Snee/WHO/EOP@Exchange on 05/01/2003 12:20:35 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: AP story on Owen

I'm waiting for sign-off from dan and staff sec is standing by to send to the road. When we get it - I'll send to holland to update the story - hopfully

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

From: Kavanaugh, Brett M.
Sent: Thursday, May 01, 2003 12:13 PM
To: Snee, Ashley
Subject: AP story on Owen

By JESSE J. HOLLAND
The Associated Press

Thursday, May 1, 2003; 11:21 AM

WASHINGTON - Senate Democrats on Thursday blocked Texas Judge Priscilla Owen from being confirmed to the U.S. Appeals Court, the second time they've thwarted President Bush and majority Republicans in a confrontation over federal judgeships.

GOP senators were not able to get the 60 votes they needed to break the filibuster on Owen, a home-state favorite of the president who has been nominated to the 5th U.S. Circuit Court of Appeals in New Orleans. Their attempt to break the Democratic filibuster failed, 52-44.

The vote broke down along mostly party lines, with independent Sen. Jim Jeffords of Vermont voting with the Democrats and two Democrats - Sens. Zell Miller of Georgia and Ben Nelson of Nebraska - voting with the GOP. Four senators did not vote: Democrats Paul Sarbanes of Maryland, Joe Lieberman of Connecticut, Bob Graham of Florida and Republican James

Inhofe of Oklahoma.

Republicans say Owen is more than qualified for the appellate bench and that Democrats misrepresented her positions and demonized her when they rejected her nomination last year when they controlled the Senate.

"I think that Justice Owen has been put in the political meat grinder in Washington, D.C.," said Sen. Kay Bailey Hutchinson, R-Texas.

But Democrats complain that Owen, who sits on the Texas Supreme Court, is an anti-abortion, pro-business judicial activist whose opinions and rulings are overly influenced by her personal beliefs. Bush forced them into this new filibuster by sending her name back for confirmation, they said.

"We are here because the president has picked another fight with the United States Senate by renominating a divisive and controversial activist to another circuit court, and that's regrettable," said Sen. Patrick Leahy of Vermont, the top Democrat on the Senate Judiciary Committee.

Democrats say they have more than enough votes in their 48-member caucus to keep Owen bottled up in the Senate for months to come.

"She seems to want to make law to fit her own ideological preconception rather than follow the law as written," said Sen. Charles Schumer, D-N.Y. A successful filibuster on Owen for Democrats will mean that simultaneous filibusters will be going against Owen and Hispanic lawyer Miguel Estrada, nominated to the U.S. Court of Appeals for the District of Columbia. It will be the first time two official filibusters against judicial nominees have occurred simultaneously in the Senate.

Republicans have lost four attempts to break the Estrada filibuster. If they're successful on Owen, Democrats say they're prepared to have three or even more judicial filibusters going simultaneously.

Democrats have threatened all year to filibuster against the nomination of U.S. District Judge Charles Pickering of Mississippi to the 5th Circuit.

"I think Pickering will have a very rough time," Schumer said. "And I think they'll be more" filibusters.

Schumer said another possible target could be California Judge Carolyn Kuhl, a former Reagan administration lawyer nominated to the San Francisco-based 9th U.S. Circuit Court of Appeals.

The Senate Judiciary Committee vote will indicate whether Democrats will try to filibuster a nominee, Schumer said. The committee has 10 Republicans and nine Democrats.

"If we don't get nine votes against them in the Judiciary Committee, it will be a difficult thing to hold it up on the floor of the Senate," said Schumer, who sits on the Senate Judiciary Committee. "That's our rule of thumb."

Sen. John Cornyn, R-Texas, says he will hold hearings in his Senate Judiciary subcommittee in May to try to resolve the Senate logjam. Cornyn personally would prefer to ban filibusters and holds on judicial nominees.

"The Senate needs to find an end to the downward spiral of accusations, obstruction and delay," said Cornyn, who put together a letter from all 10 Senate freshmen calling for quicker confirmation of judges.

Schumer suggested setting up bipartisan nomination commissions in each state that would recommend a judicial candidate to the president for each empty judgeship. "It's our best hope for breaking the vicious cycle," Schumer said.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Ashley Snee/WHO/EOP@Exchange [WHO] <Ashley Snee>; Brett M. Kavanaugh/WHO
/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2003 9:03:13 AM
Subject: : FW: Whip Alert Update 05/01/03

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 1-MAY-2003 13:03:13.00
SUBJECT:: FW: Whip Alert Update 05/01/03
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
-----Original Message-----
From: Swonger, Amy (McConnell) [mailto:Amy_Swonger@mcconnell.senate.gov]
Sent: Thursday, May 01, 2003 1:00 PM
Subject: Whip Alert Update 05/01/03

;
WHIP ALERT UPDATE
Thursday, April 1, 2003
Vote at 2:15 p.m.

;
By Unanimous Consent, the Senate will vote at 2:15 p.m. today on the confirmation of the nomination of Edward C. Prado, of Texas, to be U.S. Circuit Judge for the Fifth Circuit (Exec. Cal. #105).

;
On Monday, April 5, the Senate will vote at 4:45 p.m. on the confirmation of the nomination of Deborah L. Cook, of Ohio, to be U.S. Circuit Judge for the Sixth Circuit (Exec. Cal. #34).

;
On Thursday, April 8, the Senate will take up the nomination of John G. Roberts, Jr., of Maryland, to be U.S. Circuit Judge for the District of Columbia Circuit (Exec. Cal. #35) with the expectation that a vote will occur later in the week.

;

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/1/2003 9:14:49 AM
Subject: : Prado vote today; Cook vote Monday; floor debate begins on Roberts nomination next Thursday 5/8 with likely vote on 5/8 or 5/9

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 1-MAY-2003 13:14:49.00

SUBJECT: : Prado vote today; Cook vote Monday; floor debate begins on Roberts nomination next Thursday 5/8 with likely vote on 5/8 or 5/9

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;David G. Leitch/WHO /EOP@Exchange@EOP [WHO] <David G. Leitch>;H. Christopher Bartolomucci/WHO /EOP@EOP [WHO] <H. Christopher Bartolomucci>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/1/2003 9:43:30 AM
Subject: : SJC Markup

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 1-MAY-2003 13:43:30.00

SUBJECT:: SJC Markup

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Kuhl: held over.

Roberts: held over.

Minaldi: reported to the floor unanimously by voice vote.

U.S. Marshal Torres: reported to the floor by voice vote.

Holmes: reported WITHOUT RECOMMENDATION by a party line vote of 10-9.

From: Viet.Dinh@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>
Sent: 5/1/2003 10:46:13 AM
Subject: : FW: Judiciary Markup

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: "Viet.Dinh@usdoj.gov" <Viet.Dinh@usdoj.gov> ("Viet.Dinh@usdoj.gov"
<Viet.Dinh@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 1-MAY-2003 14:46:13.00
SUBJECT:: FW: Judiciary Markup
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

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

From: Scottfinan, Nancy
Sent: Thursday, May 01, 2003 2:43 PM
To: Dinh, Viet; Benczkowski, Brian A; Remington, Kristi L; Joy, Sheila; 'JGRoberts@HHLaw.com'
Cc: 'wendy_j._grubbs@who.eop.gov'; Brown, Jamie E (OLA)
Subject: RE: Judiciary Markup

Prado vote 97-0

There is a UC for a time agreement for 4 hours of debate on Cook on Monday, May 5, with a vote set for 4:45 pm. One of the hours of debate is reserved for Senator Kennedy. They have been talking about a UC on the Roberts nomination--6 hours of debate to begin next Thursday with a vote to occur before the end of the week; they are still working on that agreement.

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

From: Scottfinan, Nancy
Sent: Thursday, May 01, 2003 12:21 PM
To: Dinh, Viet; Benczkowski, Brian A; Remington, Kristi L; Joy, Sheila; Peacock, Claudia; Gambatesa, Donald; Murphy, Paul B; Higbee, David
Cc: 'wendy_j._grubbs@who.eop.gov'
Subject: Judiciary Markup

Kuhl and Roberts held over; Roberts to be voted on next week with a floor vote within a week after that.
Minaldi out by voice vote
U.S. Marshal Torres out by voice vote
Holmes voted out without recommendation 10-9 after lengthy debate

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>
Sent: 5/1/2003 12:34:27 PM
Subject: : RE:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-MAY-2003 16:34:27.00
SUBJECT: : RE:
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

already sent???

From: Carolyn Nelson/WHO/EOP@Exchange on 05/01/2003 04:34:38 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE:

14 Judges went up today.

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

From: Kavanaugh, Brett M.
Sent: Thursday, May 01, 2003 4:23 PM
To: Nelson, Carolyn
Subject: RE:

yes, WHY????????????????????/

From: Carolyn Nelson/WHO/EOP@Exchange on 05/01/2003 04:20:13 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE:

Did we send 5 District Ct. Nominees from TX?

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

From: Kavanaugh, Brett M.
Sent: Thursday, May 01, 2003 3:54 PM
To: Nelson, Carolyn
Subject: Re:

13 or so judges.

.

From: Matal, Joe (Judiciary) <Joe_Matal@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/1/2003 1:28:38 PM
Subject: : ISCRAA: votes and tax power
Attachments: P_2833G003_WHO.TXT_1.html; P_2833G003_WHO.TXT_2; P_2833G003_WHO.TXT_3.wpd;
P_2833G003_WHO.TXT_4.wpd; P_2833G003_WHO.TXT_5

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Matal, Joe (Judiciary)" <Joe_Matal@Judiciary.senate.gov> ("Matal, Joe
(Judiciary)" <Joe_Matal@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 1-MAY-2003 17:28:38.00
SUBJECT:: ISCRAA: votes and tax power
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett: here is a memo discussing Congress's tax authority, and the
Republican Policy Committee record analysis for the vote on the
sliding-scale fee cap on the McCain tobacco bill. (I include both in
WordPerfect and pdf because some have had trouble opening my WordPerfect
documents.) Please do not hesitate to call me if you have any
questions.

Joe Matal
Counsel to Senator Kyl
Work: 224-4076
Cell: **PRA 6**
Home:

- att1.htm - ISCRAA1998McCainBillVotes.pdf - ISCRAA1998McCainBillVotes.wpd -
ISCRATaxPowerMemo.wpd - ISCRATaxPowerMemo.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2833G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2833G003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2833G003_WHO.TXT_3>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2833G003_WHO.TXT_4>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2833G003_WHO.TXT_5>

Brett: here is a memo discussing Congress's tax authority, and the Republican Policy Committee record analysis for the vote on the sliding-scale fee cap on the McCain tobacco bill. (I include both in WordPerfect and pdf because some have had trouble opening my WordPerfect documents.) Please do not hesitate to call me if you have any questions.

Joe Matal

Counsel to Senator Kyl

Work: 224-4076

Cell: [REDACTED] PRA 6

Home: [REDACTED] PRA 6

1.

HEADING, SUBJECT, RESULT, SYNOPSIS, DEBATE, TALLY
NEXT VOTE, PREVIOUS VOTE, SUBJECT INDEX, CHRONOLOGICAL LIST,
HOME, CAMERA COPY

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session
June 16, 1998, 2:32 p.m.
Page S- 6381 Temp. Record
Vote No. 160

TOBACCO BILL/Sliding Scale Limit on Attorney Fees

SUBJECT:

National Tobacco Policy and Youth Smoking Reduction Act . . . S. 1415. Gorton modified amendment No. 2705 to the Daschle (for Durbin) amendment No. 2437, as amended, to the instructions (Gramm amendment No. 2436) to the Gramm motion to recommit the Commerce Committee modified substitute amendment No. 2420.

AMENDMENT AGREED TO, 49-48

SYNOPSIS:

The "Commerce-2" committee substitute amendment (see NOTE in vote No. 142) to S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act, will raise up to \$265.0 billion over 10 years and up to \$885.6 billion over 25 years from tobacco company "payments" (assessments) and from "look-back" penalties that will be imposed on tobacco companies if they fail to reduce underage use of tobacco products. Most of the money will come from the required payments (\$755.67 billion

over 25 years). Additional sums will be raised from other fines and penalties on tobacco companies, and the required payments will be higher if volume reduction targets on tobacco use are not met. The tobacco companies will be required to pass on the entire cost of the payments to their consumers, who are primarily low-income Americans. By Joint Tax Committee (JTC) estimates, the price of a pack of cigarettes that costs \$1.98 now will rise to \$4.84 by 2007. The amendment will require the "net" amount raised, as estimated by the Treasury Department, to be placed in a new tobacco trust fund. (The net amount will be equal to the total amount collected minus any reductions in other Federal revenue collections that will occur as a result of increasing tobacco prices. For instance, income tax collections will decline because there will be less taxable income in the economy). The JTC estimates that the amendment will raise up to \$232.4 billion over 9 years, but only \$131.8 billion net. Extending the JTC's assumptions through 25 years, a total of \$514.2 billion net will be collected. The amendment will require all of that money to be spent; 56 percent of it will be direct (mandatory) spending. The Federal Government will give States 40 percent of the funds and will spend 60 percent. Medicare will not get any of the funding in the first 10 years unless actual revenues are higher than estimated in this amendment (in contrast, the Senate-passed budget resolution required any Federal share of funds from tobacco legislation to be used to strengthen Medicare; see vote No. 84).

The Gramm motion to recommit with instructions would direct the Commerce Committee to report the bill back with the inclusion of the amendments already agreed to and the Gramm amendment No. 2437. The Gramm amendment would adopt the Gregg/Leahy amendment (see NOTE below) and would eliminate the marriage penalty in the tax code on couples earning less than \$50,000 per year. The tax relief would be structured so that married couples that received it would not consequently lose Earned Income Credit (EIC) eligibility.

The Durbin amendment, as amended, would cap the look-back penalties at \$7.7 billion annually and would shift the burden of those penalties on to those companies that have brands that do not meet the youth smoking reduction targets (see vote No. 149 for details). As amended by a Craig/Coverdell amendment, it would also fund anti-drug programs (see vote No. 151). As amended by a Gramm modified amendment, it would phase-in marriage-penalty relief over 10 years for married tax filers with incomes under \$50,000, and it would provide immediate 100 percent deductibility of health care costs for self-employed taxpayers (see vote No. 154). As amended by a Kerry amendment, it would require States to spend a quarter of their funding from this bill on Child Care Development Block Grants (see vote No. 157). As amended by a Reed amendment, a tobacco company that violated certain FDA regulations would be denied the advertising tax deduction (see vote No. 159).

The Gorton amendment would subject plaintiffs' fees for government and private class-action suits on tobacco to judicial review (the review would be in the last court in which the action was pending), and would enact a sliding-scale cap that would limit the maximum hourly fees that could be awarded based upon when the suits

began. In determining fees, judges would be required to consider a number of specified criteria, including how likely it was that the suit would succeed when it was commenced, the amount of work that was considered likely when the suit began and the amount of work actually done, the degree of skill and legal innovation demonstrated by the attorney, the amount that was expended that was not reimbursable or would not be reimbursed unless the suit succeeded, whether the attorney was obligated to continue the suit to its conclusion, and whether risk of success in the suit was decreased due to developments from other suits or from changes in State or Federal law. Under no circumstances would a judge award, after actual expenses: more than \$4,000 per hour for actions filed before December 31, 1994; more than \$2,000 per hour for actions filed on or after December 31, 1994 but before April 1, 1997; more than \$1,000 for actions filed on or after April 1, 1997 but before June 15, 1998; or \$500 for actions filed after June 15, 1998. (In many States, State attorneys general entered into contingency fee arrangements with contingency-fee trial lawyers. Without caps, some of those lawyers who did very little work could receive in excess of \$90,000 per hour for the time they spent on the suits. The only provision that this bill has to deal with exorbitant contingency fees is a section that will allow either of the parties that entered into the contingency-fee arrangements in the first place, the plaintiffs or the plaintiffs' lawyers, to request arbitration, in which case each would pick one arbitrator, and a third arbitrator would be picked with the approval of both sides.)

NOTE: Two Gregg/Leahy amendments were pending at the time of the vote (see vote No. 145).

Those favoring the amendment contended:

Argument 1:

The contingency-fee arrangements that have been entered into between many States and trial lawyers to pursue tobacco lawsuits will drain away billions of dollars that should go to pay State Medicare expenses. In some cases, they will result in grotesquely exorbitant fees (by the estimate of one expert who has examined the arrangements, as many as 25 trial lawyers may end up billionaires). Nevertheless, some of us opposed earlier efforts to limit contingency fees because those efforts treated the lawyers involved inequitably. When these cases first began in the early 1990s, the likelihood that the lawyers who were hired would succeed was extremely small. Over time, through the great skill and dogged persistence of those lawyers, novel legal theories were developed and large numbers of industry documents were gathered. As a result, success became ever more likely. More States then began to jump on the bandwagon, and they hired lawyers to represent them. The later the lawyers entered the game, the less work they had to do, and the more likely it was that

they would get a huge windfall in contingency fee payments (that is, if they were in a State that agreed to such arrangements; many States used their own lawyers or capped the fees of the lawyers they hired). Frankly, we believe that the lawyers who started this process deserve a lot more money than \$1,000 per hour for the work they have done, the huge risks they have taken, and the huge, multimillion dollar expenses they have incurred on the long-shot chance they have taken and won. The late-comers deserve much less. Therefore, in this amendment, we have set a series of caps on fees, ranging from \$4,000 per hour for the lawyers who started the process, down to \$500 per hour for lawyers who file suits in the future (that final cap is very generous, considering that it will be difficult to lose future cases, and few tobacco company lawyers, or any other lawyers for that matter, make as much as \$500 per hour).

Some of our colleagues supported amendments to cap lawyer fees at \$250 per hour and \$1,000 per hour, and will find it hard to vote for fees that could climb as high as \$4,000 per hour. To those Senators, we urge them to instead look at the amendment as a \$90,000-per-hour-plus pay cut for trial lawyers, because without this amendment some lawyers will likely get paid that much or more. That money will come right out of the tobacco settlement money being given to States for Medicare, which primarily provides health care to frail elderly patients of modest means. Most of those Senators who opposed those earlier amendments oppose this amendment as well, though they obviously are becoming uncomfortable with that position because their argument now is that the Gorton amendment would result in lawyers being paid too much. With all due respect, their argument is not rational. They say we should not suggest a \$4,000 cap for the lawyers who have done the most work, because judges will then automatically go to that level. They say if we did not suggest that cap, judges would favor less pay. However, they are well aware that a district judge in Texas has already supported an hourly wage equivalent of more than \$40,000 for the lawyers hired for that State's tobacco suit. Our colleagues' alternative is no cap at all. Further, if their concern was really that \$4,000 is too much for a cap, then they should have voted for the \$250 or \$1,000 caps. The reality is that there is no magic number between \$1,000 and \$4,000 that some of our more liberal colleagues will support. The reality is that they will not vote for anything that may cut the pay that trial lawyers will receive, however little work those lawyers did, however high that pay may be, and however much it takes away from settlement money that should be going to Medicare.

Our hope is that with this amendment we have found compromise ground. The Gorton amendment would recognize the extremely able work by the lawyers who were involved in the tobacco suits early on, and it would allow them to be paid very generously. Lawyers who filed suit later, and did very little work, would receive much less. This amendment is fair, and deserves our support.

Argument 2:

What is a fair price to pay lawyers out of tobacco settlement money that is supposed

to be used for Medicare? Should they get \$250 per hour for work they did on lawsuits that will be settled by this legislation? Our colleagues said that was not enough. How about \$1,000 per hour? Our colleagues rejected that huge hourly cap as well. Now we are asking them to limit fees to "only" \$4,000 per hour. Many of our colleagues are again shamelessly saying that is not enough. We think that it was unethical for States to hire trial attorneys on a contingency-basis in the first place. Contingency fees should only be used when a client cannot otherwise afford representation, and every State can afford representation. In many cases, the lawyers who were hired for these tobacco suits were the close personal, or at least close political, friends of the State politicians who hired them. It is very difficult for us to vote for a \$4,000-per-hour pay "cap" for trial lawyers who were unethically hired to pursue these tobacco cases. Still, the alternative of letting them being paid \$90,000 per hour or more is much worse, so we will support this amendment.

Those opposing the amendment contended:

Argument 1:

If we adopt a \$4,000 per hour cap, judges will just ignore all of the listed criteria for deciding how much should be paid, and will instead assume that \$4,000 is a reasonable fee. Thus, instead of being a ceiling as our colleagues say they intend that figure to be, it will actually be a floor. We think \$4,000 per hour is too high. It is better not to enact any fee at all, and let the States decide this issue for themselves. If that course is followed, States will undoubtedly strike down these fee arrangements and come up with payment rates much lower than \$4,000. If Senators really want to limit exorbitant trial lawyer fees, they will oppose this amendment.

Argument 2:

We oppose this amendment for the same reasons that we opposed the earlier efforts to limit attorneys fees. As far as we are concerned, the lawyers involved have valid contracts, and they have earned every penny of the hundreds of millions or billions of dollars that they will be paid. Therefore, this amendment should be rejected.

VOTING YEA:

Republicans:

(45 or 85%) Abraham Allard Ashcroft Bond Brownback Burns Campbell Chafee Coats Collins Coverdell Craig Domenici Enzi Faircloth Frist Gorton Gramm Grams

Grassley Gregg Hagel Helms Hutchinson Hutchison Inhofe Kempthorne Kyl Lugar
Mack McCain McConnell Murkowski Nickles Roberts Santorum Sessions Smith,
Bob Smith, Gordon Snowe Stevens Thomas Thompson Thurmond Warner

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(4 or 9%) Byrd Dodd Dorgan Lieberman

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Daschle Durbin Feingold Feinstein Ford Glenn Graham Harkin Hollings Inouye
Johnson Kennedy Kerrey Kerry Kohl Landrieu Lautenberg Leahy Levin Mikulski
Moseley-Braun Moynihan Murray Reed Reid Robb Rockefeller Sarbanes Torricelli
Wellstone Wyden

NOT VOTING:

Republicans:

(1) Specter-3

Democrats:

(0)

ABSENCE CODE: 1-Official Business 2-Necessarily Absent 3-Illness 4-other
Symbols: AY-Announced Yea AN-Announced Nay PY-Paired Yea PN-Paired Nay

Compiled and written by the staff of the Republican Policy Committee

Larry E. Craig, Chairman

TOP

1.

HEADING, SUBJECT, RESULT, SYNOPSIS, DEBATE, TALLY
NEXT VOTE, PREVIOUS VOTE, SUBJECT INDEX, CHRONOLOGICAL LIST,
HOME, CAMERA COPY

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session
June 16, 1998, 2:32 p.m.
Page S- 6381 Temp. Record
Vote No. 160

TOBACCO BILL/Sliding Scale Limit on Attorney Fees

SUBJECT:

National Tobacco Policy and Youth Smoking Reduction Act . . . S. 1415. Gorton modified amendment No. 2705 to the Daschle (for Durbin) amendment No. 2437, as amended, to the instructions (Gramm amendment No. 2436) to the Gramm motion to recommit the Commerce Committee modified substitute amendment No. 2420.

AMENDMENT AGREED TO, 49-48

SYNOPSIS:

The "Commerce-2" committee substitute amendment (see NOTE in vote No. 142) to S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act, will raise up to \$265.0 billion over 10 years and up to \$885.6 billion over 25 years from tobacco company "payments" (assessments) and from "look-back" penalties that will be imposed on tobacco companies if they fail to reduce underage use of tobacco products. Most of the money will come from the required payments (\$755.67 billion over 25 years). Additional sums will be raised from other fines and penalties on tobacco companies, and the required payments will be higher if volume reduction targets on tobacco use are not met. The tobacco companies will be required to pass on the entire cost of the payments to their consumers, who are primarily low-income

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Moseley-Braun Moynihan Murray Reed Reid Robb Rockefeller Sarbanes Torricelli
Wellstone Wyden

NOT VOTING:

Republicans:

(1) Specter-3

Democrats:

(0)

ABSENCE CODE: 1-Official Business 2-Necessarily Absent 3-Illness 4-other
Symbols: AY-Announced Yea AN-Announced Nay PY-Paired Yea PN-Paired Nay

Compiled and written by the staff of the Republican Policy Committee

Larry E. Craig, Chairman

TOP

MEMORANDUM

TO: Brett Kavanaugh
FROM: Joe Matal, Counsel to Senator Kyl
DATE: April 31, 2003
RE: ISCRAA and Congress's Power to Tax

Here are some legal authorities indicating that Congress has the power to apply ISCRAA's excise taxes to MSA fee income received within the last year:

First, as noted in Senator Kyl's speech, the Supreme Court has "repeatedly upheld [moderately] retroactive tax legislation against a due process challenge." United States v. Carlton, 512 U.S. 26, 30-31 (1994); *see id.* at 33 (upholding tax whose "actual retroactive effect * * * extended for a period only slightly greater than one year"). ISCRAA only taxes income received since June 1, 2002 – thus reaching back less than one year.

Second, because ISCRAA is a tax, it does not constitute a taking. As the Supreme Court made clear over a century ago, "neither is taxation for a public purpose, however great, the taking of private property for public use, in the sense of the Constitution." Mobile County v. Kimball, 102 U.S. 691, 703 (1880).

Since that time, the Supreme Court also has made clear that a tax is a tax so long as all of its provisions are adapted to the collection of revenue, and it raises at least a "negligible" amount of money. A tax is not invalid for imposing a "crushing effect" on particular businesses, and Congress's motives in imposing the tax are irrelevant. In short, "[a]s is well known, the constitutional restraints on taxing are few * * * * The remedy for excessive taxation is in the hands of Congress, not the courts." United States v. Kahriger, 345 U.S. 22, 28 (1953), overruled on other grounds, Marchetti v. United States, 88 S.Ct. 697 (1968).

The following authorities speak directly to these points:

- Sonzinsky v. United States, 300 U.S. 506 (1937), involved multiple, punitive federal taxes imposed on the sale of sawed-off shotguns, machineguns, and silencers. The party challenging the tax "insist[ed] that the present levy is not a true tax, but a penalty imposed for the purpose of suppressing traffic in a certain noxious type of firearms, the local regulation of which is reserved to the states because not granted to the national government." Id. at 512. The litigant argued that:

[t]he cumulative effect on the distribution of a limited class of firearms, of relatively small value, by the successive imposition of

different taxes, one on the business of the importer or manufacturer, another on that of the dealer, and a third on the transfer to a buyer, is * * * prohibitive in effect and * * * disclose[s] unmistakably the legislative purpose to regulate rather than to tax.

The Supreme Court did not reject this characterization of the tax's effect. Instead, it simply held that:

"[A] tax is not any the less a tax because it has a regulatory effect; and it has long been established that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed.

"Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts. They will not undertake, by collateral inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Federal Constitution.

"Here the annual tax of \$200 is productive of some revenue. We are not free to speculate as to the motives which moved Congress to impose it, or as to the extent to which it may operate to restrict the activities taxed. As it is not attended by an offensive regulation, and since it operates as a tax, it is within the national taxing power."

Id. at 513-514.

- United States v. Kahriger, 345 U.S. 22 (1953), overruled on other grounds, Marchetti v. United States, 88 S.Ct. 697 (1968), involved a heavy federal tax on gambling proceeds. The party challenging the tax argued that "Congress, under the pretense of exercising its power to tax has attempted to penalize illegal intrastate gambling through the regulatory features of the Act, and has thus infringed the police power which is reserved to the states." Id. at 23 (citation omitted). The litigant argued that "because there is legislative history indicating a congressional motive to suppress wagering, this tax is not a proper exercise of such taxing power." Id. at 27.

The Court responded:

The intent to curtail and hinder, as well as tax, was also manifest in the following cases, and in each of them the tax was upheld: Veazie Bank v. Fenno, 8 Wall. 533, 19 L.Ed. 482 (tax on paper money issued by state banks); McCray v. United States, 195 U.S. 27, 59, (tax on colored oleomargarine); United States v. Doremus, 249 U.S. 86 and Nigro v. United States, 276 U.S. 332 (tax on

narcotics); Sonzinsky v. United States, 300 U.S. 506 (tax on firearms); United States v. Sanchez, 340 U.S. 42 (tax on marihuana)." Id. at 27.

The Court continued: "a federal excise tax does not cease to be valid merely because it discourages or deters the activities taxed. Nor is the tax invalid because the revenue obtained is negligible." Id. at 28 (emphasis added). And to give some indication of what would constitute a negligible tax, the Court noted that it had upheld, in the McCray case, a tax on adulterated butter that collected only \$3,501. Id.

The Kahriger Court concluded that:

"It is axiomatic that the power of Congress to tax is extensive and sometimes falls with crushing effect on businesses deemed unessential or inimical to the public welfare * * * * As is well known, the constitutional restraints on taxing are few * * * * The remedy for excessive taxation is in the hands of Congress, not the courts." Id. See also id. at 30 (noting precedent upholding federal that "obliterated from circulation all state bank notes") (citing Veazie Bank v. Fenno, 8 Wall. 533, 19 L.Ed. 482).

- In more recent years, the Supreme Court has reaffirmed these holdings. See, e.g. Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767, 779 (1994) ("We have cautioned against invalidating a tax simply because its enforcement might be oppressive or because the legislature's motive was somehow suspect"); Bob Jones University v. Simon, 416 U.S. 725, 741 n.2 (1974) ("It is true that the Court in * * * [the past] drew what it saw at the time as distinctions between regulatory and revenue-raising taxes. But the Court has subsequently abandoned such distinctions"); City of Pittsburgh v. Alco Parking Corp., 417 U.S. 369, 376 (1974) (citing "the oft-repeated principle that the judiciary should not infer a legislative attempt to exercise a forbidden power in the form of a seeming tax from the fact, alone, that the tax appears excessive or even so high as to threaten the existence of an occupation or business").

With regard to ISCRAA, it bears keeping in mind that: 1. ISCRAA on its face is a tax, and all of its provisions are adapted to the raising of revenue. The fee formula simply determines the amount subject to the tax; the declaratory judgment provisions help to enforce the tax. 2. ISCRAA will raise more than negligible revenue. Even the 200% tax is likely to be paid in some instances – e.g., when it applies to an excess-fee payment that is marginal and minor, and the attorney is loathe to return the amount to the client. The very fact that ISCRAA will draw a revenue score will confirm its constitutional status as a tax. 3. ISCRAA does not impose a "crushing burden" on any business. Its high tax rates are marginal rates, applying only to the excessive portion of the fee. And the ISCRAA fee formula is more generous than what federal courts award to plaintiffs' attorneys in common-fund cases involving judgments of \$100 million or more.

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RE: ISCRRA and Congress's Power to Tax

Here are some legal authorities indicating that Congress has the power to apply ISCRRA's excise taxes to MSA fee income received within the last year:

First, as noted in Senator Kyl's speech, the Supreme Court has "repeatedly upheld [moderately] retroactive tax legislation against a due process challenge." United States v. Carlton, 512 U.S. 26, 30-31 (1994); *see id.* at 33 (upholding tax whose "actual retroactive effect * * * extended for a period only slightly greater than one year"). ISCRRA only taxes income received since June 1, 2002 – thus reaching back less than one year.

Second, because ISCRRA is a tax, it does not constitute a taking. As the Supreme Court made clear over a century ago, "neither is taxation for a public purpose, however great, the taking of private property for public use, in the sense of the Constitution." Mobile County v. Kimball, 102 U.S. 691, 703 (1880).

Since that time, the Supreme Court also has made clear that a tax is a tax so long as all of its provisions are adapted to the collection of revenue, and it raises at least a "negligible" amount of money. A tax is not invalid for imposing a "crushing effect" on particular businesses, and Congress's motives in imposing the tax are irrelevant. In short, "[a]s is well known, the constitutional restraints on taxing are few * * * * The remedy for excessive taxation is in the hands of Congress, not the courts." United States v. Kahriger, 345 U.S. 22, 28 (1953), overruled on other grounds, Marchetti v. United States, 88 S.Ct. 697 (1968).

The following authorities speak directly to these points:

- Sonzinsky v. United States, 300 U.S. 506 (1937), involved multiple, punitive federal taxes imposed on the sale of sawed-off shotguns, machineguns, and silencers. The party challenging the tax "insist[ed] that the present levy is not a true tax, but a penalty imposed for the purpose of suppressing traffic in a certain noxious type of firearms, the local regulation of which is reserved to the states because not granted to the national government." Id. at 512. The litigant argued that:

[t]he cumulative effect on the distribution of a limited class of firearms, of relatively small value, by the successive imposition of different taxes, one on the business of the importer or

manufacturer, another on that of the dealer, and a third on the transfer to a buyer, is * * * prohibitive in effect and * * * disclose[s] unmistakably the legislative purpose to regulate rather than to tax.

The Supreme Court did not reject this characterization of the tax's effect. Instead, it simply held that:

“[A] tax is not any the less a tax because it has a regulatory effect; and it has long been established that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed.

“Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts. They will not undertake, by collateral inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Federal Constitution.

“Here the annual tax of \$200 is productive of some revenue. We are not free to speculate as to the motives which moved Congress to impose it, or as to the extent to which it may operate to restrict the activities taxed. As it is not attended by an offensive regulation, and since it operates as a tax, it is within the national taxing power.”

Id. at 513-514.

- United States v. Kahriger, 345 U.S. 22 (1953), overruled on other grounds, Marchetti v. United States, 88 S.Ct. 697 (1968), involved a heavy federal tax on gambling proceeds. The party challenging the tax argued that “Congress, under the pretense of exercising its power to tax has attempted to penalize illegal intrastate gambling through the regulatory features of the Act, and has thus infringed the police power which is reserved to the states.” Id. at 23 (citation omitted). The litigant argued that “because there is legislative history indicating a congressional motive to suppress wagering, this tax is not a proper exercise of such taxing power.” Id. at 27.

The Court responded:

The intent to curtail and hinder, as well as tax, was also manifest in the following cases, and in each of them the tax was upheld: Veazie Bank v. Fenno, 8 Wall. 533, 19 L.Ed. 482 (tax on paper

money issued by state banks); McCray v. United States, 195 U.S. 27, 59, (tax on colored oleomargarine); United States v. Doremus, 249 U.S. 86 and Nigro v. United States, 276 U.S. 332 (tax on narcotics); Sonzinsky v. United States, 300 U.S. 506 (tax on firearms); United States v. Sanchez, 340 U.S. 42 (tax on marihuana).” Id. at 27.

The Court continued: “a federal excise tax does not cease to be valid merely because it discourages or deters the activities taxed. Nor is the tax invalid because the revenue obtained is negligible.” Id. at 28 (emphasis added). And to give some indication of what would constitute a negligible tax, the Court noted that it had upheld, in the McCray case, a tax on adulterated butter that collected only \$3,501. Id.

The Kahriger Court concluded that:

“It is axiomatic that the power of Congress to tax is extensive and sometimes falls with crushing effect on businesses deemed unessential or inimical to the public welfare * * * * As is well known, the constitutional restraints on taxing are few * * * * The remedy for excessive taxation is in the hands of Congress, not the courts.” Id. See also id. at 30 (noting precedent upholding federal that “obliterated from circulation all state bank notes”) (citing Veazie Bank v. Fenno, 8 Wall. 533, 19 L.Ed. 482).

- In more recent years, the Supreme Court has reaffirmed these holdings. See, e.g. Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767, 779 (1994) (“We have cautioned against invalidating a tax simply because its enforcement might be oppressive or because the legislature’s motive was somehow suspect”); Bob Jones University v. Simon, 416 U.S. 725, 741 n.2 (1974) (“It is true that the Court in * * * [the past] drew what it saw at the time as distinctions between regulatory and revenue-raising taxes. But the Court has subsequently abandoned such distinctions”); City of Pittsburgh v. Alco Parking Corp., 417 U.S. 369, 376 (1974) (citing “the oft-repeated principle that the judiciary should not infer a legislative attempt to exercise a forbidden power in the form of a seeming tax from the fact, alone, that the tax appears excessive or even so high as to threaten the existence of an occupation or business”).

With regard to ISCRAA, it bears keeping in mind that: 1. ISCRAA on its face is a tax, and all of its provisions are adapted to the raising of revenue. The fee formula simply determines the amount subject to the tax; the declaratory judgment provisions help to enforce the tax. 2. ISCRAA will raise more than negligible revenue. Even the 200% tax is likely to be paid in some instances – e.g., when it applies to an excess-fee payment that is marginal and minor, and the attorney is loathe to return the amount to the client. The very fact that ISCRAA will draw a

revenue score will confirm its constitutional status as a tax. 3. ISCRAA does not impose a “crushing burden” on any business. Its high tax rates are marginal rates, applying only to the excessive portion of the fee. And the ISCRAA fee formula is more generous than what federal courts award to plaintiffs’ attorneys in common-fund cases involving judgments of \$100 million or more.

From: Wyatt DuBois <wdubois@cato.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2003 1:52:56 PM
Subject: : Cato Experts Available to Comment on Campaign Finance Law Ruling
Attachments: P_XCG4G003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wyatt DuBois <wdubois@cato.org> (Wyatt DuBois <wdubois@cato.org> [UNKNOWN])
CREATION DATE/TIME: 2-MAY-2003 17:52:56.00
SUBJECT:: Cato Experts Available to Comment on Campaign Finance Law Ruling
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

CATO NEWS ALERT
<http://www.uptilt.com/ct.html?rtr=on&s=77z,2dfv,c6f,k67u,i9ja,gcl3,m0tk>

May 2, 2003

Cato Experts Available to Comment on Campaign Finance Law Ruling

WASHINGTON- John Samples, Director of Cato's Center for Representative Government and Senior Fellow Patrick Basham are available to discuss today's ruling striking down part of the federal campaign finance law.

Campaign Finance Folly by Patrick Basham and John Samples,
<http://www.uptilt.com/ct.html?rtr=on&s=77z,2dfv,c6f,edkp,ixzo,gcl3,m0tk>

This Is Reform?: Predicting the Impact of the New Campaign Financing Regulations by Patrick Basham,
<http://www.uptilt.com/ct.html?rtr=on&s=77z,2dfv,c6f,b791,g0vc,gcl3,m0tk>

Contacts:

John Samples, [PRA 6]
Patrick Basham, [PRA 6]
Evans Pierre, director of Broadcasting, [PRA 6]
[PRA 6]

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- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_XCG4G003_WHO.TXT_1>

CA TO NEWS ALERT <http://www.cato.org/>

May 2, 2003

Cato Experts Available to Comment on Campaign Finance Law Ruling

WASHINGTON- **John Samples**, Director of Cato's Center for Representative Government and Senior Fellow **Patrick Basham** are available to discuss today's ruling striking down part of the federal campaign finance law.

Campaign Finance Folly by Patrick Basham and John Samples,
<http://www.cato.org/dailys/01-12-02.html>

This Is Reform?: Predicting the Impact of the New Campaign Financing Regulations by Patrick Basham,

<http://www.cato.org/pubs/briefs/bp-078es.html>

Co ntacts:

John Samples,

PRA 6

Patrick Basham,

PRA 6

Evans Pierre, director of Broadcasting,

PRA 6

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>
Sent: 5/2/2003 10:41:39 AM
Subject: : Re: travel office issue I asked you about last week...

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-MAY-2003 14:41:39.00
SUBJECT:: Re: travel office issue I asked you about last week....
TO: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

I think we affirmatively decided not to contact the IRS. Let me loop back to Adam and Eric.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 05/02/2003 02:38:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: travel office issue I asked you about last week....

Note from Eric Terrell, Director, WH Travel Office:

;

2. I would only consider the fet issue resolved when the IRS is fully aware that w.h. is no longer paying fet, but that our broker air partner is.; Brett & Adam may be up to speed and all agree on how it should work (i.e. the way it is now) but I don't believe anyone's contacted the;IRS.

;

;

Does someone need to contact the IRS?; If yes, who would be the appropriate person?

From: GaryM Stern <garym.stern@nara.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Nancy Smith <nancy.smith@nara.gov>
Sent: 5/2/2003 12:07:42 PM
Subject: : Search for PRA Records on Murders in El Salvador and Guatamala
Attachments: P_ACA4G003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:GaryM Stern <garym.stern@nara.gov> (GaryM Stern <garym.stern@nara.gov> [UNKNOWN])
CREATION DATE/TIME: 2-MAY-2003 16:07:42.00
SUBJECT:: Search for PRA Records on Murders in El Salvador and Guatamala
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Nancy Smith <nancy.smith@nara.gov> (Nancy Smith <nancy.smith@nara.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Attached is a pdf version of the April 4, 2003 memo from Attorney General Ashcroft, informing agencies of the requirements of a recently enacted statute requiring us to search and review for declassification records related to murders in El Salvador and Guatamala. Because it is possible that there are responsive Presidential records at the Reagan and Clinton Libraries, we cannot proceed there until we get authorization from you under 44 USC 2205(2)(B), as ongoing business of the incumbent President.

Please either provide us with such authorization, or indicate whether the signing statement of the President (attached to the AG memo at tab 2), which delegates to the AG the authority to implement the provision, itself constitutes the necessary authorization under 2205.

Please let us know as soon as you can, as the statute and the memo contemplate a fairly quick turnaround, and we have quite a long line of searches already pending (especially at Clinton).

Thanks.

- AG Memo on Sec. 586.pdf
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ACA4G003_WHO.TXT_1>



N
APR 11

Office of the Attorney General
Washington, D. C. 20530

April 4, 2003

MEMORANDUM FOR HEADS OF ALL FEDERAL DEPARTMENTS AND AGENCIES,
INCLUDING THE FEDERAL BUREAU OF INVESTIGATION (see attached distribution list)

FROM: THE ATTORNEY GENERAL *John Ashcroft*

SUBJECT: Implementation of Section 586 of the Foreign Operations, Export Financing, and
Related Programs Appropriations Act, Pub. L. No. 108-7, 117 Stat. 11, 215-16
(February 20, 2003), Concerning Information Relevant to Murders of American
Churchwomen and Other American Citizens in El Salvador and Guatemala

Section 586 of Public Law 108-7 provides in pertinent part that “the President shall order all Federal agencies and departments, including the Federal Bureau of Investigation, that possess relevant information” concerning certain murders that occurred in El Salvador and Guatemala, “to expeditiously declassify and release to the victims’ families such information, consistent with existing standards and procedures on classification.” Section 586 further provides that “[i]n making determinations concerning declassification and release of relevant information, all Federal agencies and departments should use the discretion contained within such existing standards and procedures on classification in support of releasing, rather than withholding, such information.” A copy of section 586 is attached to this memorandum at Tab 1.

The President’s signing statement on Public Law 108-7 provides that “the duty of the President under section 586 * * * to issue and provide copies of an order relating to consideration of the release of information is assigned to the Attorney General, who shall ensure that the section is implemented in a manner consistent with the President’s constitutional authority to withhold information, the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties.” A copy of the President’s signing statement is attached to this memorandum at Tab 2.

This memorandum implements the statutory directive set forth in section 586 in accordance with the President’s signing statement. Section 586 identifies three categories of murders to which it applies: “the December 2, 1980, murders of four American churchwomen in El Salvador”; “the May 5, 2001, murder of Sister Barbara Ann Ford”; and “the murders of other American citizens in Guatemala since December 1999.” On or before 30 days from the date of this memorandum, the Department of State shall submit to me, through the Department of Justice

point of contact specified below, a list of the names and other identifying information concerning any American citizens murdered in Guatemala between December 1, 1999, and February 20, 2003 (the date of enactment of section 586); the Department of State shall also submit a list of the names and other identifying information concerning the four American churchwomen murdered in El Salvador on December 2, 1980. This information will be used to assist other departments and agencies in conducting searches for relevant information.

Also within 30 days from the date of this memorandum, all departments and agencies shall submit to me, through the Department of Justice point of contact specified below, the names, telephone and fax numbers, e-mail addresses, and mailing addresses of their points of contact on this matter. The Department of Justice point of contact is Melanie Ann Pustay, Deputy Director, Office of Information and Privacy. Ms. Pustay can be reached by telephone at 202-514-3642, by fax at 202-514-1009, and by e-mail at <<Melanie.A.Pustay@usdoj.gov>>. Her mailing address is Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530.

On or before 120 days from the date of this memorandum, the heads of all Federal departments and agencies, as well as the Director of the FBI, shall report to me in writing, through Ms. Pustay, on whether each such government entity possesses information relevant to the murders specified in section 586 and identified by the State Department. For any department or agency that does possess such information, the report shall also set forth a written plan for expeditious review of the information for possible release to the victims' families. The plan shall include an estimate of the date by which the review and possible release of information to the victims' families is expected to be completed, and a statement that supports and justifies the estimate. If any plan estimates that this review process will not be completed by 210 days from the date of this memorandum, the plan shall provide for submission of a written progress report to me through Ms. Pustay on or before 210 days from the date of this memorandum. As indicated in the President's signing statement, the review process shall be conducted in a manner consistent with the President's constitutional authority to withhold information, the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties. In that regard, please note that Executive Order 12958, governing classification and declassification of national security information, was amended on March 25, 2003.

A copy of this memorandum is being provided to the Committees on Appropriations of the House of Representatives and the Senate.

Distribution List:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

Federal Bureau of Investigation

Broadcasting Board of Governors
Central Intelligence Agency
Commission on Civil Rights
Commodity Futures Trading Commission
Consumer Product Safety Commission
Corporation for National and Community Service
Defense Nuclear Facilities Safety Board
Environmental Protection Agency
Equal Employment Opportunity Commission
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Emergency Management Agency
Federal Housing Finance Board
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
Federal Reserve System
Federal Retirement Thrift Investment Board
Federal Trade Commission
General Services Administration

Institute of Museum and Library Services
Inter-American Foundation
International Broadcasting Bureau
Merit Systems Protection Board
National Aeronautics and Space Administration
National Archives and Records Administration
National Capital Planning Commission
National Council on Disability
National Credit Union Administration
National Endowment for the Arts
National Endowment for the Humanities
National Labor Relations Board
National Mediation Board
National Railroad Passenger Corporation
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Compliance
Office of Government Ethics
Office of Personnel Management
Office of Special Counsel
Overseas Private Investment Corporation
Panama Canal Commission
Peace Corps
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Social Security Administration
Tennessee Valley Authority
Trade and Development Agency
United States Agency for International Development
United States International Trade Commission
United States Postal Service

Tab 1 Section 586 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 108-7, 117 Stat. 11, 215-16 (February 20, 2003)

AMERICAN CHURCHWOMEN AND OTHER CITIZENS
IN EL SALVADOR AND GUATEMALA

Sec. 586

(a) Information relevant to the December 2, 1980, murders of four American churchwomen in El Salvador, and the May 5, 2001, murder of Sister Barbara Ann Ford and the murders of other American citizens in Guatemala since December 1999, should be investigated and made public.

(b) Not later than 45 days after enactment of this Act, the President shall order all Federal agencies and departments, including the Federal Bureau of Investigation, that possess relevant information, to expeditiously declassify and release to the victims' families such information, consistent with existing standards and procedures on classification, and shall provide a copy of such order to the Committees on Appropriations.

(c) In making determinations concerning declassification and release of relevant information, all Federal agencies and departments should use the discretion contained within such existing standards and procedures on classification in support of releasing, rather than withholding, such information.

(d) All reasonable efforts should be taken by the American Embassy in Guatemala to work with relevant agencies of the Guatemalan Government to protect the safety of American citizens in Guatemala, and to assist in the investigations of violations of human rights.

This division may be cited as the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003"

Tab 2: President's signing statement on Section 586 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 108-7, 117 Stat. 11, 215-16 (February 20, 2003)

Today I have signed into law H.J. Res. 2, the "Consolidated Appropriations Resolution, 2003," which contains the remaining 11 annual appropriations acts for fiscal year 2003. The funds appropriated by this bill will provide valuable resources for priorities such as homeland security, military operations, and education.

*

In addition, a number of provisions of H.J. Res. 2 are inconsistent with the constitutional authority of the President to conduct foreign affairs, command the Armed Forces, supervise the unitary executive branch, protect sensitive information, and make recommendations to the Congress. Other provisions unconstitutionally condition execution of the laws by the executive branch upon approval by congressional committees.

* * * *

Furthermore, the duty of the President under section 586 of the Foreign Operations Appropriations Act to issue and provide copies of an order relating to consideration of the release of information is assigned to the Attorney General, who shall ensure that the section is implemented in a manner consistent with the President's constitutional authority to withhold information, the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.

* * * *

George W. Bush
The White House,
February 20, 2003

From: CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/2/2003 2:23:31 PM
Subject: : Re: Owen

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 2-MAY-2003 18:23:31.00
SUBJECT:: Re: Owen
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brother!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 5/3/2003 9:05:33 AM
Subject: : Re: Wittes/Leon Holmes

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAY-2003 13:05:33.00
SUBJECT:: Re: Wittes/Leon Holmes
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

still digesting, but not many surprises -- and, more important, all pretty academic and irrelevant since Supreme Court Justices will not really care what these 3 judges said. On procedure, contrary to what some commentators said in papers today, I think Court will get on this quickly and hear and decide this over summer and early fall rather than waiting until next fall to tackle. Will be interesting to get Clement's take on that point.

From: Alberto R. Gonzales/WHO/EOP@Exchange on 05/03/2003 11:31:32 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Wittes/Leon Holmes

What is your take on the decision?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 5/3/2003 9:31:09 AM
Subject: : Re: Wittes/Leon Holmes

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAY-2003 13:31:09.00
SUBJECT:: Re: Wittes/Leon Holmes
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

Judge Leon's decision (with Kollar-Kotelly concurring) to uphold the backup issue ad definition (which arguably is more expansive than the primary definition that the court struck down) is both strange and dangerous. Fortunately, Supreme Court will not care. Supreme Court might have gained some guidance and insight from lower court had the lower court done its job and produced some coherence. From this ridiculous mish-mash, however, the Supreme Court will just start fresh with the briefs (as Linda Greenhouse's story in NY Times correctly states).

Note that swing votes in Supreme Court on this are Rehnquist and O'Connor. Justices Scalia, Thomas, and Kennedy almost certainly will be in the Henderson camp to strike down virtually every issue of controversy. Justices Ginsburg, Breyer, Souter, and Stevens likely will be in the Kollar-Kotelly camp (except perhaps on issue ads, where they too may have concerns). And it will come down to Rehnquist and O'Connor in my judgment on many of the soft money issues.

From: Alberto R. Gonzales/WHO/EOP@Exchange on 05/03/2003 11:31:32 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Wittes/Leon Holmes

What is your take on the decision?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: James C. Ho <JamesCHo@stanfordalumni.org>
Sent: 5/3/2003 12:20:11 PM
Subject: : Re: draft op-ed
Attachments: P_I4O4G003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-MAY-2003 16:20:11.00
SUBJECT: : Re: draft op-ed
TO: "James C. Ho" <[REDACTED] PRA 6 [REDACTED]> ("James C. Ho"
<[REDACTED] PRA 6 [REDACTED]> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

This looks great. I might delete the second and third sentences of both the first and second paragraphs to take out the suggestion of partisan/packing. (I also would delete the word "new" before "majorities" in last sentence of second paragraph.) With those deletions, the op-ed reads more "good government" and less partisan, I would think, and I think that matches goal of op-ed. Thanks.

"James C. Ho" <[REDACTED] PRA 6 [REDACTED]>
05/03/2003 03:53:29 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: draft op-ed

I am sending this to you because I know that you are interested in these issues. If you happen to have any thoughts, please let me know. Please do not circulate this to anyone. Thanks!

Obstructing the Constitution
by John Cornyn

This week, the Senate marks a dismal political anniversary: two years of partisan obstruction of President Bush's judicial nominees, culminating in two unprecedented filibusters -- and more threatened to come. This obstruction should have ended when the voters returned Senate control to the President's party last fall. But Democrat leaders, although now in the minority, refuse to let go of power, and instead wreak havoc on the judicial confirmation process and the democratic principle of majority rule. Today, the Senate Subcommittee on the Constitution will investigate whether their abuse of the filibuster against judicial nominees also threatens a dangerous change to the Constitution.

The essence of our democratic system of government is beautiful in its simplicity. Elections must matter. The public must be allowed to reject gridlock by throwing the old regime out of office and installing new management. New majorities must be permitted to govern.

Accordingly, as the Supreme Court has unanimously recognized, our

Constitution is premised on the democratic doctrine of majority rule. All exceptions to this doctrine must be expressly noted in the Constitutional text, such as the two-thirds requirement for Senate approval of treaties.

The American public's historic aversion to abusive filibusters is thus well grounded, for such tactics not only violate democracy and majority rule, but arguably offend the Constitution as well. Indeed, the abuse of filibusters has previously been condemned as unconstitutional by prominent Democrats like Senators Tom Harkin, Joe Lieberman, and Tom Daschle, and Lloyd Cutler, the former Carter and Clinton White House counsel.

Moreover, the filibustering of judicial nominations uniquely threatens both presidential power and judicial independence and is thus even more dubious than the filibustering of legislation, an area of preeminent Congressional power.

Harry Edwards, a respected Carter-appointed judge, has written that the Constitution forbids the Senate from imposing a supermajority requirement on presidential appointments. Otherwise, "the Senate, acting unilaterally, could thereby increase its own power at the expense of the President" and "essentially take over the appointment process from the President."

As Judge Edwards concludes, "the Framers never intended for Congress to have such unchecked authority to impose supermajority voting requirements that fundamentally change the nature of our democratic processes." (Notably, he expressed less concern with legislative filibusters.)

History confirms Judge Edwards's reading of the Constitution. A majority of the Senate has never before been denied its constitutional right to consent to a judicial nominee -- until now.

Some have noted the example of Abe Fortas, whom President Lyndon Johnson nominated to be Chief Justice in 1968. But Fortas's nomination was dogged by allegations of ethical improprieties and bipartisan opposition, and as a result, he was unable to garner the firm support of 51 Senators. What's more, President Johnson withdrew the nomination just three days after the first failed vote.

That is a far cry from the current controversy, where Miguel Estrada, Justice Priscilla Owen, and countless others face an uncertain future and indefinite debate, despite enthusiastic bipartisan majority support. By brazenly insisting that "there is not a number [of hours] in the universe that would be sufficient" for debate, Democrat leaders recognize they are using the filibuster not to promote debate, but to change the Constitution by imposing a supermajority requirement for judicial confirmations.

The current crisis thus cries out for reform. No one can be satisfied with this destructive process, constitutional or otherwise. As all ten freshman Senators stated in a letter last week, "we are united in our concern that the judicial confirmation process is broken and needs to be fixed." Veteran Senators from both parties repeatedly express similar sentiments.

Today's hearing will accordingly explore various reform proposals. Senator Zell Miller suggests as did Senators Harkin, Lieberman, and 17 other Democrats in 1995 that the 60-vote rule for ending debate be reduced incrementally with each succeeding vote until the rule reaches 51 votes. President Bush and Senators Arlen Specter and Patrick Leahy urge the imposition of strict time deadlines for the Senate to vote on judicial nominees. Senator Charles Schumer advocates a total overhaul of the nomination process itself, by eliminating the President's appointment power altogether and instead giving President Bush and Senator Daschle "equal roles in picking the judge-pickers." Regardless of the merits of the competing proposals, each of these public officials deserves recognition for acknowledging the current crisis in the United States Senate.

Two years is too long. As Senator Henry Cabot Lodge famously said about filibusters: "To vote without debating is perilous, but to debate and never vote is imbecile." Our current state of affairs is neither fair nor representative of the bipartisan majority of this body.. The judicial confirmation process is badly broken, and the Senate needs a fresh start. For democracy to work, and for the constitutional principle of majority rule to prevail, this obstructionism must end, and we must bring matters to a vote.

Mr. Cornyn is a U.S. Senator from Texas and chairman of the Senate Subcommittee on the Constitution.

James C. Ho
Chief Counsel
Senate Subcommittee on the Constitution, Civil Rights & Property Rights
Chairman, Senator John Cornyn
(202) 224-9614 (direct line) 901 North Wayne Street #302
(202) 224-2934 (general office line) Arlington, VA 22201

PRA 6

PRA 6

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_I404G003_WHO.TXT_1>

I am sending this to you because I know that you are interested in these issues. If you happen to have any thoughts, please let me know. Please do not circulate this to anyone. Thanks!

Obstructing the Constitution
by John Cornyn

This week, the Senate marks a dismal political anniversary: two years of partisan obstruction of President Bush's judicial nominees, culminating in two unprecedented filibusters -- and more threatened to come. This obstruction should have ended when the voters returned Senate control to the President's party last fall. But Democrat leaders, although now in the minority, refuse to let go of power, and instead wreak havoc on the judicial confirmation process and the democratic principle of majority rule. Today, the Senate Subcommittee on the Constitution will investigate whether their abuse of the filibuster against judicial nominees also threatens a dangerous change to the Constitution.

The essence of our democratic system of government is beautiful in its simplicity. Elections must matter. The public must be allowed to reject gridlock by throwing the old regime out of office and installing new management. New majorities must be permitted to govern.

Accordingly, as the Supreme Court has unanimously recognized, our Constitution is premised on the democratic doctrine of majority rule. All exceptions to this doctrine must be expressly noted in the Constitutional text, such as the two-thirds requirement for Senate approval of treaties.

The American public's historic aversion to abusive filibusters is thus well grounded, for such tactics not only violate democracy and majority rule, but arguably offend the Constitution as well. Indeed, the abuse of filibusters has previously been condemned as unconstitutional by prominent Democrats like Senators Tom Harkin, Joe Lieberman, and Tom Daschle, and Lloyd Cutler, the former Carter and Clinton White House counsel.

Moreover, the filibustering of judicial nominations uniquely threatens both presidential power and judicial independence and is thus even more dubious than the filibustering of legislation, an area of preeminent Congressional power.

Harry Edwards, a respected Carter-appointed judge, has written that the Constitution forbids the Senate from imposing a supermajority requirement on presidential appointments. Otherwise, the Senate, acting unilaterally, could thereby increase its own power at the expense of the President and essentially take over the appointment process from the President.

As Judge Edwards concludes, the Framers never intended for Congress to have such unchecked authority to impose supermajority voting requirements that fundamentally change the nature of our democratic processes. (Notably, he expressed less concern with legislative filibusters.)

History confirms Judge Edwards's reading of the Constitution. A majority of the Senate has never before been denied its constitutional right to consent to a judicial nominee -- until now.

Some have noted the example of Abe Fortas, whom President Lyndon Johnson nominated to be Chief Justice in 1968. But Fortas's nomination was dogged by allegations of ethical improprieties and bipartisan opposition, and as a result, he was unable to garner the firm support of 51 Senators. What's more, President Johnson withdrew the nomination just three days after the first failed vote.

That is a far cry from the current controversy, where Miguel Estrada, Justice Priscilla Owen, and countless others face an uncertain future and indefinite debate, despite enthusiastic bipartisan majority support. By brazenly insisting that there is not a number [of hours] in the universe that would be sufficient for debate, Democrat leaders recognize they are using the filibuster not to promote debate, but to change the Constitution by imposing a supermajority requirement for judicial confirmations.

The current crisis thus cries out for reform. No one can be satisfied with this destructive process, constitutional or otherwise. As all ten freshman Senators stated in a letter last week, we are united in our concern that the judicial confirmation process is broken and needs to be fixed. Veteran Senators from both parties repeatedly express similar sentiments.

Today's hearing will accordingly explore various reform proposals. Senator Zell Miller suggests as did Senators Harkin, Lieberman, and 17 other Democrats in 1995 that the 60-vote rule for ending debate be reduced incrementally with each succeeding vote until the rule reaches 51 votes. President Bush and Senators Arlen Specter and Patrick Leahy urge the imposition of strict time deadlines for the Senate to vote on judicial nominees. Senator Charles Schumer advocates a total overhaul of the nomination process itself, by eliminating the President's appointment power altogether and instead giving President Bush and Senator Daschle equal roles in picking the judge-pickers. Regardless of the merits of the competing proposals, each of these public officials deserves recognition for acknowledging the current crisis in the United States Senate.

Two years is too long. As Senator Henry Cabot Lodge famously said about filibusters: To vote without debating is perilous, but to debate and never vote is imbecile. Our current state of affairs is neither fair nor representative of the bipartisan majority of this body. The judicial confirmation process is badly broken, and the Senate needs a fresh start. For democracy to work, and for the constitutional principle of majority rule to prevail, this obstructionism must end, and we must bring matters to a vote.

Mr. Cornyn is a U.S. Senator from Texas and chairman of the Senate Subcommittee on the Constitution.

James C. Ho
Chief Counsel

Senate Subcommittee on the Constitution, Civil Rights & Property Rights
Chairman, Senator John Cornyn

(202) 224-9614 (direct line) & nbs p; & nbsp;901 North Wayne Street #302

(202) 224-2934 (general office line) & nbs p; Arlington, VA 22201

& nbs p; < ;James_Ho@judiciary.senate.gov>

& nb sp; < /x-tab>

PRA 6

PRA 6

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Francisco, Noel J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>
Sent: 5/4/2003 3:49:08 PM
Subject: long-term planning

perhaps some wishful thinking, but Robert Novak writes as follows: "Democratic insiders, acknowledging little chance of recapturing the House in 2004, have all but given up hope of winning a Senate majority, unless there is such a transcendent development as an economic collapse. **The early calculation in Democratic circles is for a net loss of four additional Senate seats, extending the present 51-49 Republican majority to 55-45. Democratic seats are in real jeopardy in North Carolina, South Carolina, Georgia, Florida, South Dakota and Nevada. In contrast, Alaska is the only Republican Senate seat up next year that clearly tilts to the Democrats.**"

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>
Sent: 5/5/2003 3:30:57 AM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 5-MAY-2003 07:30:57.00

SUBJECT::

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

End Original ARMS Header

FYI

Ensign Submits Name Of Reid's Son For Federal Bench. Roll Call
<http://www.rollcall.com/issues/48_87/hoh/1439-1.html> 's (5/5, Henry)
"Heard On The Hill" column reports, "Don't look now, but there's at least one sign of thaw in the partisanship roiling the judicial nomination process. Sen. John Ensign (R-Nev.) has submitted the name of Senate Minority Whip Harry Reid's (D-Nev.) son, Leif, for a lifetime federal judgeship. Hey, we may have actually found a nominee that Democrats won't filibuster. Leif Reid, 35, is one of four names that Ensign sent to the White House for an upcoming District Court vacancy in Nevada. The White House will have the final say over who gets the slot. Ensign and Reid have enjoyed a strangely close relationship over the past two years, considering how tough their 1998 race was, with Reid winning by a little more than 400 votes. It will be interesting see what the American Bar Association makes of this potential appointment. Leif Reid, a 1995 law school graduate of Stanford University, was admitted to the Nevada bar in 1996, nowhere near the minimum of 12 years of practice the ABA usually requires for nominees to get a 'qualified' rating."

REV_00235401

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>
Sent: 5/5/2003 3:31:05 AM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 5-MAY-2003 07:31:05.00

SUBJECT::

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

End Original ARMS Header

FYI

Ensign Submits Name Of Reid's Son For Federal Bench. Roll Call
<http://www.rollcall.com/issues/48_87/hoh/1439-1.html> 's (5/5, Henry)
"Heard On The Hill" column reports, "Don't look now, but there's at least one sign of thaw in the partisanship roiling the judicial nomination process. Sen. John Ensign (R-Nev.) has submitted the name of Senate Minority Whip Harry Reid's (D-Nev.) son, Leif, for a lifetime federal judgeship. Hey, we may have actually found a nominee that Democrats won't filibuster. Leif Reid, 35, is one of four names that Ensign sent to the White House for an upcoming District Court vacancy in Nevada. The White House will have the final say over who gets the slot. Ensign and Reid have enjoyed a strangely close relationship over the past two years, considering how tough their 1998 race was, with Reid winning by a little more than 400 votes. It will be interesting see what the American Bar Association makes of this potential appointment. Leif Reid, a 1995 law school graduate of Stanford University, was admitted to the Nevada bar in 1996, nowhere near the minimum of 12 years of practice the ABA usually requires for nominees to get a 'qualified' rating."

REV_00235402

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: prowen@worldnet.att.net @ inet [UNKNOWN] <prowen@worldnet.att.net @ inet>
Sent: 5/5/2003 5:13:36 AM
Subject: : Atlanta Journal-Constitution editorial re politics of judicial confirmation process in South

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 09:13:36.00
SUBJECT:: Atlanta Journal-Constitution editorial re politics of judicial confirmation process in South
TO: [PRA 6] @ inet ([PRA 6] [UNKNOWN])
READ: UNKNOW
End Original ARMS Header

HEADLINE: OUR OPINION: Democrats use wrong route to win South

BODY:

U.S. Sen. John Kerry (D-Mass.) brought his presidential aspirations to the South last week, promising in Alabama that he will make the national party competitive here once again.

Make competitive, he neglected to mention, a party that has positioned itself in opposition to the war in Iraq and anything other than token tax cuts, and as Democrats reminded the nation once again about the elevation of conservatives to the federal bench. While the White House may appeal to some as inside work with no heavy lifting, getting there through the South toting this party's agenda will be a task requiring Herculean labor.

Just this week, for example, Kerry's Democratic colleagues --- Georgia's Zell Miller excepted --- began to filibuster the nomination of Texas Supreme Court Justice Priscilla Owen to the New Orleans-based 5th U.S. Circuit Court of Appeals.

Kerry and other Democrats are already filibustering the nomination of Miguel Estrada to the District of Columbia Circuit Court of Appeals --- the first time simultaneous filibusters against judicial nominees have occurred in the U.S. Senate.

Both Owen and Estrada are superbly qualified in every respect. Yet on Owen, those who complain that a "glass ceiling" exists for women of achievement are busily constructing one to keep her in her place. And those who complain that the federal bench lacks "diversity" find Estrada to be too much diversity for their taste. He is considered to be a conservative, and the interest groups that drive the Democratic Party nationally fear Owen is, too, at least on their abortion litmus test.

The fear with Owen and Estrada is that one or both will be nominated to the U.S. Supreme Court should a vacancy occur. Senate Democrats are determined to keep off the Circuit Court bench any perceived conservative who has the credentials to serve on the U.S. Supreme Court.

Kerry, then, and the legions of presidential soundalikes who campaign with him, have to come to a region where conservatism is the mainstream to explain how reducing federal taxes is bad and cheating exemplary women and minorities of the fair hearing they have earned before the U. S. Senate because they might be conservative is good.

"I can help you wage a fight down here and rebuild this party for the long run," Kerry said in Birmingham. Republicans have carried Alabama in all but three presidential elections in the past 50 years. Jimmy Carter in 1976 was the last Democrat to carry the state. George W. Bush carried every Southern state in 2000, including Tennessee, his Democratic opponent's home state. Al Gore Jr. thought so little of his Southern prospects that he actively campaigned in just three states --- Tennessee,

Florida and West Virginia.

Some Democrats, said Kerry, were "surprised" that he visited Alabama.

No surprise that he visited. The real surprise is the party baggage he hauled.

Opposition to tax cuts is comprehensible. Politicians loathe interruptions in the flow of spendable revenues. Opposition to the war is, too. Too confrontational. Angers adversaries. Provokes understandable aggression, for which we bear unexpurgated sin.

While some positions are understandable, not so their party-line opposition to Owen and Estrada. Owen, the new filibusteree, drew the American Bar Association's highest rating. She is a cum laude graduate of the Baylor University Law School who scored the top grade in Texas on the bar exam. She practiced 17 years before becoming a judge and has been widely praised for her integrity and ability. Liberal groups say, unconvincingly except when they are talking to each other and Senate Democrats, that she is anti-abortion and pro-business.

Being a neighborly people, Southerners of course welcome Kerry to visit the region and to indulge himself in its hospitality. But the senator should not indulge himself into believing that a party that opposes tax cuts and filibusters nominees such as Owen and Estrada has the slightest chance of carrying this region.

Jim Wooten is associate editorial page editor. His column appears Sundays, Tuesdays and Fridays.

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 5:40:12 AM
Subject: : Re: NRSC piece with quotes

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 09:40:12.00
SUBJECT:: Re: NRSC piece with quotes
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Will hold

tsg

Brett M. Kavanaugh
05/05/2003 09:38:41 AM
Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP
cc:
bcc:
Subject: Re: NRSC piece with quotes

I would wait until later in the day on that. Judge Gonzales is sending a letter to Schumer today in response to his latest missive that uses a lot of the same quotes (some different) and we would prefer that letter be sent first.

Tim Goeglein
05/05/2003 09:33:35 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: NRSC piece with quotes

B

Agree strongly. Did you talk with Leonard about sending it already, or should I?

tsg

Brett M. Kavanaugh
05/02/2003 07:45:24 PM

Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP

cc:

Subject: NRSC piece with quotes

very good and collects more in one place (and from more sources) than I have seen before. We should probably have this distributed by the new group?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange [WHO] <Ashley Snee>
CC: wendy.j.grubbs/who/eop@exchange [WHO] <wendy.j.grubbs>
Sent: 5/5/2003 5:43:49 AM
Subject: : Re: FW: Senate Schedule

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 09:43:49.00
SUBJECT:: Re: FW: Senate Schedule
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
CC: wendy.j.grubbs (CN=wendy.j.grubbs/OU=who/O=eop@exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

Cook will be confirmed at 4:45. We should do a statement. Event is on for Friday. Wendy, is Pryor in or not for Friday??

From: Ashley Snee/WHO/EOP@Exchange on 05/05/2003 09:42:40 AM
Record Type: Record

To: Wendy J. Grubbs/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Senate Schedule

What is going to happen with Cook?; And, what is the latest on the event; for Friday?

; -----Original Message-----

From: Wichterman, Bill (Frist) [mailto:Bill_Wichterman@frist.senate.gov]
Sent: Monday, May 05, 2003 9:27 AM
Subject: Senate Schedule

Senate Schedule

; Monday, May 5, 2003
Votes at 4:45 p.m. and 6:00 p.m.

; At 12:00 p.m., the Senate will proceed to a period of morning business until 12:45 p.m. with time equally divided between the Majority Leader and Senator Dorgan.

; At 12:45 p.m., the Senate will proceed to the consideration of the nomination of Deborah L. Cook, of Ohio, to be U.S. Circuit Judge for the Sixth Circuit.; There will be up to 4 hours of debate on the nomination followed by a vote on confirmation at 4:45 p.m.

; Following the Cook vote, the Senate will resume consideration of the nomination of Miguel Estrada, of Virginia, to be U.S. Circuit Judge for the District of Columbia Circuit with the remaining time until 6:00 p.m. equally divided between the Chairman and Ranking Member of Judiciary Committee.

; At 6:00 p.m., the Senate will proceed to a vote on the motion to invoke cloture on the Estrada nomination.

;

Tuesday, May 6, 2003

;

By Unanimous Consent, the Senate may proceed to the consideration of S. 14, the Energy bill.; No amendments will be in order prior to Thursday, May 8th or one day after the report is available, whichever is later.

;

Wednesday, May;7, 2003

*

NATO Expansion

*

State Department Authorization

;

Balance of the Week

;

*

Continue Energy Bill

*

Possible cloture votes on Estrada;and Priscilla Owen;

*

Possible vote on Johh Roberts to the DC Circuit Court of Appeals

;

;The Senate may consider any of the following agenda items,;;as well:

ö;;;;;;;;;; Available Judges and Nominations

ö;;;;;;;;;; S. 15, Project BioShield

ö;;;;;;;;;; S. 113, the FISA bill

;

Bill Wichterman

Policy Advisor

Senate Majority Leader's Office

S-230 U.S. Capitol

Washington, DC 20510

202-224-3135

From: CN=Jonathan F. Ganter/OU=WHO/O=EOP [WHO]
To: Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>
CC: Patrick J. Bumatay/WHO/EOP@Exchange@EOP [WHO] <Patrick J. Bumatay>; Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
Sent: 5/5/2003 6:27:01 AM
Subject: : Judicial Selection

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 5-MAY-2003 10:27:01.00

SUBJECT: Judicial Selection

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

CC: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

CC: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

In Patrick's absence, I will be helping to coordinate judicial selection for this week. If you have candidates that you would like to be put in a book, please forward their names and any available materials on to me. Thanks.

Jon

REV_00235421

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 6:54:34 AM
Subject: : RE: The judiciary website stinks, so help me, please:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-MAY-2003 10:54:34.00
SUBJECT:: RE: The judiciary website stinks, so help me, please:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Which two were done last year?

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

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 10:08 AM
To: Grubbs, Wendy J.
Subject: Re: The judiciary website stinks, so help me, please:

You got it.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 10:06:00 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: The judiciary website stinks, so help me, please:

Since I arrived, we have confirmed the following circuit court nominees:
Tymkovich
Bybee
Sutton
Prado

Then, by weeks end: Cook and Roberts.

Anyone else from Jan 1st to my arrival mid Feb?

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 6:55:03 AM
Subject: : RE: The judiciary website stinks, so help me, please:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-MAY-2003 10:55:03.00
SUBJECT:: RE: The judiciary website stinks, so help me, please:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Which two of the may 9th class, that is?

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

From: Kavanaugh, Brett M.
Sent: Monday, May 05, 2003 10:08 AM
To: Grubbs, Wendy J.
Subject: Re: The judiciary website stinks, so help me, please:

You got it.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 10:06:00 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: The judiciary website stinks, so help me, please:

Since I arrived, we have confirmed the following circuit court nominees:
Tymkovich
Bybee
Sutton
Prado

Then, by weeks end: Cook and Roberts.

Anyone else from Jan 1st to my arrival mid Feb?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>
Sent: 5/5/2003 7:10:39 AM
Subject: : Re: Did the judge reach Specter yet?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 11:10:39.00
SUBJECT:: Re: Did the judge reach Specter yet?
TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

they talked friday and are meeting again today.

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 11:10:40 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Did the judge reach Specter yet?

;

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>
Sent: 5/5/2003 8:41:10 AM
Subject: : Sen. Specter

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 12:41:10.00
SUBJECT: : Sen. Specter
TO: Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Last summer, he introduced a resolution on judicial confirmation process.
I need a copy asap. Thanks.

From: CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 10:44:28 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-MAY-2003 14:44:28.00
SUBJECT:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

major garrett just did a piece on cook and judges on fox

From: CN=Katherine M. Walters/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 3:29:46 PM
Subject: : DePelchin Children's Center Letter - for approval on Monday
Attachments: P_0656G003_WHO.TXT_1.doc; P_0656G003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 19:29:46.00
SUBJECT:: DePelchin Children's Center Letter - for approval on Monday
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

any word? The event is on May 8th. Thanks.
----- Forwarded by Katherine M. Walters/WHO/EOP on
05/05/2003 07:29 PM -----

Kimberly D. Rawson
05/02/2003 11:01:20 AM
Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on
Monday

----- Forwarded by Kimberly D. Rawson/WHO/EOP on
05/02/2003 10:59 AM -----

Kimberly D. Rawson
05/02/2003 08:55:10 AM
Record Type: Record

To: Jonathan W. Burks/WHO/EOP@Exchange@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on
Monday

Good Morning -
Attached, please find a letter for the DePelchin Luncheon - below is the
background info on the request and organization.
Ideally, we would really like to have this in the mail on Monday.
Thank you!

- it was requested by Jack Oliver.
- for the 5th annual DePelchin Children's Center luncheon Thursday, May 8.
- at the luncheon Dr. Peggy B. Smith will be given the Kezia DePelchin
award.
- President(41) & Mrs. Bush were the first recipients of the Kezia
DePelchin

award.

- Jane Seymour is the guest speaker.

-A bit about DePelchin.

DePelchin has had the privilege of serving Houston for over 110 years. The agency was created in 1892 to shelter orphaned children, but, over the years, due to the ever changing needs of the community, they have expanded and adapted. DePelchin Children's Center is the largest and most comprehensive provider of children's social and mental health services in the greater Houston area serving more than 27,000 clients through 30 programs in 60 locations. (I have also attached a fact sheet)

<<About DePelchin - one page.doc>>

- About DePelchin - one page.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0656G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0656G003_WHO.TXT_2>

April 29, 2003

I am pleased to send greetings to everyone gathered for the 5th annual DePelchin Children's Center Luncheon. Thank you and your members for the selfless service you have given to the greater Houston area for over 100 years. Service is an integral part of America's character and I am proud of your willingness to help provide needed services to better the social and emotional health of so many children and families.

May God bless you, and may God continue to bless America.

Sincerely,

George W. Bush

DePelchin has had the privilege of serving Houston for over 110 years. The agency was created in 1892 to shelter orphaned children, but, over the years, due to the ever changing needs of our community, we have expanded and adapted. DePelchin Children's Center is the largest and most comprehensive provider of children's social and mental health services in the greater Houston area serving more than 27,000 clients through 30 programs in 60 locations.

Our mission is: *“Recognizing that a child’s needs are best met in a family environment, DePelchin Children’s Center strengthens the lives of children and their families in our community by providing a continuum of services to prevent and resolve social and emotional crises.”*

DePelchin Children's Center provides a broad-based program of services to children and families in Harris, Ft. Bend, Montgomery and Waller counties in Texas. Programs are designed primarily to meet the needs of individuals and families in crisis requiring such services as:

- Parent education
- Teen pregnancy and teen parenting counseling services
- Adoption
- Post-adoption counseling and services
- Emergency shelters for housing abused, neglected, homeless and runaway children and adolescents.
- Foster care
- Therapeutic counseling and treatment services for emotionally disturbed children and adolescents.

The agency provides services to children and families in need, regardless of their ability to pay. DePelchin Children's Center receives funding from the United Way, the Texas Department of Protective and Regulatory Services, other governmental agencies, program fees, community support and investment income.

From: Grubbs, Wendy J.
To: <Kavanaugh, Brett M.>
Sent: 5/5/2003 4:41:58 PM
Subject: Re: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

No dem takers other than miller.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/5/2003 12:41:20 PM
Subject: : Re: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-MAY-2003 16:41:20.00
SUBJECT:: Re: when will he know about Sen. Pryor? Also, if he cannot come, can we get other D Senators to come?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No dem takers other than miller.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Paul Perkins/WHO/EOP@EOP [WHO] <Paul Perkins>; Tim Goeglein/WHO/EOP@EOP [WHO]
<Tim Goeglein>
Sent: 5/5/2003 1:05:34 PM
Subject: : I am on call

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 17:05:34.00
SUBJECT:: I am on call
TO: Paul Perkins (CN=Paul Perkins/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

From: Grubbs, Wendy J.
To: <Kavanaugh, Brett M.>
Sent: 5/5/2003 6:52:23 PM
Subject: Should the judge

Call and thank:

Ben nelson (most helpful)

Bill nelson(estrada)

Breaux (thanks and work on owen)

Zell (cuz he is wonderful)

I think we have a chance to outreach and we should.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Wendy J. Grubbs/WHO/EOP@Exchange@EOP [WHO] <Wendy J. Grubbs>
Sent: 5/5/2003 6:41:10 PM
Subject: : District Court judge summary

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-MAY-2003 22:41:10.00
SUBJECT:: District Court judge summary
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

107th Congress

83 confirmed

108th Congress

15 confirmed

43 pending (many of these recently nominated)

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>
Sent: 5/5/2003 10:41:04 PM
Subject: in response to your voice mail

we need to focus on appeals courts, which still have 14% vacancy rate

From: CN=Erin E. Healy/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 6:41:40 AM
Subject: : judicial event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 10:41:40.00
SUBJECT:: judicial event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

i worried about the weather on friday. want to prepare you for the ugly
450 venue. what's your audience size? unfortunately that room only holds
134.

From: CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 7:58:08 AM
Subject: : 2:30 pm meeting with Judge re Michigan/CA6

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 11:58:08.00
SUBJECT:: 2:30 pm meeting with Judge re Michigan/CA6
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Pls confirm that this time works.

From: CN=Collister W. Johnson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 4:44:38 AM
Subject: : Re: Fw: Ohio--Finance Meeting
Attachments: P_W0D6G003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Collister W. Johnson (CN=Collister W. Johnson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 08:44:38.00
SUBJECT:: Re: Fw: Ohio--Finance Meeting
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

you are a Great Man -
c

Brett M. Kavanaugh
05/05/2003 11:47:27 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Fw: Ohio--Finance Meeting

yes

Collister W. Johnson
05/02/2003 02:57:09 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Fw: Ohio--Finance Meeting

thanks man - can i keep the way barry is described - "long-time political
advisor to both Ohio and George W. Bush"?
c

Brett M. Kavanaugh
05/02/2003 02:39:12 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Fw: Ohio--Finance Meeting

Please identify Barry and Karl as "guests." Otherwise, good.

Collister W. Johnson
05/02/2003 02:25:35 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Fw: Ohio--Finance Meeting

Brett -
Attached is a letter that Governor Taft will send to about 300 key supporters in Ohio, after your approval. The subject is a fundraiser that Barry Jackson will attend (and Karl Rove will call into) on May 22 in Columbus. your thoughts?
c

----- Forwarded by Collister W. Johnson/WHO/EOP on
05/02/2003 02:22 PM -----

Coddy Johnson <cjohnson@georgewbush.com>
05/02/2003 02:29:20 PM
Record Type: Record

To: Collister W. Johnson/WHO/EOP@EOP
cc:
Subject: Fw: Ohio--Finance Meeting

Ohio--Finance Meeting
----- Original Message -----
From: Annie Gardecki
To: Coddy Johnson
Sent: Friday, May 02, 2003 2:16 PM
Subject: Ohio--Finance Meeting

Coddy--
Attached is the follow-up letter from Governor Taft to our Finance Committee Members for our May 22 meeting. Please take a look at the references to Barry Jackson and Karl Rove and get back to me with a sign off.

Thanks.
AMG

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_W0D6G003_WHO.TXT_1>

May 2, 2003

/NAME/
/ADDRESS/
/ADDRESS 2/
/CITY/, /STATE/ /ZIP/

Dear /SALUTATION/,

This letters serves as a reminder of the upcoming *Ohio Republican Party Executive Finance Committee Meeting* on **Thursday, May 22nd** at the Columbus Club. You are among an elite group of strong Republican supporters invited to attend as we discuss the needs and challenges facing the Ohio Republican Party as we prepare for the 2004 Presidential Election.

Knowing that Ohio is a key battleground state, Ohio's 20 electoral votes will prove pivotal because it's a fact of political life that no Democrat can win the White House without carrying Ohio. That is why we must prepare right now.

Along with Chairman Bob Bennett, Finance Chairman Jim Dicke and myself, ~~Director of Strategic Initiatives for the White House~~ Barry Jackson – a longtime political advisor to both the state of Ohio and to George W. Bush - will be in attendance.

Karl Rove is expected to address the meeting via phone and Speaker Larry Householder and Senate President Doug White have been invited to present a legislative briefing. Statewide office holders have been invited to attend the dinner following the meeting.

I hope you will join me for this very important meeting. Please confirm your attendance with Annie Gardecki at () by May 16th.

Sincerely,

Governor Bob Taft

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 4:59:56 AM
Subject: : 9:00 Heilbrun is OFF

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 08:59:56.00
SUBJECT:: 9:00 Heilbrun is OFF
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

From: Harvey Koch <hkoch@kochrouse.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 10:06:40 AM
Subject: : May 6, 2003 Senate Hearing: "Judicial Nominations, Filibusters, and the Constitution: When a Majority is Denied its Right to Consent."

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Harvey Koch <hkoch@kochrouse.com> (Harvey Koch <hkoch@kochrouse.com> [UNKNOWN])
CREATION DATE/TIME: 6-MAY-2003 14:06:40.00
SUBJECT:: May 6, 2003 Senate Hearing: "Judicial Nominations, Filibusters, a nd the Constitution: When a Majority is Denied its Right to Consent."
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett: Below, for your information, please find the testimony that I have submitted today to the U. S. Senate Judiciary Committee. I am still working on the justiciablity issue, and I believe that I have a solution for that(Bill Pryor and I are "debating" that even today).

I spoke with Ken Starr again recently and he said to tell you hello. And I appreciate your monitoring David Walker's quest for a postition with Homeland Security where he may serve the President and his Administration.

Best Regards. Harvey Koch

HARVEY C. KOCH

ATTORNEY AT LAW
2 CANAL STREET SUITE 2600
NEW ORLEANS, LOUISIANA 70130

U. S. SENATOR JOHN CORNYN
CHAIRMAN, U. S. SENATE SUBCOMMITTEE ON THE CONSTITUTION
UNITED STATES SENATE
WASHINGTON, D. C. 20510

Re: May 6, 2003 Hearing: "Judicial Nominations, Filibusters, and the Constitution: Whan a Majority is Denied Its Right to Consent."

Dear Senator Cornyn:

To briefly introduce myself, my name is Harvey C. Koch. I was born in Hammond, Louisiana. I am a licensed Louisiana attorney(Bar Number 007763), in good standing, practicing in New Orleans, Louisiana. My practice is, in the main, a commercial law practice, in the Federal Court System, including the U. S. District Courts, the U. S. Court of Federal Claims, the U. S. Courts of Appeal and the U. S. Supreme Court. That practice commenced in 1965 after four years as a U. S. Air Force Judge Advocate trial attorney beginning immediately after graduating from the Tulane University School of Law in New Orleans, Louisiana. Over the years I have dealt with litigation involving issues of Constitutional law, and have lectured on those issues many times nationwide. I serve the Eastern District of Louisiana Federal Court as a trial attorney for its Disciplinary Enforcement proceedings; I served a five year term on the U. S. District Court, Eastern District of Louisiana Advisory Group for the Civil Justice Reform Act of 1990, as appointed by then Chief Judge Morey Sear; since 1988 I have continuously served on the United States Court of Federal Claims Chief Judge's Advisory Council, as originally appointed by then Chief Judge Loren Smith; I have been a delegate

to the United States Fifth Circuit Judicial Conference every year since 1985; I was nominated to membership in the American Law Institute by the late U. S. Fifth Circuit Court of Appeals Judge John Minor Wisdom; I have served as a faculty member of the American Bar Association Appellate Advocacy National Institute, chaired by Judge Patrick Higginbotham of the U.

S. Fifth Circuit Court of Appeals; I have chaired substantive law committees of the American Bar Association; founded and served as the first Chair of the Section on Construction and Surety Law of the Louisiana Bar Association;

served as Chair of the Louisiana Bar Association's Professionalism Task Force which produced that Bar Association's Code of Professional Conduct; was awarded a Doctor of Laws Degree, Honoris Causa, by Northwood University; I founded and am the current Chair of the Insurance Industry Committee of the American College of Construction Lawyers; I am a Life Member of both the American Bar Foundation and the Louisiana Bar Foundation;

I have authored multiple publications pertaining to commercial law issues every year since 1973; I have received awards for Outstanding Service from the Louisiana Bar Association, the American Bar Association and the United States Supreme Court Historical Society; and am currently listed in "The Best Lawyers in America" publication.

Senator Cornyn, I come before you today to succinctly address you, and your United States Constitution Subcommittee, being a duly constituted sub-committee of the United States Senate Judiciary Committee, regarding the topic of your hearing today, which I have been given to understand is entitled:

"Judicial Nominations, Filibusters, and the Constitution:
When a Majority is Denied its Right to Consent."

To me the critically important issue presented by the topic of this hearing is the constitutionality, or unconstitutionality, of the current ongoing Filibuster system as it is applied to the Judicial Nomination process under the provisions of the United States Constitution. Again, to me, based on my study of the subject, it is crystal clear that the practice, to the extent permitted by U. S. Senate Rule XXII, is patently unconstitutional. Ergo, Senate Rule XXII is likewise unconstitutional. It is equally clear to me that if this question, or issue, were brought before the U. S. Supreme Court in an appropriate manner that Court would accept and decide such a case. In that circumstance it is my considered opinion that the Supreme Court would doubtless find the Rule patently unconstitutional.

Likewise it is my opinion that the Senate, with the Vice President as Presiding Officer, has the full power under the Constitution to address and decide the constitutionality of its own rules, including Rule XXII. After all, when it comes to protecting the Rule of Law, which itself springs from the very lifesblood of the Constitution, there are no "Sacred Cows", and "what is good for the goose is likewise good for the gander". And, in the final analysis, the Senate is certainly one of the guardians of the Rule of Law as visualized by the Constitution itself, and therefore the Senate must act accordingly.

I respectfully rest my case. That is my position. It will be my privilege and pleasure

to expand on the foregoing, if you, or your Subcommittee, would find that helpful. Indeed, I would relish such an eventuality.

Thank you for this opportunity.

I wish you God's Speed in your deliberations.

Respectfully Submitted.

Harvey C. Koch
Attorney at Law
2 Canal Street Suite 2600
World Trade Center of New Orleans
New Orleans, LA 70130

Office Central: 504-566-7528
Office Direct: 504-566-7545
Facsimile: 504-568-0834

E-Mail Address: hkoch@kochrouse.com

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 5/6/2003 8:00:47 AM
Subject: : please call Phil Perry

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 12:00:47.00
SUBJECT:: please call Phil Perry
TO: Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
End Original ARMS Header

sorry, got this in meeting . . .

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/06/2003 11:59 AM -----

From: Charlotte L. Montiel/WHO/EOP@Exchange on 05/06/2003 10:55:52
AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: please call Phil Perry

re: Mass Tort Litigation issue
;
55044
395-2170

From: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 8:07:30 AM
Subject: : Tomorrow 11am

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven
(RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 6-MAY-2003 12:07:30.00
SUBJECT:: Tomorrow 11am
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We are doing a briefing on Owen tomorrow at 11am at the RPC. Bencz says
he can send somebody, but we thought you should have first shot. Do you
want to come? Pls coordinate with Bencz and let me know.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Erin E. Healy/WHO/EOP@EOP [WHO] <Erin E. Healy>
Sent: 5/6/2003 12:33:58 PM
Subject: : Re: judicial event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 16:33:58.00
SUBJECT:: Re: judicial event
TO: Erin E. Healy (CN=Erin E. Healy/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

cannot believe the East Room is reserved for tours and the President and a dozen Senators shuttled to 450, esp since we are trying to do a two-tier event with a meeting first between President and Senators.

Erin E. Healy
05/06/2003 10:41:11 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: judicial event

i worried about the weather on friday. want to prepare you for the ugly 450 venue. what's your audience size? unfortunately that room only holds 134.

From: Mamo, Jeanie S.
To: <Kavanaugh, Brett M.>;<Snee, Ashley>
Sent: 5/6/2003 12:40:15 PM
Subject: Raleigh News & Observer (5/6/03) EDITORIAL re: 4th Circuit

Circuit-riders

Raleigh News & Observer

EDITORIAL

May 6, 2003

Political deadlock has cost North Carolina any voice on

a key federal court. The state's senators now can clear the air

North Carolina is the most populous of five states covered by the 4th U.S. Circuit Court of Appeals in Richmond. Yet, no North Carolinian has held a seat on this key tribunal, only a step below the Supreme Court, since 1999. Even before the death of Judge Sam J. Ervin III more than four years ago, a partisan blocking of nominees going back almost to the 1980s had shortchanged North Carolina in 4th Circuit judgeships.

This is regrettable not because it has deprived Tar Heel legal figures of coveted posts on the federal bench. It has meant a lack of North Carolina perspective on a panel whose decisions can be gravely important to people from this state.

Given that situation, President Bush's submission to the U.S. Senate of the names of two Republican nominees, Allyson K. Duncan and Claude A. Allen, affords Sens. John Edwards and Elizabeth Dole a new opportunity to end a Democratic-Republican impasse that has been a disservice to both North Carolina and the court.

Both Duncan and Allen are African-American, which is not without significance. The 4th Circuit's constituent states -- North Carolina, South Carolina, Virginia, West Virginia and Maryland -- have the highest proportion of black residents among the various federal circuit courts. Until recently, however, the court has been without black representation among its judges. A better ethnic balancing might well tend to promote a healthy diversity of views within the court.

Moving on Duncan

Yet it's unfortunate for a spirit of compromise that Bush has complicated matters -- especially for Edwards and his fellow Democrats -- by nominating Allen, whose moment in the North Carolina spotlight happened to come when he served as then-Sen. Jesse Helms' 1984 campaign press aide.

Allen, a Pennsylvania native now serving as the second-ranking official in the U.S. Department of Health and Human Services, has never been a judge. He had held different offices under a Republican governor in Virginia prior to joining the Bush administration. Allen earned his undergraduate and law degrees at UNC-Chapel Hill and Duke respectively, but his North Carolina connections are hardly as solid as those of

Duncan, who also has some judicial experience.

Now, because Duncan is a consensus nominee, Edwards makes a valid point in urging Dole to join him in support of giving priority to Duncan's committee hearings in the Senate. The confirmation of Duncan, president-elect of the N.C. Bar Association and widely regarded as a fair-minded moderate, would give North Carolina at least one seat on the 15-member court.

The court today has an 8-4 Republican majority and three vacancies. It also has carved out a reputation as the most conservative (radical, some critics say) of all the federal appellate courts.

Boyle's long record

A sticking point for agreement between Edwards and Dole is the Republican senator's insistence that priority be given to a confirmation hearing for veteran U.S. District Judge Terrence Boyle of Elizabeth City, whom Edwards has opposed. Nominated first for a 4th Circuit judgeship 12 years ago and then renominated by President Bush in 2001, Boyle, too, was once an aide and had other close ties to Helms.

Edwards has voiced concerns about Boyle's "record on civil rights." But it's not hard to find people in the legal community who view the nominee as a knowledgeable and fair-minded judge. His record could be fully aired, in any event, during Senate hearings on his fitness for the appellate post.

After a Democratic-controlled Judiciary Committee failed to hold a hearing on Boyle's first nomination in 1991, Helms angrily blocked a series of Democratic choices for the court. Three well-qualified black judges from North Carolina lost out. Consequently, it was Virginian Roger L. Gregory, originally an interim appointee of President Clinton's, who finally broke the color barrier on the 4th Circuit bench.

Here is an instance, then, in which North Carolina's two senators can go the extra mile to end an ill-advised stalemate. The confirmation of Duncan should be a bipartisan slam dunk.

Edwards may also have to swallow hard and back both an early hearing and confirmation of Boyle to fill another of the court's vacancies. Setting partisan differences aside, if it comes down to a choice between the two former Helms aides, Judge Boyle and the inexperienced Allen, the selection of Boyle would hardly seem to be a difficult call.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 8:41:41 AM
Subject: : Raleigh News & Observer (5/6/03) EDITORIAL re: 4th Circuit

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 12:41:41.00
SUBJECT:: Raleigh News & Observer (5/6/03) EDITORIAL re: 4th Circuit
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Circuit-riders
Raleigh News & Observer
EDITORIAL
May 6, 2003

Political deadlock has cost North Carolina any voice on
a key federal court. The state's senators now can clear the air

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From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 5/6/2003 8:58:55 AM
Subject: : Fw: Whip Alert Update 05/06/03

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 6-MAY-2003 12:58:55.00

SUBJECT:: Fw: Whip Alert Update 05/06/03

TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

A district nom today...

.

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

From: Swonger, Amy (McConnell) <Amy_Swonger@mccconnell.senate.gov>

Sent: Tue May 06 12:06:20 2003

Subject: Whip Alert Update; 05/06/03

WHIP ALERT UPDATE

Tuesday, May 6, 2003

Vote at Approximately 2:30 p.m.

At 2:15 p.m. today, the Senate will proceed to the consideration of Cecilia M. Altonaga, of Florida, to be U.S. District Judge of the Southern District of Florida (Exec. Cal. #128).

At approximately 2:30 p.m., the Senate will proceed to a vote on the confirmation of the Altonaga nomination.

REV_00235586

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Steven_Duffield@rpc.senate.gov [UNKNOWN] <Steven_Duffield@rpc.senate.gov>
Sent: 5/6/2003 9:39:29 AM
Subject: : Re: Tomorrow 11am

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 13:39:29.00
SUBJECT:: Re: Tomorrow 11am
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Steven_Duffield@rpc.senate.gov (Steven_Duffield@rpc.senate.gov [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

I can do it. Tell me where and when. Thx.

.

----- Original Message -----
From: <Steven_Duffield@rpc.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/06/2003 12:02:59 PM
Subject: Tomorrow 11am

We are doing a briefing on Owen tomorrow at 11am at the RPC. Bencz says he can send somebody, but we thought you should have first shot. Do you want to come? Pls coordinate with Bencz and let me know.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
Sent: 5/6/2003 10:37:19 AM
Subject: : Re: 2:30 pm meeting with Judge re Michigan/CA6

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 14:37:19.00
SUBJECT:: Re: 2:30 pm meeting with Judge re Michigan/CA6
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Sorry. On hill for cornyn now. Go ahead without me.

.

----- Original Message -----
From: Theodore W. Ulyot/WHO/EOP
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/06/2003 11:57:36 AM
Subject: 2:30 pm meeting with Judge re Michigan/CA6

Pls confirm that this time works.

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 3:04:01 PM
Subject: : FW: Minaldi confirmed

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 6-MAY-2003 19:04:01.00
SUBJECT:: FW: Minaldi confirmed
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

fyi

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

From: Nancy.Scottfinan@usdoj.gov [mailto:Nancy.Scottfinan@usdoj.gov]
Sent: Tuesday, May 06, 2003 7:01 PM
To: Viet.Dinh@usdoj.gov; Brian.A.Benczkowski@usdoj.gov;
Kristi.L.Remington@usdoj.gov; Sheila.Joy@usdoj.gov
Cc: Jamie.E.Brown@usdoj.gov; Grubbs, Wendy J.
Subject: RE: Minaldi confirmed

by voice vote tonight. Also filed cloture petitions on Estrada and Owen.

REV_00235600

From: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 11:24:00 AM
Subject: : Re: Tomorrow 11am

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven
(RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 6-MAY-2003 15:24:00.00
SUBJECT:: Re: Tomorrow 11am
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

11am at RPC -- Russell 347. I will give out the basic DOJ packet on her
plus any talking points.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Steven_Duffield@rpc.senate.gov [UNKNOWN] <Steven_Duffield@rpc.senate.gov>
Sent: 5/6/2003 11:41:00 AM
Subject: : Re: Tomorrow 11am

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 15:41:00.00
SUBJECT:: Re: Tomorrow 11am
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Steven_Duffield@rpc.senate.gov (Steven_Duffield@rpc.senate.gov [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

We have some talkers.

.

----- Original Message -----
From: <Steven_Duffield@rpc.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/06/2003 03:22:43 PM
Subject: Re: Tomorrow 11am

11am at RPC -- Russell 347. I will give out the basic DOJ packet on her plus any talking points.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 12:14:49 PM
Subject: : FW: DRAFT PROCLAMATION -- NATIONAL SAFE BOATING WEEK, 2003
Attachments: P_IZ77G003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 6-MAY-2003 16:14:49.00
SUBJECT:: FW: DRAFT PROCLAMATION -- NATIONAL SAFE BOATING WEEK, 2003
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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

From: Deguzman Jr, Danilo
Sent: Tuesday, May 06, 2003 4:05 PM
To: Kalbaugh, David E.; Williams, Sherman A.; Blakeman, Bradley A.;
Ritacco, Krista L.; Gillmor, Eleanor L.; Baldwin, Jenica; Loy, Carrie B.;
Douglas, Penny G.; Mehlman, Ken; Mamo, Jeanie S.; Bumatay, Patrick J.;
Burkhart, Shannon
Cc: Dickey, Lana; Rowley, Jill C.
Subject: DRAFT PROCLAMATION -- NATIONAL SAFE BOATING WEEK, 2003
Importance: High

Attached for your review is a draft proclamation designating May 17 through May 23, 2003, as National Safe Boating Week.

A response to LANA DICKEY is requested by WEDNESDAY, MAY 7, 2003, at 3:00 P.M. If we do not hear back from you by 3:00 P.M., we will assume you have no comment. Thank you.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IZ77G003_WHO.TXT_1>

NATIONAL SAFE BOATING WEEK, 2003

- - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

As summer approaches, Americans are looking forward to enjoying our Nation's rivers, lakes, and oceans. National statistics show that recreational boating is safer today than ever before, with the number of boating fatalities declining even as the number of boats increases. However, lives continue to be lost needlessly, and we must remain committed to boating safety. During National Safe Boating Week, we are reminded that practicing simple steps can make recreational boating safer and more enjoyable.

This year's theme, "Boat Smart. Boat Safe. Wear It!" highlights the importance and ease of wearing life jackets. Drowning remains the number one cause of recreational boating fatalities. The chances of surviving a serious boating accident increases dramatically by wearing a life jacket. Modern life jackets are smaller, lighter, and more flexible, making them easier and more comfortable to wear. According to the United States Coast Guard, nearly 80 percent of those who died in boating accidents in 2001 were not wearing life jackets. In many of these cases, life jackets were available on board, but were useless to the passengers in the boats because the speed and suddenness of the accident prevented them from having time to don their life jackets.

In addition to wearing life jackets, the 2003 North American Safe Boating Campaign encourages boaters to enroll in a boating safety class, to ensure that boats are properly maintained and checked for safety, to follow regulations and guidelines relating to homeland security issues, and to not consume alcohol when operating a boat. More information about staying safe on the water is available by visiting the U.S. Coast Guard's Office of Boating Safety website

at www.uscgboating.org. By improving our skills and increasing our knowledge of recreational boating safety, we can reduce the loss of life, and prevent the injuries and property damage that occur on our waterways.

Safe boating also improves homeland security. The same Coast Guard members, marine patrol, police, and fire officers who respond to recreational boating accidents are also responsible for protecting the security of our ports and waterways. By avoiding boating accidents, Americans can help these officials devote more time and effort to safeguarding our homeland.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period prior to Memorial Day weekend as "National Safe Boating Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 17 through May 23, 2003, as National Safe Boating Week. I encourage the Governors of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the officials of other areas subject to the jurisdiction of the United States, to join in observing this occasion. I also urge boaters to learn about proper boating practices, including the wearing of life jackets, and to take advantage of programs offered by the U.S. Coast Guard throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this
day of , in the year of our Lord
two thousand three, and of the Independence of the United States
of America the two hundred and twenty-seventh.

From: Kristi.L.Remington@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 4:40:20 PM
Subject: : Fw: Press conference tomorrow

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Kristi.L.Remington@usdoj.gov" <Kristi.L.Remington@usdoj.gov> (
"Kristi.L.Remington@usdoj.gov" <Kristi.L.Remington@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 6-MAY-2003 20:40:20.00
SUBJECT:: Fw: Press conference tomorrow
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Have you discussed with her?

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

From: CKuhl@LASuperiorCourt.org <CKuhl@LASuperiorCourt.org>
To: Remington, Kristi L <Kristi.L.Remington@USDOJ.gov>; Dinh, Viet
<Viet.Dinh@USDOJ.gov>
Sent: Tue May 06 19:56:49 2003
Subject: Press conference tomorrow

The press conference I referred to in my prior e-mail will take place at
725 South Figueroa St. at the Smith, Kaufman law firm, Suite 3200.

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 5/6/2003 5:46:30 PM
Subject: call me

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/6/2003 3:23:15 PM
Subject: : RE: FW: Minaldi confirmed

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 6-MAY-2003 19:23:15.00
SUBJECT:: RE: FW: Minaldi confirmed
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yup. I rock. hehe

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Tuesday, May 06, 2003 7:07 PM
To: Grubbs, Wendy J.
Subject: Re: FW: Minaldi confirmed

also Altonaga??

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/06/2003 07:04:33 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Eric C.
Pelletier/WHO/EOP@Exchange, Ziad Ojakli/WHO/EOP@Exchange, David W.
Hobbs/WHO/EOP@Exchange
cc:
Subject: FW: Minaldi confirmed

fyi

-----Original Message-----
From: Nancy.Scottfinan@usdoj.gov [mailto:Nancy.Scottfinan@usdoj.gov
<mailto:Nancy.Scottfinan@usdoj.gov>]
Sent: Tuesday, May 06, 2003 7:01 PM
To: Viet.Dinh@usdoj.gov; Brian.A.Benczkowski@usdoj.gov;
Kristi.L.Remington@usdoj.gov; Sheila.Joy@usdoj.gov
Cc: Jamie.E.Brown@usdoj.gov; Grubbs, Wendy J.
Subject: RE: Minaldi confirmed

by voice vote tonight. Also filed cloture petitions on Estrada and Owen.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;McGavock D. Reed/OMB /EOP@EOP [OMB] <McGavock D. Reed>
CC: Steven D. Aitken/OMB/EOP@EOP [OMB] <Steven D. Aitken>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>
Sent: 5/6/2003 6:40:24 PM
Subject: : Re: Request "pre-clearance" for WHC's proposed executive order entitled "Facilitating the Administration of Justice in the Federal Courts"

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-MAY-2003 22:40:24.00
SUBJECT:: Re: Request "pre-clearance" for WHC's proposed executive order entitled "Facilitating the Administration of Justice in the Federal Courts"
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: McGavock D. Reed (CN=McGavock D. Reed/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
CC: Steven D. Aitken (CN=Steven D. Aitken/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
CC: Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
End Original ARMS Header

Will do. Thanks.

----- Original Message -----
From: McGavock D. Reed/OMB/EOP
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc: Philip J. Perry/OMB/EOP@EOP,
Steven D. Aitken/OMB/EOP@EOP
Date: 05/06/2003 10:04:42 PM
Subject: Request "pre-clearance" for WHC's proposed executive order entitled "Facilitating the Administration of Justice in the Federal Courts"

Brett,

We will need a formal cover letter for the order from Judge Gonzales to Mitch Daniels, describing what the order does, why the order is necessary, and a request for processing pursuant to Executive Order 11030, as amended. All Executive Orders require a formal transmittal letter from policy official that is sponsoring the order.

Thank you, Mac

----- Forwarded by McGavock D. Reed/OMB/EOP on 05/06/2003 10:01 PM -----

McGavock D. Reed
05/06/2003 10:01:11 PM
Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@Exchange@EOP, Joseph S. Leventhal/OVP/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Request "pre-clearance" for WHC's proposed executive order entitled "Facilitating the Administration of Justice in the Federal Courts"

Patrick and Joe,

Could your shops "pre-clear" the attached order by 11:00 a.m. tomorrow, Wednesday, May 7th?

WHC (Brett Kavanaugh) is interested in getting this signed by the President on Friday, May 9th. After 11:00 a.m., I'd like to send the order out to Justice and the WH components for comments by cob, tomorrow with the goal of getting the EO package into WH Staff Secretary's Office, Thursday morning.

Thank you, Mac

Message Copied

To:

Brett M. Kavanaugh/WHO/EOP@EOP

David S. Addington/OVP/EOP@EOP

Philip J. Perry/OMB/EOP@EOP

Steven D. Aitken/OMB/EOP@EOP

Rosemary.hart@usdoj.gov

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Brosnahan, Jennifer R.>; <Newstead, Jennifer G.>; <Bartolomucci, H. Christopher>; <Sampson, Kyle>; <Francisco, Noel J.>; <Powell, Benjamin A.>; <Ullyot, Theodore W.>; <Addington, David S.>
Sent: 5/7/2003 8:50:06 AM
Subject: story on Senate's nuclear plan on filibusters
Attachments: ~~DLNK0.URL; ~~DLNK1.URL

Hatch group may go ‘nuclear’ on judges

Plan would limit use of Rule XXII in Dem filibusters

By Alexander Bolton <> and Geoff Earle <>

Several senior Republican senators are seeking wider party backing for a bold plan that would break the Democrats’ filibuster of President Bush’s judicial nominees.

Their approach calls for employing a rarely used parliamentary tactic to overturn current Senate procedures.

Under the strategy envisioned by Senate Judiciary Chairman Orrin Hatch (R-Utah), among others, the Republicans would strip any Senate minority — currently the Democrats — of their ability to filibuster presidential nominees.

Approval by Senate Majority Leader Bill Frist (Tenn.), which is being sought, would all but assure that the plan would go forward.

Under the most likely scenario now under discussion, they would secure a ruling from the chair that Senate Rule XXII does not apply to executive submissions to the Senate — and that includes judicial nominees. Rule XXII provides for unlimited debate on all legislative issues that reach the floor unless three-fifths of the Senate calls a halt.

With such an approach, a favorable ruling from the chair on limiting the scope of Rule XXII could stand after only a simple majority approved it.

Anticipating these moves, Democrats have already asked the Senate parliamentarian to weigh in on the issue in their defense.

From the standpoint of the proponents, the appeal of this “silver-bullet” strategy is that it would quash the Democratic blockade without requiring 60 votes, the number needed by current rules to halt such delaying tactics, or 67 votes, the number needed to change a filibustered Senate rule.

One drawback of this proposed tactic is that it might destroy whatever is left of the working relationship between Democrats and Republicans. That is why some legislative experts liken the parliamentary tool to a legislative nuclear bomb.

Under the most likely scenario, the presiding officer of the Senate — perhaps Vice President Dick Cheney — would rule that a filibuster of presidential nominees is unprotected by Rule XXII.

Democrats would need 51 votes to overturn that ruling. In practical terms, that means they would need the help of two GOP defectors — three if Sen. Zell Miller (D-Ga.) votes with Republicans, as he often has.

Another alternative would be to change the rule through the Senate Rules Committee. But that process would entail extensive hearings and negotiations, and would be unlikely to attract Democratic support.

Democrats would view any change of Senate rules that circumscribed the rights of the minority party and was not approved by two-thirds of the chamber as an abuse of majority power.

However, with few exceptions, Senate Republicans view the filibuster of circuit court nominees, a tactic that until recently was rarely used, as an abuse of minority power.

Democrats are filibustering Bush’s nominations of Miguel Estrada and Priscilla Owen to the U.S. Court of Appeals for the D.C. Circuit and the 5th Circuit Court of Appeals, respectively. This has prompted an outcry from conservatives in Congress and around the country.

And Republicans on the Judiciary Committee expect Democrats soon to filibuster two more Bush nominees: Bill Pryor, nominated to the 11th Circuit Court, and Carolyn Kuhl, nominated to the 9th Circuit Court, said Margarita Tapia, spokeswoman for the panel.

However, what may be really at stake is the future makeup of the Supreme Court. The justices on the high tribunal have now served together for nearly a decade. Three of the nine justices are over 70 years old.

Although Senate Republican leaders have kept their parliamentary strategy close to the vest, Hatch offered an insight into it in during an interview Friday with The Hill.

Hatch said the Democratic filibuster is “violative of the Constitution” and “totally politicizing of the judicial selection process,” adding: “I know how to break it, and I will when the time comes.”

When asked how he would break the Democratic blockade, Hatch said: “You’ve got to deny Rule XXII on the executive calendar. I think you’ll see this in the not-too-distant future because the process is broken and it can’t continue like this.”

All regular Senate business—that is to say all public and private bills—is placed on the legislative calendar. Business sent to the Senate from the White House, such as treaties, executive branch nominees and judicial branch nominees, are placed on the executive calendar.

Hatch believes the Senate has a right to set its own rules — in this case the right to filibuster — for the legislative calendar but not for the executive calendar because that would entail imposing Senate rules on the executive

branch and would violate the Constitution's separation of powers.

"The executive branch and the judicial branch are co-equal [with the legislative branch]," Hatch said.

However, when pressed later about how specifically he would curtail Rule XXII, Hatch said: "Rule XXII should not apply to the executive calendar. I'm not going to go into the plan. There are a variety of methodologies we're looking at."

The current Senate stalemate over nominees is the culmination of the increasingly intense battle over the ideological makeup of the federal judiciary, and a sign, many GOP lawmakers say, that the judicial nominating process is "broken."

"I think it's a big problem," said Sen. Trent Lott (R-Miss.), the chairman of the Senate Rules Committee. "I think it's unconstitutional, but I would defer to Senator Hatch about what is the best way to deal with the problem. I don't think we can let this stand. We cannot let the Democrats set this [precedent] in perpetuity for them and for us, requiring 60 votes to confirm a judge."

Lott said the Senate Republican leadership "has to make the final call, but there are a number of us who think we've got to take some further action—I think Ted Stevens [of Alaska], Orrin Hatch and a number of others."

Lott said that there are ways to change how the Senate does business without enlisting the support of 67 senators, the number needed for a filibustered rule change, but he would not reveal any specific details: "I don't want to get into it right now. I don't want to reveal our hand because if we say what exactly we are entertaining, the Democrats will try to find a way to block it."

One GOP leadership aide said Frist is open to the suggestions of Hatch and others but will not make any hasty decisions.

"We're not going to rule out any rules changes," said the aide. "Mr. Frist may do something later but he's not going to tear up the rules book. He is going to proceed in a very slow and deliberative way."

"We've learned in the past just because a member or aide says he knows the way to do something that may not be what the parliamentarian says," the aide added.

However, when asked if he has solicited the parliamentarian about curbing Rule XXII, Hatch said: "I know what the parliamentarian is going to say."

A Senate Democratic leadership aide warned against an attempt by Hatch to exempt judicial nominees from the Senate's filibuster rules. "Rule XXII obviously does apply to nominees, no matter how he wants to parse it."

If Republicans were able to force a change by jamming through a procedural ruling, "It would be a nuclear winter in the Senate," said the aide. "This place would fall apart. It would be dire consequences if that happened, in my opinion."

The aide said that Hatch doesn't have the case he thinks he has to win a ruling of the chair, based on the Senate's precedents, because Republicans have in effect already acknowledged the Democratic filibuster of Miguel Estrada.

"He's got a precedent of five cloture votes on Estrada, so he doesn't have a very good precedent," said the aide.

The aide also pointed to other times when there have been filibusters and cloture votes on judicial nominees. He called "ludicrous" GOP claims that the ongoing Democratic filibusters of Estrada and Owen were unprecedented. Cloture was filed to end a filibuster against Abe Fortas's elevation to chief justice of the Supreme Court. Cloture was also filed and invoked on Stephen Breyer when he was a federal appeals court nominee in 1980.

Those arguments aside, the aide conceded that it might be possible for Republicans to force a rules change by

moving that Rule XXII does not apply to judicial nominees and then getting a favorable ruling from the chair.

Then the key question would be, “How would the chair rule, and how would the parliamentarian rule, and would the chair listen to his ruling?” said the aide. The chair would not necessarily have to hew to that advice – although the aide said it would be extraordinary to ignore the parliamentarian’s ruling.

[InternetShortcut]

URL=http://www.thehill.com/about/alexander_bolton.shtm

[InternetShortcut]

URL=http://www.thehill.com/about/geoff_earle.shtm

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>
CC: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2003 9:52:40 AM
Subject: : FW: Holmes and religious test

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
CREATION DATE/TIME: 7-MAY-2003 13:52:40.00
SUBJECT:: FW: Holmes and religious test
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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

From: Frank Brown at Specter-DC
Sent: Wednesday, May 07, 2003 1:05 PM
To: Miranda, Manuel (Frist)
Subject: Re:Holmes and religious test

Hello Manuel!!! I just wanted to make sure I got my invite to the white House on Friday. Don't forget the little people. Holla back

From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 5/7/2003 10:51:14 AM
Subject: FW: MESSAGE MEETING REMINDER

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

From: Ritacco, Krista L.

Sent: Wednesday, May 07, 2003 10:50 AM

To: Yunker, Jacob H.; Allgood, Lauren K.; Ball, Andrea G.; Barrales, Ruben S.; Bennett, Melissa S.; Besanceney, Brian R.; Buchan, Claire ; Burkhart, Shannon; Burks, Jonathan W.; Campbell, Anne E.; Christie, Ronald I.; Ciafardini, Andrew D.; Conde, Roberta L.; Cooper, Rory S.; DeFrancis, Suzy; Devenish, Nicolle; Douglas, Penny G.; Duffy, Trent D.; Ellison, Kimberly; Eskew, Tucker A.; Figg, Kara G.; Gerdelman, Sue H.; Gillmor, Eleanor L.; Grant, Britt; Gray, Adrian G.; Gray, Ann ; Healy, Erin E.; Hennessey, Keith; Hernandez, Israel; Hughes, Taylor A.; Ingle, Edward; Jackson, Barry S.; Kaplan, Joel; Kozberg, Lindsey C.; Kupfer, Jeffrey F.; Kyle, Ross M.; Lawrimore, Emily A.; Lefkowitz, Jay P.; Lineberry, Stephen M.; Litkenhaus, Colleen; Mallea, Jose; Martin, Catherine J.; McClellan, Scott ; McCord, Lauren; McDonald, Rebekah; McQuade, Vickie A.; Mehlman, Ken; Middlemas, A. Morgan; Millerwise, Jennifer; Millison, Cathy L.; Montiel, Charlotte L.; Nelson, Carolyn; Nipper, Wendy L.; Parell, Christie; Pelletier, Eric C.; Perez, Anna M.; Ralston, Susan B.; Reese, Shelley; Riepenhoff, Allison L.; Rodriguez, Noelia ; Rogers, Edwina C.; Rust, Kathryn E.; Ryun, Catharine A.; Schulte, Gregory L.; Sforza, Scott N.; Smith, Heidi M.; Snee, Ashley; Torgerson, Karin B.; Towey, Jim; Vestewig, Lauren J.; Walters, Katherine M.; Wehner, Peter H.; Westine, Lezlee J.; Williams, Mary C.; Wozniak, Natalie S.

Subject: MESSAGE MEETING REMINDER

There will be a message meeting today at noon in the Roosevelt Room.

From: Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>
To: Kristi.L.Remington@usdoj.gov [UNKNOWN] <Kristi.L.Remington@usdoj.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Brian.A.Benczkowski@usdoj.gov [UNKNOWN] <Brian.A.Benczkowski@usdoj.gov>; Nancy.Scottfinan@usdoj.gov [UNKNOWN] <Nancy.Scottfinan@usdoj.gov>; Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>; Jamie.E.Brown@usdoj.gov [UNKNOWN] <Jamie.E.Brown@usdoj.gov>
Sent: 5/7/2003 10:36:26 AM
Subject: : FW: Tentative Markup Agenda for Thursday, May 8, 2003
Attachments: P_A1F8G003_WHO.TXT_1.html; P_A1F8G003_WHO.TXT_2.doc

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME: 7-MAY-2003 14:36:26.00

SUBJECT:: FW: Tentative Markup Agenda for Thursday, May 8, 2003

TO:Kristi.L.Remington@usdoj.gov (Kristi.L.Remington@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Nancy.Scottfinan@usdoj.gov (Nancy.Scottfinan@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Jamie.E.Brown@usdoj.gov (Jamie.E.Brown@usdoj.gov [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

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

From: Stahl, Katie (Judiciary)

Sent: Tuesday, May 06, 2003 7:20 PM

To: Sebold, Linda (Secretary); Dean, Ken (Secretary); Hauck, David (SAA); Klutts, Chad (Secretary); Miller Reporting (milrepc@millerreporting.com); Miranda, Manuel (Frist); Wikner, Brian (Judiciary); Butterfield, Jane (Judiciary); Carroll, Kurt (Judiciary); Turner, Roslyne (Judiciary); Pomerance, Lilah (Schumer); Carle, David (Leahy); Fleek, Susanne (Leahy); Gordon, Robert (Edwards); Jones, Stephanie (Edwards); Lackey, Miles (Edwards); Payne-Funk, Matt (Leahy); Skocki, Stan (DeWine); Abegg, John (McConnell); Cobb, Susan (Hatch); Janzen, Stormie (Sessions); Knight, Patricia (Hatch); Maier, Elizabeth (Kyl); Nuebel, Kathy (Grassley); Thomas Swanton (thomas_swanton@specter.senate.gov); Frank Brown (frank_brown@specter.senate.gov); Glazewski, Tim (Kyl); Larry Kosten (larry_kosten@specter.senate.gov); Mark Heilbrun (mark_heilbrun@specter.senate.gov); Singh Seema (seema_singh@specter.senate.gov); Sonia Acosta (sonia_acosta@kohl.senate.gov); Morcombe, Cecilia (Judiciary); Marmion, Preble (Judiciary); Mohle, Heinz (Judiciary); Tapia, Margarita (Judiciary); Bradley, Ellen (L. Graham); Cernok, Jill (Kyl); Cricks, Alison; Farr, MaryBeth (Chambliss); Gumerson, Katie (RPC); Hale, Carrie (DeWine); Higgins, Meaghan (Cornyn); Jafari, Beth (Cornyn); Jodi Lindley (jodi_lindley@craig.senate.gov); Montoya, Ruth (Hatch); Shimp, Leah (Grassley); Trevor Miller (trevor_miller@feingold.senate.gov); Anderson, Kathy (Durbin); Arlene Branca (arlene_branca@kohl.senate.gov); Bar, Alexis (Edwards); Dowd, John (Leahy); Hart Hazard (hart_hazard@biden.senate.gov); Hawkins, Julia (Feinstein); Magarik, Tamar (Feinstein); Mary Murphy (mary_murphy@feingold.senate.gov); McDonald, Kevin (Leahy); Molly Buford (molly_buford@biden.senate.gov); Nicholas, Elizabeth (Edwards); Schumer Scheduling (Scheduling@schumer.senate.gov); Tom Wyler (tom_wyler@feingold.senate.gov); Judiciary, Schumer2 (Judiciary); Bauerly, Cynthia (Judiciary); Berman, Jeff (Judiciary); Flood, James

REV_00235661

(Judiciary); Judiciary, Schumer1 (Judiciary); Terrell, Louisa
(Judiciary); Judiciary, Biden1 (Judiciary); Lee, Marcia (Judiciary);
MacBride, Neil (Judiciary); Meyer, Jonathan (Judiciary); Robinson, Tonya
(Judiciary); Rosen, Eric (Judiciary); Zubrensky, Michael (Judiciary);
Kang, Chris (Judiciary); Keam, Mark (Judiciary); Longley, Michael
(Judiciary); Zogby, Joseph (Judiciary); White, Kirsten (Judiciary);
Busansky, Alex (Judiciary); Judiciary, Feingold1 (Judiciary); Khera,
Farhana (Judiciary); Schiff, Bob (Judiciary); Strickland, LaVita
(Judiciary); Hantman, David (Judiciary); Hughes, Dempsey (Judiciary);
Judiciary, Feinstein1 (Judiciary); Judiciary, Feinstein2 (Judiciary);
Knapp, Jason (Feinstein); Lamberti, Matthew (Judiciary); Oscherwitz, Tom
(Judiciary); Toone, Robert (Judiciary); Flug, James (Judiciary);
Johnson, Olati (Judiciary); Judiciary, Kennedy1 (Judiciary); Judiciary,
Kennedy2 (Judiciary); Judiciary, Kennedy3 (Judiciary); Judiciary,
Kennedy4 (Judiciary); Kaguyutan, Janice (Judiciary); Olavarria, Esther
(Judiciary); Phillips, Richard (Judiciary); Sessoms, Julia (Judiciary);
Schwantes, Jonathan (Judiciary); Arends, Ross (Judiciary); Bloom, Seth
(Judiciary); Judiciary, Kohll (Judiciary); Miller, Jeffrey (Judiciary);
Nonna, Caroline (Judiciary); Reder, Elizabeth (Judiciary); Toomajian,
Phil (Judiciary); Arfa, Rachel (Judiciary); Berry, Jessica (Judiciary);
Cohen, Bruce (Judiciary); Davies, Susan (Judiciary); Demaine, Linda
(Judiciary); DeOreo, Mary (Judiciary); Fine, Daniel (Judiciary); Graves,
Lisa (Judiciary); Greenfeld, Helaine (Judiciary); Huebner, Ben
(Judiciary); Katzman, Julie (Judiciary); Klepper, Leesa (Judiciary);
Lafayette, Ed (Judiciary); Lucius, Kristine (Judiciary); Lynch, Tim
(Judiciary); Magner, Tara (Judiciary); McCormack, Blythe (Judiciary);
McKenerney, Christina (Judiciary); Neises, Eric (Judiciary); Pagano,
Edward (Judiciary); Parry, Liz (Judiciary); Smith, William (Judiciary);
Barnes, Cindy (Judiciary); Judiciary, Sessions1 (Judiciary); Judiciary,
Sessions2 (Judiciary); Pai, Ajit (Judiciary); Sander, Andrea
(Judiciary); Poindexter, Martha Scott (Chambliss); Gillies, John
(Chambliss); McLean, Camila (Chambliss); Ho, James (Judiciary); Brooke
Roberts; Taylor, Steve (Judiciary); Blackwell, Robin (Judiciary);
Fortier, Evelyn (Judiciary); Jones, Bill (Judiciary); Judiciary, DeWine1
(Judiciary); Judiciary, DeWine2 (Judiciary); Judiciary, DeWine3
(Judiciary); Levitas, Peter (Judiciary); Galyean, James (L. Graham);
Reed, Matt (Judiciary); Groover, Chad (Judiciary); Judiciary, Grassley1
(Judiciary); Judiciary, Grassley2 (Judiciary); Judiciary, Grassley4
(Judiciary); Lari, Rita (Judiciary); Augustine, Rene (Judiciary); Best,
David (Judiciary); Bloemendal, Katherine (Judiciary); Bunker, Matt
(Judiciary); Camacho, Lissa (Judiciary); Caramanica, Jessica
(Judiciary); Castle, William (Judiciary); Codevilla, David (Judiciary);
Comisac, RenaJohnson (Judiciary); Dahl, Alex (Judiciary); Delrahim,
Makan (Judiciary); Eskelsen, Jon (Judiciary); Friedrich, Dabney
(Judiciary); Green, Tanya (Judiciary); Greissing, John (Judiciary);
Hardman, Isaac (Judiciary); Haywood, Amy (Judiciary); Higginbotham, Ryan
(Judiciary); Johnson, Jacob (Judiciary); LeBon, Cherylyn (Judiciary);
Lehman, Ted (Judiciary); Lundell, Jason (Judiciary); Mitchell, Dorothy
(Judiciary); O'Connor, Reed (Judiciary); O'Scannlain, Kevin (Judiciary);
Prior, Swen (Judiciary); Seidel, Rebecca (Judiciary); Snell, BethAnn
(Judiciary); Soliemanzadeh, Payam (Judiciary); Stahl, Katie (Judiciary);
Volkov, Michael (Judiciary); Wagner, Jennifer (Judiciary); Matal, Joe
(Judiciary); Higgins, Stephen (Judiciary); Judiciary, kylintern1
(Judiciary); Judiciary, kylintern2 (Judiciary); Letourneau, Matthew
(Judiciary); Judiciary, VictoriaS (Judiciary); Judiciary, AnnaG
(Judiciary); Judiciary, JonF (Judiciary); Judiciary, MargueriteM
(Judiciary); Judiciary, MattG (Judiciary); Judiciary, SheilaB
(Judiciary); Millette, Martin (Judiciary); Artim, Bruce (Judiciary);
Campbell, Chris (Judiciary); Carlson, Mark (Judiciary); DeLoatche,
Patricia (Judiciary); Kim, Harold (Judiciary); Judiciary, TylerH
(Judiciary); Judiciary, BarrH (Judiciary); Judiciary, ChrisT
(Judiciary); Judiciary, DanT (Judiciary); Judiciary, DerrickH
(Judiciary); Judiciary, EricJ (Judiciary); Judiciary, JeremyJ
(Judiciary); Judiciary, JeremyN (Judiciary); Judiciary, KristenW
(Judiciary); Judiciary, NicoleO (Judiciary)

Subject: Tentative Markup Agenda for Thursday, May 8, 2003

- att1.htm - Draft Agenda May 8 2003.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_A1F8G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_A1F8G003_WHO.TXT_2>

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

From: Stahl, Katie (Judiciary)

Sent: Tuesday, May 06, 2003 7:20 PM

To: Sebold, Linda (Secretary); Dean, Ken (Secretary); Hauck, David (SAA); Klutts, Chad (Secretary); Miller Reporting (milrepco@millerreporting.com); Miranda, Manuel (Frist); Wikner, Brian (Judiciary); Butterfield, Jane (Judiciary); Carroll, Kurt (Judiciary); Turner, Roslyne (Judiciary); Pomerance, Lilah (Schumer); Carle, David (Leahy); Fleek, Susanne (Leahy); Gordon, Robert (Edwards); Jones, Stephanie (Edwards); Lackey, Miles (Edwards); Payne-Funk, Matt (Leahy); Skocki, Stan (DeWine); Abegg, John (McConnell); Cobb, Susan (Hatch); Janzen, Stormie (Sessions); Knight, Patricia (Hatch); Maier, Elizabeth (Kyl); Nuebel, Kathy (Grassley); Thomas Swanton (thomas_swanton@specter.senate.gov); Frank Brown (frank_brown@specter.senate.gov); Glazewski, Tim (Kyl); Larry Kosten (larry_kosten@specter.senate.gov); Mark Heilbrun (mark_heilbrun@specter.senate.gov); Singh Seema (seema_singh@specter.senate.gov); Sonia Acosta (sonia_acosta@kohl.senate.gov); Morcombe, Cecilia (Judiciary); Marmion, Preble (Judiciary); Mohle, Heinz (Judiciary); Tapia, Margarita (Judiciary); Bradley, Ellen (L. Graham); Cernok, Jill (Kyl); Cricks, Alison; Farr, MaryBeth (Chambliss); Gumerson, Katie (RPC); Hale, Carrie (DeWine); Higgins, Meaghan (Cornyn); Jafari, Beth (Cornyn); Jodi Lindley (jodi_lindley@craig.senate.gov); Montoya, Ruth (Hatch); Shimp, Leah (Grassley); Trevor Miller (trevor_miller@feingold.senate.gov); Anderson, Kathy (Durbin); Arlene Branca (arlene_branca@kohl.senate.gov); Bar, Alexis (Edwards); Dowd, John (Leahy); Hart Hazard (hart_hazard@biden.senate.gov); Hawkins, Julia (Feinstein); Magarik, Tamar (Feinstein); Mary Murphy (mary_murphy@feingold.senate.gov); McDonald, Kevin (Leahy); Molly Buford (molly_buford@biden.senate.gov); Nicholas, Elizabeth (Edwards); Schumer Scheduling (Scheduling@schumer.senate.gov); Tom Wyler (tom_wyler@feingold.senate.gov); Judiciary, Schumer2 (Judiciary); Bauerly, Cynthia (Judiciary); Berman, Jeff (Judiciary); Flood, James (Judiciary); Judiciary, Schumer1 (Judiciary); Terrell, Louisa (Judiciary); Judiciary, Biden1 (Judiciary); Lee, Marcia (Judiciary); MacBride, Neil (Judiciary); Meyer, Jonathan (Judiciary); Robinson, Tonya (Judiciary); Rosen, Eric (Judiciary); Zubrensky, Michael (Judiciary); Kang, Chris (Judiciary); Keam, Mark (Judiciary); Longley, Michael (Judiciary); Zogby, Joseph (Judiciary); White, Kirsten (Judiciary); Busansky, Alex (Judiciary); Judiciary, Feingold1 (Judiciary); Khera, Farhana (Judiciary); Schiff, Bob (Judiciary); Strickland, LaVita (Judiciary); Hantman, David (Judiciary); Hughes, Dempsey (Judiciary); Judiciary, Feinstein1 (Judiciary); Judiciary, Feinstein2 (Judiciary); Knapp, Jason (Feinstein); Lamberti, Matthew (Judiciary); Oscherwitz, Tom (Judiciary); Toone, Robert (Judiciary); Flug, James (Judiciary); Johnson, Olati (Judiciary); Judiciary, Kennedy1 (Judiciary); Judiciary, Kennedy2 (Judiciary); Judiciary, Kennedy3 (Judiciary); Judiciary, Kennedy4 (Judiciary); Kaguyutan, Janice (Judiciary); Olavarria, Esther (Judiciary); Phillips, Richard (Judiciary); Sessoms, Julia (Judiciary); Schwantes, Jonathan (Judiciary); Arends, Ross (Judiciary); Bloom, Seth (Judiciary); Judiciary, Kohl1 (Judiciary); Miller, Jeffrey (Judiciary); Nonna, Caroline (Judiciary); Reder, Elizabeth (Judiciary); Toomajian, Phil (Judiciary); Arfa, Rachel (Judiciary); Berry, Jessica (Judiciary); Cohen, Bruce (Judiciary); Davies, Susan (Judiciary); Demaine, Linda (Judiciary); DeOreo, Mary (Judiciary); Fine, Daniel (Judiciary); Graves, Lisa (Judiciary); Greenfeld, Helaine (Judiciary); Huebner, Ben (Judiciary); Katzman, Julie (Judiciary); Klepper, Leesa (Judiciary); Lafayette, Ed (Judiciary); Lucius, Kristine (Judiciary); Lynch, Tim (Judiciary); Magner, Tara (Judiciary); McCormack, Blythe (Judiciary); McKennerney, Christina (Judiciary); Neises, Eric (Judiciary); Pagano, Edward (Judiciary); Parry, Liz (Judiciary); Smith, William (Judiciary); Barnes, Cindy (Judiciary); Judiciary, Sessions1 (Judiciary); Judiciary, Sessions2 (Judiciary); Pai, Ajit (Judiciary); Sander, Andrea (Judiciary); Poindexter, Martha Scott (Chambliss); Gillies, John (Chambliss); McLean, Camila (Chambliss); Ho, James (Judiciary); Brooke Roberts; Taylor, Steve (Judiciary); Blackwell, Robin (Judiciary); Fortier, Evelyn (Judiciary); Jones, Bill (Judiciary); Judiciary, DeWine1 (Judiciary); Judiciary, DeWine2 (Judiciary); Judiciary, DeWine3 (Judiciary); Levitas, Peter (Judiciary); Galyean, James (L. Graham); Reed, Matt (Judiciary); Groover, Chad (Judiciary); Judiciary, Grassley1 (Judiciary); Judiciary, Grassley2 (Judiciary); Judiciary, Grassley4 (Judiciary); Lari, Rita (Judiciary); Augustine, Rene (Judiciary); Best, David (Judiciary); Bloemendal, Katherine (Judiciary); Bunker, Matt (Judiciary); Camacho, Lissa (Judiciary); Caramanica, Jessica (Judiciary); Castle, William (Judiciary); Codevilla, David (Judiciary); Comisac, RenaJohnson (Judiciary); Dahl, Alex (Judiciary); Delrahim, Makan (Judiciary); Eskelsen, Jon (Judiciary); Friedrich, Dabney (Judiciary); Green, Tanya (Judiciary); Greissing, John (Judiciary); Hardman, Isaac (Judiciary); Haywood, Amy (Judiciary); Higginbotham, Ryan (Judiciary); Johnson, Jacob (Judiciary); LeBon, Cherylyn (Judiciary); Lehman, Ted (Judiciary); Lundell, Jason (Judiciary); Mitchell, Dorothy (Judiciary); O'Connor, Reed (Judiciary); O'Scannlain, Kevin (Judiciary); Prior, Swen (Judiciary); Seidel, Rebecca (Judiciary); Snell, BethAnn (Judiciary); Soliemanzadeh, Payam (Judiciary); Stahl, Katie (Judiciary); Volkov, Michael (Judiciary); Wagner, Jennifer (Judiciary); Matal, Joe (Judiciary); Higgins, Stephen (Judiciary); Judiciary, kylintern1 (Judiciary); Judiciary, kylintern2 (Judiciary); Letourneau, Matthew (Judiciary); Judiciary, VictoriaS (Judiciary); Judiciary, AnnaG (Judiciary); Judiciary, JonF (Judiciary); Judiciary, MargueriteM (Judiciary); Judiciary, MattG (Judiciary); Judiciary, SheilaB (Judiciary); Millette, Martin (Judiciary); Artim, Bruce (Judiciary); Campbell, Chris (Judiciary); Carlson, Mark (Judiciary); DeLoatche, Patricia (Judiciary); Kim, Harold (Judiciary); Judiciary, TylerH (Judiciary); Judiciary, BarrH (Judiciary); Judiciary, ChrisT (Judiciary); Judiciary, DanT (Judiciary); Judiciary, DerrickH (Judiciary); Judiciary, EricJ (Judiciary); Judiciary,

JeremyJ (Judiciary); Judiciary, JeremyN (Judiciary); Judiciary, KristenW (Judiciary); Judiciary, NicoleO (Judiciary)
Subject: Tentative Markup Agenda for Thursday, May 8, 2003

(Tentative) AGENDA
Executive Business Meeting
Senate Judiciary Committee
226 Dirksen Senate Office Building
Thursday, May 8, 9:30 a.m.

I. Nominations

Carolyn B. Kuhl to be US Circuit Judge for the Ninth Circuit

John G. Roberts, Jr., to be US Circuit Judge
for the District of Columbia Circuit

David G. Campbell to be US District Judge
for the District of Arizona

S. Maurice Hicks, Jr., to be US District Judge
for the Western District of Louisiana

William Emil Moschella to be Assistant Attorney General,
Office of Legislative Affairs, US Department of Justice

David B. Rivkin to be Commissioner for the Foreign Claims Settlement
Commission

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
Sent: 5/7/2003 10:59:38 AM
Subject: : FW: 2 Judges Appointed TODAY

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 7-MAY-2003 14:59:38.00

SUBJECT:: FW: 2 Judges Appointed TODAY

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

;-----Original Message-----

From: ; McCathran, William W.;

Sent;;; Wednesday, May 07, 2003 2:55 PM

To:;;; Bumatay, Patrick J.; Sampson, Kyle

Subject:;;;;;; 2 Judges Appointed TODAY

Deborah L. Cook - USCJ 6TH CIR.

Cecilia M. Altonaga - USDJ So. Florida.

Cheers,

Bill

REV_00235667

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
Sent: 5/7/2003 10:59:35 AM
Subject: : FW: 2 Judges Appointed TODAY

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 7-MAY-2003 14:59:35.00

SUBJECT:: FW: 2 Judges Appointed TODAY

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

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

From: McCathran, William W.

Sent: Wednesday, May 07, 2003 2:55 PM

To: Bumatay, Patrick J.; Sampson, Kyle

Subject: 2 Judges Appointed TODAY

Deborah L. Cook - USCJ 6TH CIR.

Cecilia M. Altonaga - USDJ So. Florida.

Cheers,

Bill

REV_00235668

From: Bumatay, Patrick J.
To: <Ullyot, Theodore W.>;<Bartolomucci, H. Christopher>;<Brosnahan, Jennifer R.>;<Francisco, Noel J.>;<Kavanaugh, Brett M.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 5/7/2003 3:00:12 PM
Subject: FW: 2 Judges Appointed TODAY

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

From: McCathran, William W.
Sent: Wednesday, May 07, 2003 2:55 PM
To: Bumatay, Patrick J.; Sampson, Kyle
Subject: 2 Judges Appointed TODAY

Deborah L. Cook - USCJ 6TH CIR.
Cecilia M. Altonaga - USDJ So. Florida.

Cheers,
Bill

From: Campbell, Anne E.
To: <Kavanaugh, Brett M.>
Sent: 5/7/2003 3:12:32 PM
Subject: RE:

Sure - my fax number is 6-2973.
Thank you.

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

From: Kavanaugh, Brett M.
Sent: Wednesday, May 07, 2003 3:09 PM
To: Campbell, Anne E.
Subject:

Judge Gonzales had some other suggestions. Can I FAX them to you?

From: CN=Katherine M. Walters/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2003 12:35:43 PM
Subject: : Re: DePelchin Children's Center Letter - for approval on Monday
Attachments: P_C4N8G003_WHO.TXT_1.doc; P_C4N8G003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2003 16:35:43.00
SUBJECT:: Re: DePelchin Children's Center Letter - for approval on Monday
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

any ruling? sorry to harass, but the event is tomorrow.

Brett M. Kavanaugh
05/05/2003 11:43:28 PM
Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP
cc:
bcc:
Subject: Re: DePelchin Children's Center Letter - for approval on Monday

will have answer in a.m. checking with our charitable event guru.

Katherine M. Walters
05/05/2003 07:29:14 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on Monday

any word? The event is on May 8th. Thanks.
----- Forwarded by Katherine M. Walters/WHO/EOP on
05/05/2003 07:29 PM -----

Kimberly D. Rawson
05/02/2003 11:01:20 AM
Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on

Monday

----- Forwarded by Kimberly D. Rawson/WHO/EOP on
05/02/2003 10:59 AM -----

Kimberly D. Rawson
05/02/2003 08:55:10 AM
Record Type: Record

To: Jonathan W. Burks/WHO/EOP@Exchange@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on
Monday

Good Morning -
Attached, please find a letter for the DePelchin Luncheon - below is the
background info on the request and organization.
Ideally, we would really like to have this in the mail on Monday.
Thank you!

- it was requested by Jack Oliver.
- for the 5th annual DePelchin Children's Center luncheon Thursday, May 8.
- at the luncheon Dr. Peggy B. Smith will be given the Kezia DePelchin
award.
- President(41) & Mrs. Bush were the first recipients of the Kezia
DePelchin
award.
- Jane Seymour is the guest speaker.

-A bit about DePelchin.
DePelchin has had the privilege of serving Houston for over 110
years. The
agency was created in 1892 to shelter orphaned children, but, over
the
years, due to the ever changing needs of the community, they have
expanded
and adapted. DePelchin Children's Center is the largest and most
comprehensive provider of children's social and mental health
services in
the greater Houston area serving more than 27,000 clients through
30
programs in 60 locations. (I have also attached a fact sheet)

<<About DePelchin - one page.doc>>

- About DePelchin - one page.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C4N8G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_C4N8G003_WHO.TXT_2>

April 29, 2003

I am pleased to send greetings to everyone gathered for the 5th annual DePelchin Children's Center Luncheon. Thank you and your members for the selfless service you have given to the greater Houston area for over 100 years. Service is an integral part of America's character and I am proud of your willingness to help provide needed services to better the social and emotional health of so many children and families.

May God bless you, and may God continue to bless America.

Sincerely,

George W. Bush

DePelchin has had the privilege of serving Houston for over 110 years. The agency was created in 1892 to shelter orphaned children, but, over the years, due to the ever changing needs of our community, we have expanded and adapted. DePelchin Children's Center is the largest and most comprehensive provider of children's social and mental health services in the greater Houston area serving more than 27,000 clients through 30 programs in 60 locations.

Our mission is: *“Recognizing that a child’s needs are best met in a family environment, DePelchin Children’s Center strengthens the lives of children and their families in our community by providing a continuum of services to prevent and resolve social and emotional crises.”*

DePelchin Children's Center provides a broad-based program of services to children and families in Harris, Ft. Bend, Montgomery and Waller counties in Texas. Programs are designed primarily to meet the needs of individuals and families in crisis requiring such services as:

- Parent education
- Teen pregnancy and teen parenting counseling services
- Adoption
- Post-adoption counseling and services
- Emergency shelters for housing abused, neglected, homeless and runaway children and adolescents.
- Foster care
- Therapeutic counseling and treatment services for emotionally disturbed children and adolescents.

The agency provides services to children and families in need, regardless of their ability to pay. DePelchin Children's Center receives funding from the United Way, the Texas Department of Protective and Regulatory Services, other governmental agencies, program fees, community support and investment income.

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/7/2003 3:19:30 PM
Subject: : RE: FW: 5/9 Judicial Independence #3 - to be staffed out

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 7-MAY-2003 19:19:30.00
SUBJECT:: RE: FW: 5/9 Judicial Independence #3 - to be staffed out
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

2 - yes, I'm doing one - will send through staffing tomorrow.
3 - ari is going to preview the speech tomorrow - but can we get the most recent version/final version of the speech before then? We can maybe look at doing a backgrounder with the press after - but most of them will be traveling with the President.

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

From: Kavanaugh, Brett M.
Sent: Wednesday, May 07, 2003 6:41 PM
To: Snee, Ashley
Subject: Re: FW: 5/9 Judicial Independence #3 - to be staffed out

1. Yes, there were some changes.
2. For the fact sheet, are you doing a draft (I hope)? Should we have an attachment to fact sheet that includes some of the D statements in past?
3. Should we have a background briefing for reporters either tomorrow night or Friday after the event?

From: Ashley Snee/WHO/EOP@Exchange on 05/07/2003 05:48:27 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: 5/9 Judicial Independence #3 - to be staffed out

Ari is inclined to give a preview of the Friday event tomorrow. Are there many changes made to this version? I'll also need it for the fact sheet.
thanks

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

From: Ritacco, Krista L.
Sent: Wednesday, May 07, 2003 4:52 PM
To: Snee, Ashley
Subject: FW: 5/9 Judicial Independence #3 - to be staffed out

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

From: Campbell, Anne E.
Sent: Tuesday, May 06, 2003 6:07 PM
To: Staff Secretary
Cc: Ritacco, Krista L.; Hernandez, Israel; Ralston, Susan B.; Carroll,

Colleen M.; Jones, Brian C.; Vargo, Erin A.; Reilly, Jeannette B.; Kropp,
Emily L.; Kavanaugh, Brett M.

Subject: 5/9 Judicial Independence #3 - to be staffed out

With Staff Secretary - to be staffed.
Comments are due at 2pm tomorrow (5/7)
Thank you. << File: Judicial#3.doc >>

From: FindLaw.com <listadmin@LEGALMINDS.ORG>
To: TOPHEADLINES@LEGALMINDS.ORG [UNKNOWN]
<TOPHEADLINES@LEGALMINDS.ORG>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/7/2003 3:36:35 PM
Subject: : [TOPHEADLINES] Top Legal Headlines: Today's Top Legal Stories - Wed., May 7, 2003

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"FindLaw.com" <listadmin@LEGALMINDS.ORG> ("FindLaw.com" <listadmin@LEGALMINDS.ORG>
[UNKNOWN])
CREATION DATE/TIME: 7-MAY-2003 19:36:35.00
SUBJECT:: [TOPHEADLINES] Top Legal Headlines: Today's Top Legal Stories - Wed., May 7, 2003
TO:TOPHEADLINES@LEGALMINDS.ORG (TOPHEADLINES@LEGALMINDS.ORG [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FINDLAW Wed, May 7, 2003

TOP LEGAL NEWS HEADLINES

For all of the day's legal news go to: <http://news.findlaw.com>

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billable items a day that are currently slipping through the cracks. We
think you will be surprised at the results. Click Here.
http://rd.findlaw.com/scripts/nl.pl?url=1051772400_nl

POLITICS
Cheney Says He'll Be Bush's Running Mate
http://news.findlaw.com/ap/a/p/1131/5-7-2003/20030507020001_4.html

Report Questions Pentagon Aide's Briefing
http://news.findlaw.com/ap/a/w/1152/5-7-2003/20030507074501_04.html

LEGAL COMMENTARY
U.S. V. Patane: The Supreme Court Takes A Case About Miranda 'Fruits'
<http://writ.news.findlaw.com/colb/20030507.html>

Appealing To The U.N. In An Internet Defamation Case
<http://writ.news.findlaw.com/ramasastry/20030507.html>

CIVIL RIGHTS
Ashcroft, Oregon Square Off Over Suicide Law
<http://news.findlaw.com/news/s/20030507/lifesuicidedc.html>

Michigan May Force Toddler's Surgery
http://news.findlaw.com/ap/o/1110/5-7-2003/20030507101503_27.html

PERSONAL INJURY

Judge Awards \$104 Million To 9-11 Victims

http://news.findlaw.com/ap/o/1110/5-7-2003/20030507110002_06.html

GM Paid To Settle C/K Truck Suits -Report

<http://news.findlaw.com/business/s/20030507/autosgmreportdc.html>

PRODUCT LIABILITY

3M Seeks FDA Approval For Drug Aldara

http://news.findlaw.com/ap/o/1500/5-7-2003/20030507101503_26.html

IMMIGRATION

3 Cubans in Custody After Reaching Fla.

http://news.findlaw.com/ap/o/1110/5-7-2003/20030507071501_04.html

LABOR AND EMPLOYMENT

Lawmakers Eye Easing Companies' Pension Burden

<http://news.findlaw.com/politics/s/20030507/congresspensionsdc.html>

ENVIRONMENT

Cruise Ship Dumps Tons Of Sewage In Wash.

http://news.findlaw.com/ap/o/1110/5-7-2003/20030507054501_04.html

Conservationists Fight For W.Va. Canyon

http://news.findlaw.com/ap/o/1110/5-7-2003/20030507073002_11.html

GUNS

U.S. Court In Calif. Stands By Gun Ruling

<http://news.findlaw.com/news/s/20030507/rightsgunsdc.html>

CYBERSPACE LAW

Panel Votes To Restrict Internet Gambling

http://news.findlaw.com/ap/ht/1700/5-7-2003/20030507101503_48.html

BUSINESS

Senators Eye \$1.4B Wall Street Settlement

http://news.findlaw.com/ap/f/1310/5-7-2003/20030507053001_6.html

In Leaked E-Mail, SEC Head Warns Of Leaks

<http://news.findlaw.com/business/s/20030507/financialseccleaksdc.html>

ENRON

Former Enron Broadband Exec Surrenders

<http://news.findlaw.com/business/s/20030507/enronbroadbanddc.html>

INTERNATIONAL LAW

EU Gives U.S. Deadline In Tax Break Sanctions Row

<http://news.findlaw.com/politics/s/20030507/eusatradedc.html>

Colombia Gov't Blamed In Hostages' Deaths

http://news.findlaw.com/ap/i/1102/5-7-2003/20030507033002_12.html

WAR ON TERRORISM

U.S. Military Tribunals Lack Defendants

http://news.findlaw.com/ap/a/w/1152/5-7-2003/20030507061501_15.html

U.S. Adds Basque Group To 'Terror' List

<http://news.findlaw.com/politics/s/20030507/spainusabatasunadc.html>

IRAQ

Lawmaker Says Halliburton's Role Expanded In Iraq

<http://news.findlaw.com/news/s/20030507/iraqoilhalliburtondc.html>

Ex-Baath Official Taken Into Custody

http://news.findlaw.com/ap/i/1107/5-7-2003/20030507000005_01.html

CRIME & TRIALS

Drug Lord Ochoa Resumed Old Trade, Miami Jury Told

<http://news.findlaw.com/news/s/20030507/crimeochoadc.html>

Longest Serving Death Row Inmate Executed In U.S.

<http://news.findlaw.com/news/s/20030507/executiongeorgiadc.html>

ENTERTAINMENT

The Who's Pete Townshend Cautioned Over Child Porn

<http://news.findlaw.com/entertainment/s/20030507/crimebritaintownshenddc.htm>

\$132M Awarded Over Ja Rule Record Dispute

http://news.findlaw.com/ap/e/1403/5-7-2003/20030507060005_11.html

SPORTS

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Sheila.Joy@usdoj.gov [UNKNOWN] <Sheila.Joy@usdoj.gov>
Sent: 5/7/2003 6:37:53 PM
Subject: : Re: chart of early circuit judges

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-MAY-2003 22:37:53.00
SUBJECT:: Re: chart of early circuit judges
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Sheila.Joy@usdoj.gov (Sheila.Joy@usdoj.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

This is tremendous. Thank you so much.

.
----- Original Message -----
From:<Sheila.Joy@usdoj.gov>
To:Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/07/2003 10:19:02 PM
Subject: chart of early circuit judges

Brett, The attached information has been compiled from two different sources -- both are hand written documents so the spelling of names may not be completely accurate -- I have not had time to check against the typed cards. The differences in the books are one set only list those individuals appointed - the other set lists nominations - in some parts of the book on nominations it is not clear whether the "was sent" means to the WH or to the Senate - I have used that date for the "nominated" column. I will try to confirm the information through the card index in the morning. I need to go through another book for the information between 1801 and the 1905 entries. Sheila

- cirjudge1891.1952.wpd

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Sheila.Joy@usdoj.gov <Sheila.Joy@usdoj.gov>
CC: Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>
Sent: 5/8/2003 6:17:22 AM
Subject: : RE: chart of early circuit judges

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 10:17:22.00
SUBJECT: : RE: chart of early circuit judges
TO: "Sheila.Joy@usdoj.gov" <Sheila.Joy@usdoj.gov> ("Sheila.Joy@usdoj.gov"
<Sheila.Joy@usdoj.gov> [UNKNOWN])
READ: UNKNOWN
CC: Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

I actually am most interested in circuit judges from the time the U.S. Courts of Appeals were formed in 1891. The precise question I am analyzing is whether any nominee had to wait endlessly (say, more than 2 years) without any Senate action (either being confirmed, voted down, or returned without being re-nominated) between the creation of the US Courts of Appeals in 1891 and 1988, at the end of the Reagan Administration.

"Sheila.Joy@usdoj.gov" <Sheila.Joy@usdoj.gov>
05/08/2003 09:40:33 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: chart of early circuit judges

not confirmed - some were returned at the end of a Congress or Session without any action. If the "confirmed or other" column is blank the books did not show confirmation. ie Skelly Wright was not acted on as a circuit judge but a later reference showed a nominaton & confirmation as a district judge.

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:37 AM
To: Joy, Sheila
Subject: RE: chart of early circuit judges

Right, there was one "rejected." But a few of the spaces are blank.
Question
is whether those folks were confirmed or not.

(Embedded
image moved "Sheila.Joy@usdoj.gov" <Sheila.Joy
to file: 05/08/2003 09:34:07 AM
pic21102.pcx)

Record Type: Record

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

cc:
Subject: RE: chart of early circuit judges

re confirmation - check the "confirmed or other" column

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:14 AM
To: Joy, Sheila
Subject: Re: chart of early circuit judges

Was everyone on this list confirmed?

(Embedded
image moved "Sheila.Joy@usdoj.gov" <Sheila.Joy
to file: 05/07/2003 10:19:02 PM
pic13414.pcx)

Record Type: Record

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

cc:
Subject: chart of early circuit judges

Brett, The attached information has been compiled from two different sources -- both are hand written documents so the spelling of names may not be completely accurate -- I have not had time to check against the typed cards. The differences in the books are one set only list those individuals appointed - the other set lists nominations - in some parts of the book on nominations it is not clear whether the "was sent" means to the WH or to the Senate - I have used that date for the "nominated" column. I will try to confirm the information through the card index in the morning. I need to go through another book for the information between 1801 and the 1905 entries. Sheila

From: CN=Katherine M. Walters/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 4:55:05 AM
Subject: : AIPAC Baltimore Event Invitation
Attachments: P_O059G003_WHO.TXT_1.doc; P_O059G003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 08:55:05.00
SUBJECT:: AIPAC Baltimore Event Invitation
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

You probably hate me, but they are wanting to print today. Should I tell them no bio at all is permissible?

----- Forwarded by Katherine M. Walters/WHO/EOP on
05/08/2003 08:53 AM -----

Katherine M. Walters
05/07/2003 10:37:16 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: AIPAC Baltimore Event Invitation

Brett- I asked AIPAC to remove Ken's official title from the invite, and they did. They want to include a short bio on Ken as well, which I just found out. Is that possible or no? thanks

----- Forwarded by Katherine M. Walters/WHO/EOP on
05/07/2003 10:36 AM -----

Marcie Brecher <mbrecher@aipac.org>
05/07/2003 10:06:48 AM
Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP
cc:
Subject: Re: 6.30.03 AIPAC Baltimore Event Invitation

Kate,

Thank you for your ongoing assistance with this. I attach below the inside text of the June 30th AIPAC invitation for final review and approval. Per our conversation yesterday, I have updated the title of the event. I would also love to be able to include some biographical information on Ken Mehlman - please advise if this is permissible.

If possible, I would love to hear back from you by the end of the day today. Again, thank you for your help.

Sincerely,

Marcie

REV_00235724

Marcie Brecher
Area Director, Baltimore and Greater Washington
American Israel Public Affairs Committee
410-444-8365 (Baltimore tel)
202-639-5231 (Washington tel)
202-347-4918 (fax)

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>>> <Katherine_M._Walters@who.eop.gov> 05/06/03 12:10PM >>>
Can you please send me the final version? Thanks.

(Embedded
image moved Marcie Brecher <mbrecher@aipac.org>
to file: 05/06/2003 12:01:36 PM
pic16767.pcx)

Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP

cc:
Subject: Re: 6.30.03 AIPAC Baltimore Event Invitation

Kate,
Thanks so much for getting this to me today. I very much appreciate your assistance in turning this around.

Have a great day,
Marcie

>>> <Katherine_M._Walters@who.eop.gov> 05/06/03 11:52AM >>>
Marcie- sorry about the late response. Our Counsel has been swamped.
This invitation is ok as long as you remove Ken's official title. Please have it say "The Honorable Ken Mehlman". (no White House Political Director.) Counsel prohibits using official titles for events. Thanks.
----- Forwarded by Katherine M. Walters/WHO/EOP on
05/06/2003
07:35 AM -----

(Embedded
image moved Marcie Brecher <mbrecher@aipac.org>
to file: 04/29/2003 10:07:59 AM
pic22535.pcx)

Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP

cc:

Subject: 6.30.03 AIPAC Baltimore Event Invitation

Dear Kate,

I attach below the text of the invitation for AIPAC's Baltimore kick-off event with Ken Mehlman on June 30, 2003 for approval by your office. In addition to the attached, I will include the resume information you shared with me for Ken and for Congressman Hoyer, as well as an insert with the Host Committee (currently in formation). It is my hope to send the invitation to print on Monday, May 5th. Please advise if this is an unrealistic timeline based on your schedule.

I very much appreciate your assistance with this. Please feel free to contact me with any questions.

Sincerely,

Marcie

Marcie Brecher
Area Director, Baltimore and Greater Washington
American Israel Public Affairs Committee
202-639-5231 (phone)
202-347-4918 (fax)

Consistently ranked as the most influential foreign policy lobbying organization on Capitol Hill, AIPAC is a non-partisan American membership organization that seeks to strengthen the relationship between Israel and the United States. Please visit our website www.aipac.org

(See attached file: 6.30.03 Invitation Text.doc)

- 6.30.03 Invitation Text.doc
- 6.30.03 Speaker Bios for invitation.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0059G003_WHO.TXT_1>

REV_00235726

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0059G003_WHO.TXT_2>

**Join members of the Baltimore community
to demonstrate your support for Israel during**

Standing with Israel: The Imperative for Pro-Israel Involvement

Sponsored by The American Israel Public Affairs Committee
America's Pro-Israel Lobby

Monday, June 30, 2003

5:30 p.m. Reception & Buffet Dinner

6:30 p.m. Program

Beth Tfiloh Congregation

3300 Old Court Road

Baltimore, Maryland

with special guest speakers

The Honorable Steny Hoyer

The Honorable Kenneth Mehlman

Howard Kohr, Executive Director

The American Israel Public Affairs Committee

RSVP by Monday, June 23rd to Marcie Brecher PRA 6
or email Mollie Toms at mtoms@aipac.org

Couvert per person: \$50

Hors d'oeuvres and a buffet dinner will be served.

Dietary laws observed.

AIPAC gratefully acknowledges the media sponsorship of the  **JewishTimes**

The Honorable Steny H. Hoyer (D-MD)

Congressman Steny H. Hoyer represents Maryland's Fifth Congressional District, which includes Calvert, Charles and St. Mary's counties and portions of Prince George's and Anne Arundel counties. He is now serving his 12th term (he came to Congress after a special election in 1981), making him the longest-serving Member of the U.S. House of Representatives from Southern Maryland in history.

On November 14, 2002, Congressman Hoyer was unanimously elected by Members of the House Democratic Caucus to serve as the House Democratic Whip, the second-ranking position among House Democrats. He is the senior Member of Maryland's U.S. House delegation, and his election as Democratic Whip makes him the highest-ranking Member of Congress from Maryland in history.

Congressman Hoyer has been a leader for the pro-Israel cause and a stalwart supporter of a strong U.S. – Israel relationship his entire career. Just last month, Democratic Whip Hoyer, along with Majority Whip Roy Blunt (R-MO), Tom Lantos (D-CA) and Henry Hyde (R-IL), co-authored a letter to President Bush urging him to “reaffirm his unshakeable commitment to his June 24th principles” as he moves forward with a “roadmap” for future Israeli–Palestinian negotiations. The letter reiterates the President's call for responsible Palestinian leadership that is committed to peace with Israel, determined to destroy the terrorist infrastructure and actively engaged in real reform of the political, security and economic spheres. The Congressman is planning to lead a Congressional Delegation to Israel in August 2003.

The Honorable Kenneth B. Mehlman

In January 2001, Ken Mehlman joined the White House to oversee and coordinate all aspects of President George W. Bush's political affairs by working with members of Congress, Federal agencies, state and national parties, state and local elected officials, and community groups. Before and during the 2002 elections, Ken coordinated Administration efforts to advance and support the Republican agenda.

Ken previously served as National Field Director for Bush-Cheney 2000, where he worked with the campaign leadership in all fifty states and the Republican National Committee to execute winning political plans and mobilize strong grassroots. During the primaries, Ken wrote and implemented the plan that produced Governor Bush's historic Iowa caucus victory.

Before joining the Bush campaign, Ken was Congresswoman Kay Granger's (TX-12) Chief of Staff and Congressman Lamar Smith's (TX-21) Legislative Director. He practiced environmental law in Washington and worked on campaigns in Massachusetts, Ohio, Virginia, Texas, and Georgia, as well as the 1992 and 1996 Presidential campaigns.

A native of Baltimore, Ken is a 1991 graduate of Harvard Law School and 1988 graduate of Franklin and Marshall College and a member of the D.C. and Maryland bars.

From: Bennett, Melissa S.
To: katholiccard@ix.netcom.com <Kyle, Ross M.>;katholiccard@ix.netcom.com <Connaughton, James>;katholiccard@ix.netcom.com <Gillmor, Eleanor L.>;katholiccard@ix.netcom.com <Vestewig, Lauren J.>;katholiccard@ix.netcom.com <Hall, Philo D.>;katholiccard@ix.netcom.com <Justesen, Troy>;katholiccard@ix.netcom.com <Kuzmich, Holly A.>;katholiccard@ix.netcom.com <Malphrus, Garry>;katholiccard@ix.netcom.com <Sharp, Jess>;katholiccard@ix.netcom.com <Skelly, Layton>;katholiccard@ix.netcom.com <Wilson, Christina C.>;katholiccard@ix.netcom.com <Winland, Emily>;katholiccard@ix.netcom.com <O'Neill, Joseph F.>;katholiccard@ix.netcom.com <Thompson, Carol J.>;katholiccard@ix.netcom.com <Cooper, Jean>;katholiccard@ix.netcom.com <Allgood, Lauren K.>;katholiccard@ix.netcom.com <Heath, Daniel D.>;katholiccard@ix.netcom.com <Gerdelman, Sue H.>;katholiccard@ix.netcom.com <Smith, Marty P.>;katholiccard@ix.netcom.com <Boeckel, Caroline>;katholiccard@ix.netcom.com <Gottesman, Blake>;katholiccard@ix.netcom.com <Estes, Ashley>;katholiccard@ix.netcom.com <Riepenhoff, Allison L.>;katholiccard@ix.netcom.com <Mallea, Jose>;katholiccard@ix.netcom.com <Reynolds, Tim>;katholiccard@ix.netcom.com <Figg, Kara G.>;katholiccard@ix.netcom.com <Weinstein, Jared B.>;katholiccard@ix.netcom.com <Cleveland, Carolyn E.>;katholiccard@ix.netcom.com <Bird, Debra D.>;katholiccard@ix.netcom.com <Barclay, Barbara A.>;katholiccard@ix.netcom.com <Bartlett, Daniel J.>;katholiccard@ix.netcom.com <Bolten, Joshua B.>;katholiccard@ix.netcom.com <Bridgeland, John M.>;katholiccard@ix.netcom.com <Card, Andrew H.>;katholiccard@ix.netcom.com <Fleischer, Lawrence A.>;katholiccard@ix.netcom.com <Friedman, Stephen>;katholiccard@ix.netcom.com <Gerson, Michael J.>;katholiccard@ix.netcom.com <Gonzales, Alberto R.>;katholiccard@ix.netcom.com <Hagin, Joseph W>;katholiccard@ix.netcom.com <Hobbs, David W.>;katholiccard@ix.netcom.com <Miers, Harriet>;katholiccard@ix.netcom.com <Powell, Dina>;katholiccard@ix.netcom.com <Rove, Karl C.>;katholiccard@ix.netcom.com <Spellings, Margaret M.>;katholiccard@ix.netcom.com <Johnson III, Clay>;katholiccard@ix.netcom.com <Abbot, Charles S.>;katholiccard@ix.netcom.com <Ball, Andrea G.>;katholiccard@ix.netcom.com <Barrales, Ruben S.>;katholiccard@ix.netcom.com <DeFrancis, Suzy>;katholiccard@ix.netcom.com <Edson, Gary R.>;katholiccard@ix.netcom.com <Eskew, Tucker A.>;katholiccard@ix.netcom.com <Hennessey, Keith>;katholiccard@ix.netcom.com <Hernandez, Israel>;katholiccard@ix.netcom.com <Ingle, Edward>;katholiccard@ix.netcom.com <Jackson, Barry S.>;katholiccard@ix.netcom.com <Jenkins, Gregory J.>;katholiccard@ix.netcom.com <Keniry, Daniel>;katholiccard@ix.netcom.com <Lefkowitz, Jay P.>;katholiccard@ix.netcom.com <Leitch, David G.>;katholiccard@ix.netcom.com <McClellan, Scott>;katholiccard@ix.netcom.com <McConnell, John P.>;katholiccard@ix.netcom.com <Mehlman, Ken>;katholiccard@ix.netcom.com <Montgomery, Brian D.>;katholiccard@ix.netcom.com <Ojakli, Ziad>;katholiccard@ix.netcom.com <Towey, Jim>;katholiccard@ix.netcom.com <Wehner, Peter H.>;katholiccard@ix.netcom.com <Westine, Lezlee J.>;katholiccard@ix.netcom.com <Allen, Michael>;katholiccard@ix.netcom.com <Arends, Jackie>;katholiccard@ix.netcom.com <Badger, William D.>;katholiccard@ix.netcom.com <Bartolomucci, H. Christopher>;katholiccard@ix.netcom.com <Bernard, Kenneth>;katholiccard@ix.netcom.com <Besanceney, Brian R.>;katholiccard@ix.netcom.com <Beyer, Todd W.>;katholiccard@ix.netcom.com <Beynon, Rebecca A.>;katholiccard@ix.netcom.com <Blahous, Charles P.>;katholiccard@ix.netcom.com <Brosnahan, Jennifer R.>;katholiccard@ix.netcom.com <Buchan, Claire>;katholiccard@ix.netcom.com <Bullock, Katja>;katholiccard@ix.netcom.com <Burgeson, Christine M.>;katholiccard@ix.netcom.com <Burks, Jonathan W.>;katholiccard@ix.netcom.com <Chadwick, Kirsten>;katholiccard@ix.netcom.com <Christie, Ronald I.>;katholiccard@ix.netcom.com <Clark, Alicia P.>;katholiccard@ix.netcom.com <Contreras, Rebecca>;katholiccard@ix.netcom.com <Cox, Christopher C.>;katholiccard@ix.netcom.com <Jensen, Amy>;katholiccard@ix.netcom.com <Devenish, Nicole>;katholiccard@ix.netcom.com <Dougherty, Elizabeth S.>;katholiccard@ix.netcom.com <Dunn, David>;katholiccard@ix.netcom.com <Everson, Nanette>;katholiccard@ix.netcom.com <Falkenrath, Richard>;katholiccard@ix.netcom.com <Fenton, Catherine S.>;katholiccard@ix.netcom.com <Francisco, Noel J.>;katholiccard@ix.netcom.com <Gannon, Kelley>;katholiccard@ix.netcom.com <Gilbert, Alan>;katholiccard@ix.netcom.com <Goeglein, Tim>;katholiccard@ix.netcom.com <Goldman, Adam B.>;katholiccard@ix.netcom.com <Grubbs, Wendy J.>;katholiccard@ix.netcom.com <Higbee, David>;katholiccard@ix.netcom.com <Kaplan, Joel>;katholiccard@ix.netcom.com <Kavanaugh, Brett M.>;katholiccard@ix.netcom.com <Kelly, James M.>;katholiccard@ix.netcom.com <Kirk, Matthew>;katholiccard@ix.netcom.com <Kozberg, Lindsey C.>;katholiccard@ix.netcom.com <Kuo, David>;katholiccard@ix.netcom.com <Kurtz, Paul B.>;katholiccard@ix.netcom.com <Liang, Elan>;katholiccard@ix.netcom.com <Loper, Ginger G.>;katholiccard@ix.netcom.com <Smith, Heidi M.>;katholiccard@ix.netcom.com <Marsh, Robert>;katholiccard@ix.netcom.com <McNally, Robert C.>;katholiccard@ix.netcom.com <McNally, Edward>;katholiccard@ix.netcom.com <Moy, Edmund C.>;katholiccard@ix.netcom.com <Neusner, Noam M.>;katholiccard@ix.netcom.com <Newstead, Jennifer G.>;katholiccard@ix.netcom.com <O'Hollaren, Sean B.>;katholiccard@ix.netcom.com

<Pelletier, Eric C.>;kathicard@ix.netcom.com <Peterman, Brian>;kathicard@ix.netcom.com
 <Powell, Benjamin A.>;kathicard@ix.netcom.com <Reardon, Brian>;kathicard@ix.netcom.com
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 Desiree T.>;kathicard@ix.netcom.com <Schacht, Diana L.>;kathicard@ix.netcom.com <Schlapp,
 Matthew A.>;kathicard@ix.netcom.com <Scully, Matthew>;kathicard@ix.netcom.com <Sforza,
 Scott N.>;kathicard@ix.netcom.com <Silverberg, Kristen>;kathicard@ix.netcom.com <Torgerson,
 Karin B.>;kathicard@ix.netcom.com <Troy, Tevi>;kathicard@ix.netcom.com <Ullyot, Theodore
 W.>;kathicard@ix.netcom.com <Warsh, Kevin>;kathicard@ix.netcom.com <Nelson,
 Carolyn>;kathicard@ix.netcom.com <Bumatay, Patrick J.>;kathicard@ix.netcom.com <Hughes,
 Taylor A.>;kathicard@ix.netcom.com <Ritacco, Krista L.>;kathicard@ix.netcom.com <Campbell,
 Anne E.>;kathicard@ix.netcom.com <Reese, Shelley>;kathicard@ix.netcom.com <Ingols, Adam
 B.>;kathicard@ix.netcom.com <West, Christal R.>;kathicard@ix.netcom.com <Douglas, Penny
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 L.>;kathicard@ix.netcom.com <Snee, Ashley>;kathicard@ix.netcom.com <Ralston, Susan
 B.>;kathicard@ix.netcom.com <Hager, Henry C>;kathicard@ix.netcom.com <McDonald,
 Rebekah>;kathicard@ix.netcom.com <Walters, Katherine M.>;kathicard@ix.netcom.com
 <Bellinger, John B.>;kathicard@ix.netcom.com <Miller, Franklin C.>;kathicard@ix.netcom.com
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 <McCormack, Brian V.>;kathicard@ix.netcom.com <Cabral, Raquel>;kathicard@ix.netcom.com
 <Middlemas, A. Morgan>;kathicard@ix.netcom.com <Blakeman, Bradley
 A.>;kathicard@ix.netcom.com <Gambatesa, Linda M.>;kathicard@ix.netcom.com <Litkenhaus,
 Colleen>;kathicard@ix.netcom.com <Daniels, Mitchell>;kathicard@ix.netcom.com <Heishman,
 Jane C.>;kathicard@ix.netcom.com <Heishman, Jane C.>;kathicard@ix.netcom.com <Lineberry,
 Laura E.>;kathicard@ix.netcom.com <Koch, Jennie M.>;kathicard@ix.netcom.com <Travers,
 David L.>;kathicard@ix.netcom.com <Raad, Lori J.>;kathicard@ix.netcom.com <Keller, Karen
 E.>;kathicard@ix.netcom.com <Altoft, Lois E.>;kathicard@ix.netcom.com <Gray,
 Ann>;kathicard@ix.netcom.com <Hughes, Taylor A.>;kathicard@ix.netcom.com <Figg, Jeanie
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 Diana>;kathicard@ix.netcom.com <Miller, Mike>;kathicard@ix.netcom.com <Tubb,
 Richard>;kathicard@ix.netcom.com <Heath, Michael>;kathicard@ix.netcom.com <Steen,
 Gretchen P.>;kathicard@ix.netcom.com <Stout, Dennis L.>;kathicard@ix.netcom.com <Stout,
 Timothy C.>;kathicard@ix.netcom.com <Reese, Shelley>;kathicard@ix.netcom.com <Middlemas,
 A. Morgan>;kathicard@ix.netcom.com <Rust, Kathryn E.>;kathicard@ix.netcom.com <Hager,
 Henry C>;kathicard@ix.netcom.com <Jacanin, Marilyn R.>;kathicard@ix.netcom.com <Draper,
 Eric>;kathicard@ix.netcom.com <Sternner, Susan L.>;kathicard@ix.netcom.com <Davis Photo
 Office, Michael>;kathicard@ix.netcom.com <Davis, Alicia W.>;kathicard@ix.netcom.com <Good,
 Terry W.>;kathicard@ix.netcom.com <Droege, Philip C.>;kathicard@ix.netcom.com <Campen,
 Tim>;kathicard@ix.netcom.com <Otto, Eric H.>;kathicard@ix.netcom.com <West, Christal
 R.>;kathicard@ix.netcom.com <Ingols, Adam B.>;kathicard@ix.netcom.com <Cropper, Stacia
 L.>;kathicard@ix.netcom.com <Evans, Sandra K>;kathicard@ix.netcom.com <Chambers, Shane
 P.>;kathicard@ix.netcom.com <Hanusa, Mary Ann>;kathicard@ix.netcom.com <Campbell, Anne
 E.>;kathicard@ix.netcom.com <Arnold, Listi>;kathicard@ix.netcom.com <Pritchett, Clare>;Sean
 McCarthy PRA 6 Glenn Kessler PRA 6 Lin Tynes
 PRA 6 Rob Digiuise
 PRA 6 kathicard@ix.netcom.com <Riepenhoff, Allison
 L.>;kathicard@ix.netcom.com <Bennett, Melissa S.>;kathicard@ix.netcom.com <Kyle, Ross
 M.>;kathicard@ix.netcom.com <Mallea, Jose>;PPD ops
 PRA 6 kathicard@ix.netcom.com <Reynolds, Tim>
 kathicard@ix.netcom.com <kathicard@ix.netcom.com>

CC:
 Sent:
 Subject:

5/8/2003 9:19:26 AM
 Surprise at 5:30 pm in the Roosevelt Room for Sec. Card

Please join us for a surprise birthday party for Sec. Card
 at 5:30 pm today in the Roosevelt Room

Hope you can join us!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Sheila.Joy@usdoj.gov <Sheila.Joy@usdoj.gov>
Sent: 5/8/2003 5:37:39 AM
Subject: : RE: chart of early circuit judges

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 09:37:39.00
SUBJECT:: RE: chart of early circuit judges
TO: "Sheila.Joy@usdoj.gov" <Sheila.Joy@usdoj.gov> ("Sheila.Joy@usdoj.gov"
<Sheila.Joy@usdoj.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Right, there was one "rejected." But a few of the spaces are blank.
Question is whether those folks were confirmed or not.

"Sheila.Joy@usdoj.gov" <Sheila.Joy
05/08/2003 09:34:07 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: chart of early circuit judges

re confirmation - check the "confirmed or other" column

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:14 AM
To: Joy, Sheila
Subject: Re: chart of early circuit judges

Was everyone on this list confirmed?

(Embedded
image moved "Sheila.Joy@usdoj.gov" <Sheila.Joy
to file: 05/07/2003 10:19:02 PM
pic13414.pcx)

Record Type: Record

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

REV_00235734

Subject: chart of early circuit judges

Brett, The attached information has been compiled from two different sources -- both are hand written documents so the spelling of names may not be completely accurate -- I have not had time to check against the typed cards. The differences in the books are one set only list those individuals appointed - the other set lists nominations - in some parts of the book on nominations it is not clear whether the "was sent" means to the WH or to the Senate - I have used that date for the "nominated" column. I will try to confirm the information through the card index in the morning. I need to go through another book for the information between 1801 and the 1905 entries. Sheila

From: Sheila.Joy@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 5:42:06 AM
Subject: : RE: chart of early circuit judges

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Sheila.Joy@usdoj.gov" <Sheila.Joy@usdoj.gov> ("Sheila.Joy@usdoj.gov"
<Sheila.Joy@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 8-MAY-2003 09:42:06.00
SUBJECT:: RE: chart of early circuit judges
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

not confirmed - some were returned at the end of a Congress or Session without any action. If the "confirmed or other" column is blank the books did not show confirmation. ie Skelly Wright was not acted on as a circuit judge but a later reference showed a nominaton & confirmation as a district judge.

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

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:37 AM
To: Joy, Sheila
Subject: RE: chart of early circuit judges

Right, there was one "rejected." But a few of the spaces are blank.
Question
is whether those folks were confirmed or not.

(Embedded
image moved "Sheila.Joy@usdoj.gov" <Sheila.Joy
to file: 05/08/2003 09:34:07 AM
pic21102.pcx)

Record Type: Record

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

cc:
Subject: RE: chart of early circuit judges

re confirmation - check the "confirmed or other" column

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

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:14 AM
To: Joy, Sheila
Subject: Re: chart of early circuit judges

Was everyone on this list confirmed?

(Embedded
image moved "Sheila.Joy@usdoj.gov" <Sheila.Joy
to file: 05/07/2003 10:19:02 PM
pic13414.pcx)

Record Type: Record

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

cc:
Subject: chart of early circuit judges

Brett, The attached information has been compiled from two different sources -- both are hand written documents so the spelling of names may not be completely accurate -- I have not had time to check against the typed cards. The differences in the books are one set only list those individuals appointed - the other set lists nominations - in some parts of the book on nominations it is not clear whether the "was sent" means to the WH or to the Senate - I have used that date for the "nominated" column. I will try to confirm the information through the card index in the morning. I need to go through another book for the information between 1801 and the 1905 entries. Sheila

From: Sheila.Joy@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 5:57:58 AM
Subject: : RE: chart of early circuit judges

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Sheila.Joy@usdoj.gov" <Sheila.Joy@usdoj.gov> ("Sheila.Joy@usdoj.gov"
<Sheila.Joy@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 8-MAY-2003 09:57:58.00
SUBJECT:: RE: chart of early circuit judges
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

OK - Federal Judicial Center website reflects that Circuit Court for DC began in 1801 with the same powers as circuit judges but had other authority within district of columbia

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:37 AM
To: Joy, Sheila
Subject: RE: chart of early circuit judges

Right, there was one "rejected." But a few of the spaces are blank.
Question
is whether those folks were confirmed or not.

(Embedded
image moved "Sheila.Joy@usdoj.gov" <Sheila.Joy
to file: 05/08/2003 09:34:07 AM
pic21102.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: chart of early circuit judges

re confirmation - check the "confirmed or other" column

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, May 08, 2003 9:14 AM
To: Joy, Sheila
Subject: Re: chart of early circuit judges

Was everyone on this list confirmed?

(Embedded
image moved "Sheila.Joy@usdoj.gov" <Sheila.Joy
to file: 05/07/2003 10:19:02 PM
pic13414.pcx)

Record Type: Record

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

cc:
Subject: chart of early circuit judges

Brett, The attached information has been compiled from two different sources -- both are hand written documents so the spelling of names may not be completely accurate -- I have not had time to check against the typed cards. The differences in the books are one set only list those individuals appointed - the other set lists nominations - in some parts of the book on nominations it is not clear whether the "was sent" means to the WH or to the Senate - I have used that date for the "nominated" column. I will try to confirm the information through the card index in the morning. I need to go through another book for the information between 1801 and the 1905 entries. Sheila

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Christopher J. Orr/WHO/EOP@EOP [WHO] <Christopher J. Orr>
CC: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 5/8/2003 6:17:23 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 10:17:23.00
SUBJECT: :
TO: Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

can you use pictures of Estrada and Owen from their hearings -- from AP.

Also, photo office has pictures of them individually with President on May 9, 2001.

From: Nelson, Carolyn
To: <Figg, Kara G.>;<Kavanaugh, Brett M.>
Sent: 5/8/2003 10:32:46 AM
Subject: RE: Pre-Brief tomorrow?

The Judge would indeed like 5 minutes with the President prior to our event.

Thanks for asking!

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

From: Figg, Kara G.
Sent: Thursday, May 08, 2003 10:18 AM
To: Kavanaugh, Brett M.
Cc: Nelson, Carolyn
Subject: Pre-Brief tomorrow?

I noticed you did not ask for a Pre-Brief before tomorrow's event.
Does the Judge need 5 minutes prior to brief the President? Or, do you feel comfortable without one?
Thanks.

From: Figg, Kara G.
To: <Nelson, Carolyn>;<Kavanaugh, Brett M.>
Sent: 5/8/2003 10:33:10 AM
Subject: RE: Pre-Brief tomorrow?

thanks!

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

From: Nelson, Carolyn
Sent: Thursday, May 08, 2003 10:33 AM
To: Figg, Kara G.; Kavanaugh, Brett M.
Subject: RE: Pre-Brief tomorrow?

The Judge would indeed like 5 minutes with the President prior to our event.

Thanks for asking!

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

From: Figg, Kara G.
Sent: Thursday, May 08, 2003 10:18 AM
To: Kavanaugh, Brett M.
Cc: Nelson, Carolyn
Subject: Pre-Brief tomorrow?

I noticed you did not ask for a Pre-Brief before tomorrow's event.
Does the Judge need 5 minutes prior to brief the President? Or, do you feel comfortable without one?
Thanks.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Ashley Snee/WHO
/EOP@Exchange [WHO] <Ashley Snee>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO]
<Alberto R. Gonzales>
Sent: 5/8/2003 8:06:06 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 8-MAY-2003 12:06:06.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

From the How Appealing Blog:

;
This evening's installment of "Ask the White House" to focus on judicial nominations: According to the White House Web site <<http://www.whitehouse.gov/>>, "Counsel to the President Judge Alberto Gonzales will host the next 'Ask the White House' to discuss the President's judicial nominees and the nominating process on the White House web site (www.whitehouse.gov) on Thursday, May 8 at 5 p.m. ET." And this page <<http://www.whitehouse.gov/ask/>> advises that "You can submit questions to Judge Gonzales beginning at 3pm today." I hope that those readers of "How Appealing" who regularly ask me difficult questions decrying or supporting the current state of the federal judicial nomination and confirmation process will take the time to submit their questions to Judge Gonzales.

From: CN=Nanette Everson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 10:17:14 AM
Subject: : Re: DePelchin Children's Center Letter - for approval on Monday
Attachments: P_4XR9G003_WHO.TXT_1.doc; P_4XR9G003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 14:17:14.00
SUBJECT:: Re: DePelchin Children's Center Letter - for approval on Monday
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ok by me

Brett M. Kavanaugh
05/05/2003 11:43:04 PM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on Monday

Nanette: I think this is ok, but wanted to check. Any concerns? They are obviously on a very short fuse.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/05/2003 11:40 PM -----

Katherine M. Walters
05/05/2003 07:29:14 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on Monday

any word? The event is on May 8th. Thanks.

----- Forwarded by Katherine M. Walters/WHO/EOP on
05/05/2003 07:29 PM -----

Kimberly D. Rawson
05/02/2003 11:01:20 AM
Record Type: Record

To: Katherine M. Walters/WHO/EOP@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on Monday

----- Forwarded by Kimberly D. Rawson/WHO/EOP on
05/02/2003 10:59 AM -----

Kimberly D. Rawson
05/02/2003 08:55:10 AM
Record Type: Record

To: Jonathan W. Burks/WHO/EOP@Exchange@EOP
cc:
Subject: DePelchin Children's Center Letter - for approval on
Monday

Good Morning -
Attached, please find a letter for the DePelchin Luncheon - below is the
background info on the request and organization.
Ideally, we would really like to have this in the mail on Monday.
Thank you!

- it was requested by Jack Oliver.
- for the 5th annual DePelchin Children's Center luncheon Thursday, May 8.
- at the luncheon Dr. Peggy B. Smith will be given the Kezia DePelchin
award.
- President (41) & Mrs. Bush were the first recipients of the Kezia
DePelchin
award.
- Jane Seymour is the guest speaker.

-A bit about DePelchin.
DePelchin has had the privilege of serving Houston for over 110
years. The
agency was created in 1892 to shelter orphaned children, but, over
the
years, due to the ever changing needs of the community, they have
expanded
and adapted. DePelchin Children's Center is the largest and most
comprehensive provider of children's social and mental health
services in
the greater Houston area serving more than 27,000 clients through
30
programs in 60 locations. (I have also attached a fact sheet)

<<About DePelchin - one page.doc>>

- About DePelchin - one page.doc

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4XR9G003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4XR9G003_WHO.TXT_2>

April 29, 2003

I am pleased to send greetings to everyone gathered for the 5th annual DePelchin Children's Center Luncheon. Thank you and your members for the selfless service you have given to the greater Houston area for over 100 years. Service is an integral part of America's character and I am proud of your willingness to help provide needed services to better the social and emotional health of so many children and families.

May God bless you, and may God continue to bless America.

Sincerely,

George W. Bush

DePelchin has had the privilege of serving Houston for over 110 years. The agency was created in 1892 to shelter orphaned children, but, over the years, due to the ever changing needs of our community, we have expanded and adapted. DePelchin Children's Center is the largest and most comprehensive provider of children's social and mental health services in the greater Houston area serving more than 27,000 clients through 30 programs in 60 locations.

Our mission is: *“Recognizing that a child’s needs are best met in a family environment, DePelchin Children’s Center strengthens the lives of children and their families in our community by providing a continuum of services to prevent and resolve social and emotional crises.”*

DePelchin Children's Center provides a broad-based program of services to children and families in Harris, Ft. Bend, Montgomery and Waller counties in Texas. Programs are designed primarily to meet the needs of individuals and families in crisis requiring such services as:

- Parent education
- Teen pregnancy and teen parenting counseling services
- Adoption
- Post-adoption counseling and services
- Emergency shelters for housing abused, neglected, homeless and runaway children and adolescents.
- Foster care
- Therapeutic counseling and treatment services for emotionally disturbed children and adolescents.

The agency provides services to children and families in need, regardless of their ability to pay. DePelchin Children's Center receives funding from the United Way, the Texas Department of Protective and Regulatory Services, other governmental agencies, program fees, community support and investment income.

From: CN=Nanette Everson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 10:17:13 AM
Subject: : Re: Regional Appointees Conference

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 14:17:13.00
SUBJECT:: Re: Regional Appointees Conference
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I would like to match your presentation style; are you a talking head or will you have pictures?
----- Forwarded by Nanette Everson/WHO/EOP on 05/08/2003 02:11 PM -----

Tracy Jucas
05/06/2003 12:40:03 PM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc:
Subject: Re: Regional Appointees Conference

Will you need powerpoint equipment for this? You don't have much time (15 minutes), but I thought I'd check w/ you first before I get back w/ Christie.
----- Forwarded by Tracy Jucas/WHO/EOP on 05/06/2003 12:38 PM -----

05/02/2003 03:42 PM
Christie Parell
Christie Parell
Christie Parell
05/02/2003 03:42 PM
05/02/2003 03:42 PM
Record Type: Record

To: tracy jucas/who/eop@eop, jonathan f. ganter/who/eop@eop
cc:
bcc:
Subject: Re: Regional Appointees Conference

Excellent! Thanks for both of your help on this! Can you please check with them on whether they'll need audio/visual equipment eg. PowerPoint projector, etc. There will be a microphone, of course. Thanks!!

Brett M. Kavanaugh
05/02/2003 02:23:30 PM
Record Type: Record

To: Nanette Everson/WHO/EOP@EOP
cc: christie parell/who/eop@eop, brett m. kavanaugh/who/eop@eop,
tracy jucas/who/eop@eop, jonathan f. ganter/who/eop@eop
bcc:
Subject: Re: Regional Appointees Conference

ok by me

Nanette Everson
05/02/2003 01:44:11 PM
Record Type: Record

To: Christie Parell/WHO/EOP@EOP
cc: brett m. kavanaugh/who/eop@eop, tracy jucas/who/eop@eop,
jonathan f. ganter/who/eop@eop
bcc:
Subject: Re: Regional Appointees Conference

ok for me

05/02/2003 10:38 AM
Christie Parell
Christie Parell
Christie Parell
05/02/2003 10:38 AM
05/02/2003 10:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Nanette Everson/WHO/EOP@EOP
cc: Tracy Jucas/WHO/EOP@EOP, Jonathan F. Ganter/WHO/EOP@EOP
Subject: Regional Appointees Conference

Brett/Nanette:

Per Brian's e-mail below, he hopes that you will both be able to speak to the regional appointees on May 20th at 1:30pm in EEOB 450. It would be a 30 min. session with Brett speaking for 15 min. on the Hatch Act, and Nanette for 15 min. on Ethics. Does this time work in your schedules??

Thank you!!

----- Forwarded by Christie Parell/WHO/EOP on 04/28/2003
05:26 PM -----

From: Brian D. Montgomery/WHO/EOP@Exchange on 04/22/2003 12:01:48
PM
Record Type: Record

To: David G. Leitch/WHO/EOP@Exchange, Brett M.
Kavanaugh/WHO/EOP@EOP
cc: Charlotte L. Montiel/WHO/EOP@Exchange, Christie
Parell/WHO/EOP@EOP
Subject: Regional Appointees Conference

David/Brett:

The Offices of Cabinet Affairs, Presidential Personnel,
Intergovernmental Affairs, Political Affairs, and the Council for
Excellence in Government are together sponsoring a two-day conference

entitled "Regional Appointees: Challenges and Opportunities," scheduled for May 19-20, 2003 in Washington, DC.

This conference will be the first of its kind during this Administration and will include regional appointees from several Cabinet and sub-Cabinet agencies such as Education, Interior, Labor, EPA, HHS, FEMA, GSA, HUD and SBA. It will be held at the nearby Mayflower Hotel, with several sessions taking place in Room 450 EEOB.

Given your office's stake in such an event, we want to involve you in the conference's program workshops and plenary sessions. In working with the agencies, we have identified roughly 85 regional political appointees that we have invited to attend the conference. Other local agency personnel, including inter-governmental affairs staff, will also be invited.

The purpose of the conference is to better engage our regional appointees as representatives of the President around the country and to give them a chance to meet and hear from senior White House officials and agency leaders. Sessions will focus on a variety of vital issues including:

- ú Management Results / President's Management Team

- ú Building Support for the President's Agenda

- ú Freedom Corps / Faith-Based Initiatives

- ú Hatch Act / Ethics

- ú Policy Perspectives

- ú Homeland Security

- ú Working Together for Greater Regional Impact

- ú Legislative Update

- ú Foreign Policy Update

We have tentatively scheduled your presentation for Tuesday afternoon, May 20 in Room 450 EEOB (exact time is TBD). We would hope you could discuss your insights on the Hatch Act and ethics in government. We would also hope you could join us for a reception to be held later that evening.

We would greatly appreciate your participation, and I know that the Regional Appointees would appreciate hearing from you and will be happy to take your perspectives back with them to their respective regions. Please feel free to contact me should you have additional questions or you may have your assistant contact Christie Parell (6-2343) to confirm your availability.

Many thanks in advance,

Brian Montgomery

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Francisco, Noel J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>
Sent: 5/8/2003 2:50:35 PM
Subject: Judiciary Markup

Kuhl. 10-9

Roberts. 16-2, Kennedy and Durbin no, Schumer not voting

Callahan. 18-0, Schumer not voting

Hicks. 19-0

Moschella and Rapadas done by UC

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 11:14:14 AM
Subject: : Re: Judiciary Markup

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 15:14:14.00
SUBJECT:: Re: Judiciary Markup
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

who were the two nays on Roberts?
did Feinstein speak on Kuhl?

Brett M. Kavanaugh
05/08/2003 02:51:08 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Judiciary Markup

Kuhl.; 10-9
Roberts. 16-2, Kennedy and Durbin no, Schumer not voting
Callahan. 18-0, Schumer not voting
Hicks. 19-0
Moschella and Rapadas done by UC

Message Sent

To:

Alberto R. Gonzales/WHO/EOP@Exchange@EOP
David G. Leitch/WHO/EOP@Exchange@EOP
Jennifer R. Brosnahan/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Benjamin A. Powell/WHO/EOP@EOP
Theodore W. Ullyot/WHO/EOP@EOP

REV_00235774

From: Kavanaugh, Brett M.
To: <Campbell, Anne E.>;<Carroll, Colleen M.>
Sent: 5/8/2003 4:29:35 PM
Subject: Re: acknowledgements

additions to list below:

former Attorney General Bill Barr

Dick Wiley, Law Day Chair for the American Bar Association

Brett M. Kavanaugh

05/08/2003 04:07:04 PM

Record Type: Record

To: Anne E. Campbell/WHO/EOP@Exchange@EOP

cc: Colleen M. Carroll/WHO/EOP@EOP

Subject: acknowledgements

Do you need our help on that?

Right now the possible "long list" seems to be Senators TBD, Counsel Al Gonzales, Attorney General John Ashcroft, Deputy Attorney General Larry Thompson, Solicitor General Ted Olson, American Bar Association President A.P. Carlton, President of Hispanic National Bar Association Duard Bradshaw, former Attorney General Dick Thornburgh, former Counsel Boyden Gray, and former Clinton and Carter Counsel Lloyd Cutler.

From: Bennett, Melissa S.
To: katholic@ix.netcom.com <Bennett, Melissa S.>;katholic@ix.netcom.com <Kyle, Ross M.>;katholic@ix.netcom.com <Gillmor, Eleanor L.>;katholic@ix.netcom.com <Vestewig, Lauren J.>;katholic@ix.netcom.com <Hall, Philo D.>;katholic@ix.netcom.com <Justesen, Troy>;katholic@ix.netcom.com <Kuzmich, Holly A.>;katholic@ix.netcom.com <Malphrus, Garry>;katholic@ix.netcom.com <Sharp, Jess>;katholic@ix.netcom.com <Skelly, Layton>;katholic@ix.netcom.com <Wilson, Christina C.>;katholic@ix.netcom.com <Winland, Emily>;katholic@ix.netcom.com <O'Neill, Joseph F.>;katholic@ix.netcom.com <Thompson, Carol J.>;katholic@ix.netcom.com <Cooper, Jean>;katholic@ix.netcom.com <Allgood, Lauren K.>;katholic@ix.netcom.com <Heath, Daniel D.>;katholic@ix.netcom.com <Gerdelman, Sue H.>;katholic@ix.netcom.com <Smith, Marty P.>;katholic@ix.netcom.com <Boeckel, Caroline>;katholic@ix.netcom.com <Gottesman, Blake>;katholic@ix.netcom.com <Estes, Ashley>;katholic@ix.netcom.com <Riepenhoff, Allison L.>;katholic@ix.netcom.com <Mallea, Jose>;katholic@ix.netcom.com <Reynolds, Tim>;katholic@ix.netcom.com <Figg, Kara G.>;katholic@ix.netcom.com <Weinstein, Jared B.>;katholic@ix.netcom.com <Cleveland, Carolyn E.>;katholic@ix.netcom.com <Bird, Debra D.>;katholic@ix.netcom.com <Barclay, Barbara A.>;katholic@ix.netcom.com <Bartlett, Daniel J.>;katholic@ix.netcom.com <Bolten, Joshua B.>;katholic@ix.netcom.com <Bridgeland, John M.>;katholic@ix.netcom.com <Miers, Harriet>;katholic@ix.netcom.com <Powell, Dina>;katholic@ix.netcom.com <Rove, Karl C.>;katholic@ix.netcom.com <Spellings, Margaret M.>;katholic@ix.netcom.com <Abbot, Charles S.>;katholic@ix.netcom.com <Ball, Andrea G.>;katholic@ix.netcom.com <Barrales, Ruben S.>;katholic@ix.netcom.com <DeFrancis, Suzy>;katholic@ix.netcom.com <Edson, Gary R.>;katholic@ix.netcom.com <Eskew, Tucker A.>;katholic@ix.netcom.com <Hennessey, Keith>;katholic@ix.netcom.com <Hernandez, Israel>;katholic@ix.netcom.com <Ingle, Edward>;katholic@ix.netcom.com <Jackson, Barry S.>;katholic@ix.netcom.com <Jenkins, Gregory J.>;katholic@ix.netcom.com <Keniry, Daniel>;katholic@ix.netcom.com <Lefkowitz, Jay P.>;katholic@ix.netcom.com <Leitch, David G.>;katholic@ix.netcom.com <McClellan, Scott>;katholic@ix.netcom.com <McConnell, John P.>;katholic@ix.netcom.com <Mehlman, Ken>;katholic@ix.netcom.com <Montgomery, Brian D.>;katholic@ix.netcom.com <Ojakli, Ziad>;katholic@ix.netcom.com <Towey, Jim>;katholic@ix.netcom.com <Wehner, Peter H.>;katholic@ix.netcom.com <Westine, Lezlee J.>;katholic@ix.netcom.com <Allen, Michael>;katholic@ix.netcom.com <Arends, Jackie>;katholic@ix.netcom.com <Badger, William D.>;katholic@ix.netcom.com <Bartolomucci, H. Christopher>;katholic@ix.netcom.com <Bernard, Kenneth>;katholic@ix.netcom.com <Besanceney, Brian R.>;katholic@ix.netcom.com <Beyer, Todd W.>;katholic@ix.netcom.com <Beynon, Rebecca A.>;katholic@ix.netcom.com <Blahous, Charles P.>;katholic@ix.netcom.com <Brosnahan, Jennifer R.>;katholic@ix.netcom.com <Buchan, Claire>;katholic@ix.netcom.com <Bullock, Katja>;katholic@ix.netcom.com <Burgeson, Christine M.>;katholic@ix.netcom.com <Burks, Jonathan W.>;katholic@ix.netcom.com <Chadwick, Kirsten>;katholic@ix.netcom.com <Christie, Ronald I.>;katholic@ix.netcom.com <Clark, Alicia P.>;katholic@ix.netcom.com <Contreras, Rebecca>;katholic@ix.netcom.com <Cox, Christopher C.>;katholic@ix.netcom.com <Jensen, Amy>;katholic@ix.netcom.com <Devenish, Nicole>;katholic@ix.netcom.com <Dougherty, Elizabeth S.>;katholic@ix.netcom.com <Dunn, David>;katholic@ix.netcom.com <Everson, Nanette>;katholic@ix.netcom.com <Falkenrath, Richard>;katholic@ix.netcom.com <Fenton, Catherine S.>;katholic@ix.netcom.com <Francisco, Noel J.>;katholic@ix.netcom.com <Gannon, Kelley>;katholic@ix.netcom.com <Gilbert, Alan>;katholic@ix.netcom.com <Goeglein, Tim>;katholic@ix.netcom.com <Goldman, Adam B.>;katholic@ix.netcom.com <Grubbs, Wendy J.>;katholic@ix.netcom.com <Higbee, David>;katholic@ix.netcom.com <Kaplan, Joel>;katholic@ix.netcom.com <Kavanaugh, Brett M.>;katholic@ix.netcom.com <Kelly, James M.>;katholic@ix.netcom.com <Kirk, Matthew>;katholic@ix.netcom.com <Kozberg, Lindsey C.>;katholic@ix.netcom.com <Kuo, David>;katholic@ix.netcom.com <Kurtz, Paul B.>;katholic@ix.netcom.com <Liang, Elan>;katholic@ix.netcom.com <Loper, Ginger G.>;katholic@ix.netcom.com <Smith, Heidi M.>;katholic@ix.netcom.com <Marsh, Robert>;katholic@ix.netcom.com <McNally, Robert C.>;katholic@ix.netcom.com <McNally, Edward>;katholic@ix.netcom.com <Moy, Edmund C.>;katholic@ix.netcom.com <Neusner, Noam M.>;katholic@ix.netcom.com <Newstead, Jennifer G.>;katholic@ix.netcom.com <O'Hollaren, Sean B.>;katholic@ix.netcom.com <Pelletier, Eric C.>;katholic@ix.netcom.com <Peterman, Brian>;katholic@ix.netcom.com <Powell, Benjamin A.>;katholic@ix.netcom.com <Reardon, Brian>;katholic@ix.netcom.com <Wright, Liza>;katholic@ix.netcom.com <Sampson, Kyle>;katholic@ix.netcom.com <Sayle, Desiree T.>;katholic@ix.netcom.com <Schacht, Diana L.>;katholic@ix.netcom.com <Schlapp,

Matthew A.>;kathicard@ix.netcom.com <Scully, Matthew>;kathicard@ix.netcom.com <Sforza, Scott N.>;kathicard@ix.netcom.com <Silverberg, Kristen>;kathicard@ix.netcom.com <Torgerson, Karin B.>;kathicard@ix.netcom.com <Troy, Tevi>;kathicard@ix.netcom.com <Ullyot, Theodore W.>;kathicard@ix.netcom.com <Warsh, Kevin>;kathicard@ix.netcom.com <Nelson, Carolyn>;kathicard@ix.netcom.com <Bumatay, Patrick J.>;kathicard@ix.netcom.com <Hughes, Taylor A.>;kathicard@ix.netcom.com <Ritacco, Krista L.>;kathicard@ix.netcom.com <Campbell, Anne E.>;kathicard@ix.netcom.com <Reese, Shelley>;kathicard@ix.netcom.com <Ingols, Adam B.>;kathicard@ix.netcom.com <West, Christal R.>;kathicard@ix.netcom.com <Douglas, Penny G.>;kathicard@ix.netcom.com <Deckard, Josh>;kathicard@ix.netcom.com <Levine, Adam L.>;kathicard@ix.netcom.com <Snee, Ashley>;kathicard@ix.netcom.com <Ralston, Susan B.>;kathicard@ix.netcom.com <Hager, Henry C>;kathicard@ix.netcom.com <McDonald, Rebekah>;kathicard@ix.netcom.com <Walters, Katherine M.>;kathicard@ix.netcom.com <Bellinger, John B.>;kathicard@ix.netcom.com <Miller, Franklin C.>;kathicard@ix.netcom.com <Cleveland, Robin>;kathicard@ix.netcom.com <Heiden, Debra>;kathicard@ix.netcom.com <Field, Jennifer D.>;kathicard@ix.netcom.com <Mayfield, Jennifer H.>;kathicard@ix.netcom.com <McCormack, Brian V.>;kathicard@ix.netcom.com <Cabral, Raquel>;kathicard@ix.netcom.com <Middlemas, A. Morgan>;kathicard@ix.netcom.com <Blakeman, Bradley A.>;kathicard@ix.netcom.com <Gambatesa, Linda M.>;kathicard@ix.netcom.com <Litkenhaus, Colleen>;kathicard@ix.netcom.com <Daniels, Mitchell>;kathicard@ix.netcom.com <Heishman, Jane C.>;kathicard@ix.netcom.com <Heishman, Jane C.>;kathicard@ix.netcom.com <Lineberry, Laura E.>;kathicard@ix.netcom.com <Koch, Jennie M.>;kathicard@ix.netcom.com <Travers, David L.>;kathicard@ix.netcom.com <Raad, Lori J.>;kathicard@ix.netcom.com <Keller, Karen E.>;kathicard@ix.netcom.com <Altoft, Lois E.>;kathicard@ix.netcom.com <Gray, Ann>;kathicard@ix.netcom.com <Hughes, Taylor A.>;kathicard@ix.netcom.com <Figg, Jeanie L.>;kathicard@ix.netcom.com <Barfield, Tiffany L.>;kathicard@ix.netcom.com <Riecke, January M.>;kathicard@ix.netcom.com <McCord, Lauren>;kathicard@ix.netcom.com <Donnelly, Diana>;kathicard@ix.netcom.com <Miller, Mike>;kathicard@ix.netcom.com <Tubb, Richard>;kathicard@ix.netcom.com <Heath, Michael>;kathicard@ix.netcom.com <Steen, Gretchen P.>;kathicard@ix.netcom.com <Stout, Dennis L.>;kathicard@ix.netcom.com <Stout, Timothy C.>;kathicard@ix.netcom.com <Reese, Shelley>;kathicard@ix.netcom.com <Middlemas, A. Morgan>;kathicard@ix.netcom.com <Rust, Kathryn E.>;kathicard@ix.netcom.com <Hager, Henry C>;kathicard@ix.netcom.com <Jacanin, Marilyn R.>;kathicard@ix.netcom.com <Draper, Eric>;kathicard@ix.netcom.com <Sternner, Susan L.>;kathicard@ix.netcom.com <Davis Photo Office, Michael>;kathicard@ix.netcom.com <Davis, Alicia W.>;kathicard@ix.netcom.com <Good, Terry W.>;kathicard@ix.netcom.com <Droege, Philip C.>;kathicard@ix.netcom.com <Campen, Tim>;kathicard@ix.netcom.com <Otto, Eric H.>;kathicard@ix.netcom.com <West, Christal R.>;kathicard@ix.netcom.com <Ingols, Adam B.>;kathicard@ix.netcom.com <Cropper, Stacia L.>;kathicard@ix.netcom.com <Evans, Sandra K>;kathicard@ix.netcom.com <Chambers, Shane P.>;kathicard@ix.netcom.com <Hanusa, Mary Ann>;kathicard@ix.netcom.com <Campbell, Anne E.>;kathicard@ix.netcom.com <Arnold, Listi>;kathicard@ix.netcom.com <Pritchett, Clare>;Sean McCarthy <PRA 6>;Glenn Kessler <PRA 6>;Lin Tynes <PRA 6>;Rob DiGiuse <PRA 6>;kathicard@ix.netcom.com <Riepenhoff, Allison L.>;kathicard@ix.netcom.com <Kyle, Ross M.>;kathicard@ix.netcom.com <Mallea, Jose>;PPD ops <PRA 6>;kathicard@ix.netcom.com <Reynolds, Tim> kathicard@ix.netcom.com <kathicard@ix.netcom.com>

CC:
Sent:
Subject:

5/8/2003 5:29:14 PM
REMINDER

Please join us for a surprise birthday party for Sec. Card
at 5:30 pm today in the Roosevelt Room

Hope you can join us!

From: Kyle, Ross M.
To: <Kavanaugh, Brett M.>
Sent: 5/8/2003 6:45:08 PM
Subject: Proposed EO "...Justice in the Federal Courts"

BOLTEN = NO COMMENT

Message

From: Healy, Erin E. [Healy, Erin E.]
Sent: 5/8/2003 7:01:54 PM
To: Bartlett, Daniel J.; Gottesman, Blake; Loy, Carrie B.; West, Christal R.; Kavanaugh, Brett M.; Nelson, Carolyn; Av, Av;
PRA 6 Sforza, Scott N.; Young, Tracy; Purcell, Kristopher N.; Deservi, Robert; Mark, David M.;
McCathran, Ellen W.; Fritz, Angela I.; Dickens, Reed; Godfrey, Georgia D.; Deckard, Josh ; Cassano, Lois A.; Donnan,
Elizabeth H.; Viana, Mercedes M.; Mamo, Jeanie S.; Abney, Allen K.; Draper, Eric ; Morse, Paul L; Jacanin, Marilyn R.;
Ishikawa, Moreen E.; Hager, Katharina M.; Sterner, Susan L.; Fenton, Catherine S.; Figg, Jeanie L.; Doebler, Max;
Miers, Harriet; Cleveland, Carolyn E.; Bird, Debra D.; Barclay, Barbara A.; Torgerson, Karin B.; Burks, Jonathan W.
Subject: Judicial Line by Line
Attachments: Judicial Independence.doc

<<Judicial Independence.doc>>

Line by Line
Judicial Independence and the Judicial Confirmation Process
Friday, May 9, 2003
Rose Garden

- NOTE: Weather call will be at 8:00 a.m. Rain site will be Presidential Hall (Rm. 450).
- 8:30 a.m. Ushers will set press risers, flag boxes and rope & stanchion.
Park Service will set 240 chairs.
WHCA will set flags, audio & podium (Blue Falcon on the middle step).
Lights will set.
- 9:00 a.m. Media will pre-set.
- 9:30 a.m. Guests arrive the East Visitors Center and hold in the East Garden.
- 10:10 a.m. Guests take their seats in the Rose Garden.
- 10:15 a.m. Final Access.
- 10:20 a.m. AG Ashcroft and Judge Gonzales meet with POTUS for pre-brief in Oval Office.
- 10:25 a.m. POTUS, AG Ashcroft & Judge Gonzales meet with Senators in the Oval Office.
- Senator Corynyn
 - Senator Dole
 - Senator Frist
 - Senator Graham
 - Senator Hatch
 - Senator McConnell
 - Senator Miller
 - Senator Specter
- 10:30 a.m. Ashcroft & Senators escorted to their seats in the Rose Garden via Lower Press.
- 10:32 a.m. WHCA announces POTUS accompanied by Judge Gonzales.
- 10:33 a.m. Judge Gonzales introduces POTUS.
****POTUS stands stage LEFT****
- 10:35 a.m. POTUS gives remarks.
Judge Gonzales stands stage RIGHT
- 10:50 a.m. POTUS concludes remarks and departs.

###

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 3:10:04 PM
Subject: : Re: Roberts confirmed by voice vote

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 8-MAY-2003 19:10:04.00
SUBJECT:: Re: Roberts confirmed by voice vote
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

do we have confirmation of this?

Brett M. Kavanaugh
05/08/2003 06:18:43 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Roberts confirmed by voice vote

Message Sent

To: _____
Alberto R. Gonzales/WHO/EOP@Exchange@EOP
David G. Leitch/WHO/EOP@Exchange@EOP
Jennifer R. Brosnahan/WHO/EOP@EOP
Jennifer G. Newstead/WHO/EOP@EOP
H. Christopher Bartolomucci/WHO/EOP@EOP
Kyle Sampson/WHO/EOP@EOP
Noel J. Francisco/WHO/EOP@EOP
Benjamin A. Powell/WHO/EOP@EOP
Theodore W. Ullyot/WHO/EOP@EOP

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/8/2003 3:11:21 PM
Subject: : You said three of those who were nominated on 9/11 are still waiting. Shouldn't it be 4?

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 8-MAY-2003 19:11:21.00

SUBJECT:: You said three of those who were nominated on 9/11 are still waiting. Shouldn't it be 4?

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

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

From: Donnan, Elizabeth H.

Sent: Thursday, May 08, 2003 6:30 PM

Subject: SCHEDULE UPDATE: CONFERENCE CALL ON BACKGROUND

THERE WILL BE A CONFERENCE CALL ON BACKGROUND WITH A SENIOR ADMINISTRATION OFFICIAL AT 6:55PM RE: THE PRESIDENT'S REMARKS TOMORROW ON JUDICIAL INDEPENDENCE AND JUDICIAL CONFIRMATION PROCESS. CALL (202) 395-6392, CODE: 275805 TO PARTICIPATE

From: Kavanaugh, Brett M.
To: <Orr, Christopher J.>
CC: <Snee, Ashley>
Sent: 5/8/2003 9:00:17 PM
Subject: Re: Thanks

This was really great. Thanks so much.

From: Christopher J. Orr on 05/08/2003 06:53:42 PM

Record Type: Record

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

cc:

Subject: Thanks

Thanks for a successful edition of "Ask the White House".

The letter which the Judge referenced is now online. The video will be launched tomorrow, pending approval. But it looks good.

Thanks again. The transcript is included in this email. It is also located at:

www.whitehouse.gov/ask/20030508.html

Jimmy

Welcome to "Ask the White House" -- an online interactive forum where you can submit questions to Bush administration officials.

Today's guest: Counsel to the President Judge Alberto Gonzales

Today's topic: The President's judicial nominees and the nominating process.

Judge Gonzales

Good afternoon. Thanks for joining me on "Ask the White House". This is an important day to participate in this online discussion as tomorrow is the two year anniversary of the president's first 11 Appeals Court nominations. Of those nominations, four still have yet to receive an up or down vote. Let's get started.

Eddie, from Macon Ga writes:

On todays local news there was a story about a possible lawsuit by Senators Saxby Chambliss Ga and Lindsey Graham SC regarding the democrats blocking of President Bushs nominations. What kind of results or impact do you think will be made by such a move? Thank you!

Judge Gonzales

As the President has said, the Senate has a constitutional responsibility to provide an up or down vote on judicial nominees. Without endorsing any specific approach, we applaud Senators Chambliss and Graham for seeking a solution to a broken process.

Karen, from Needham MA writes:

What are the presidents plans regarding the filibuster against Miguel Estrada?

Judge Gonzales

As the President has said, he intends to stand beside Miguel Estrada until he is sworn in as a judge on the D. C. Circuit Court of Appeals. Miguel is well qualified and represents the American dream. Despite a remarkable record of achievement he is being held to a double standard. The President will continue to work with Senators of both parties to get him the up or down vote he deserves.

Rebecca, from Goshen, Ohio writes:

I was wondering what is it like to work with the President?

Judge Gonzales

Good question, it is an honor to work with George W. Bush. The President is a remarkable person. It is hard to be around the President and not learn, just by watching and listening. It is also hard to be around the President and not like him.

Henry, from Oceanside, California writes:

What does it matter if 2-3 nominees dont get approved? Over 120 already have been. Isnt this a good batting average for the Senate?

Judge Gonzales

Each nominee is entitled to a vote and to be considered on his or her merits. Every qualified nominee should be confirmed in a timely manner. Only half of the President's appeals court nominees have received an up or down vote and nine of the pending nominees have been waiting more than a year for a vote.

Patrick, from Richardson, TX writes:

Though a bipartisan merit selection system for federal judicial appointments would have political drawbacks for whoever is president--such as the loss of a tool to reward core constituencies and an inability to shape the ideological direction of the courts, 1 do you see any advantages from such a system, and 2 could there ever be the political will to seek an institutionalized compromise that would back away from the historic drive to pack the federal courts the impulse behind Marbury v. Madison afterall?

Judge Gonzales

The framers of the Constitution wanted one person to be responsible and accountable for the nomination of federal

judges, and the Senate as a whole to vote on the nominees.

Lori, from Corpus Christi, TX writes:

Have you found a good tex-mex restaurant in the nations capital?

Judge Gonzales

My family and I miss Texas and the great Tex-Mex food in Austin...and of course Corpus Christi. Although we love Washington, we look forward to the day we can return to my beloved State. Go Astros!

Shaun, from San Antonio writes:

Judge Gonzales, heres a tough one for you... Dallas Cowboys or Houston Texans?

Judge Gonzales

Houston Oilers!!!!!!!

Gregory, from Sandusky, OH writes:

Since the advise and consent role of Congress, as spelled out in the Constitution, specifically states that a simple majority vote is required, is it not unconstitutional for the Senate Democrats to insist that a 60 favorable vote to break a filibuster is needed for the whole Senate to vote up or down on a judicial nomination?

Judge Gonzales

The Senate has a constitutional responsibility to provide an up or down vote. It is unprecedented for a minority of Senators to block a vote on an appeals court nominee by means of a filibuster. Both Miguel Estrada and Priscilla Owen have the support of a majority of Senators, and should receive a vote and be confirmed.

James, from New York, NY writes:

When you say nine appeals court nominees have been waiting for more than one year, are you including Justice Owen and Judge Pickering? They did receive votes, after all, even though the votes were negative. Then the President renominated them when the Republicans regained control of the Senate, and theyve been waiting about four months since then. In fact, is it not disregarding the Senates constitutional function of advice and consent for the President to reappoint nominees who were voted down?

Judge Gonzales

The President continues to support both nominees, believes they deserve a vote, and is confident they will be confirmed. And to clarify, in the last Congress, they did not receive a vote in the full Senate and we know that both would have been confirmed if they received an up or down vote.

Curtis, from Washington, DC writes:

The Senate Democrats have used one of your statements on a Priscilla Owen dissent to discredit her. However, you issued a statement on July 16, 2002 supporting Justice Owen. Can you clarify the discrepancy?

Judge Gonzales

There is no discrepancy. I strongly support Priscilla Owen and continue to believe she is well qualified. She is a

woman of integrity and will be an outstanding judge on the Fifth Circuit. The fact that she and I disagreed on some opinions is not unusual or noteworthy and does not in any way affect my strong support for her.

Rich, from New York City writes:

What is your reaction to Senator Schumers idea that the President give up his right to nominating judges and hand over the process to unelected and unaccountable boards in the states?

Judge Gonzales

I responded to Senator Schumer's letter earlier this week and advised him that we believed his plan to be inconsistent with the Constitution and would not produce the best qualified judges. We will post my response to the Senator after my online discussion is over. Check back in about 30 minutes.

** Posted at 6:45pm **

[Click here to read the letter \(in PDF format\).](#)

Rafael, from Englewood, Colorado writes:

Does the President employ a litmus test when selecting his nominees?

Judge Gonzales

No.

George, from Maryland writes:

What is it like to work in the White House?

Judge Gonzales

It is an honor. People from all over the world come to Washington and peer through the black iron rod gates for just a glimpse of the President or First Lady. I have yet to meet an American who is not in awe when they step into the White House for the first time. I am proud and privileged.

susan, from Michigan writes:

Will the White House pressure the Senate to hold hearings and confirm the Sixth Circuit nominees from Michigan despite the negative blue slips submitted by Michigans Democrat senators?

Judge Gonzales

There is a vacancy crisis in the Sixth Circuit. The President has four nominees from Michigan to that court pending; three have been pending more than a year without even a hearing. These well qualified nominees deserve hearings and votes. The people of Michigan and the other people in the Sixth Circuit are being harmed by these delays.

Alexander, from Hebron, CT writes:

Mr. Gonzales, Senate Democrats alledge that the Constitutions advise and consent provisions not only empower the Senate to push against a judicial nominee who hasnt fully answered questions, but requires the Senate to do so. How would you respond to those who say that the President shouldnt have nominees rubber stamped.

Judge Gonzales

Your question refers to Miguel Estrada. Mr. Estrada answered questions in an all day hearing, responded to numerous written questions, and met with a number of Senators all to provide information about his qualifications. He provided more information than has been required of past appeals court nominees. He is being held to an unfair double standard. While we do not expect the Senate to rubber stamp the President's nominees we expect the Senate to treat the nominees fairly and give them votes.

Rich, from New York City writes:

Could you and Miguel Estrada take Chuck Schumer and Ted Kennedy in a tag team wrestling match? Could tag team wrestling be a compromise to the gridlock which has kept so many nominees in limbo?

Judge Gonzales

oops, got to go! Thank you all for joining me today in this on line discussion. Everyone should watch the President's speech tomorrow on judicial independence and the confirmation process at 10:30 a.m. ET. It will be web cast on WhiteHouse.Gov. Thanks again.

Message Sent To: _____

Alberto R. Gonzales/WHO/EOP@Exchange@EOP

Brett M. Kavanaugh/WHO/EOP@EOP

Ashley Snee/WHO/EOP@Exchange@EOP

David G. Leitch/WHO/EOP@Exchange@EOP

William C. Haymes/OA/EOP@Exchange

From: Miers, Harriet
To: <Kavanaugh, Brett M.>
Sent: 5/9/2003 7:04:52 AM
Subject: RE: Judges EO

We are waiting to get it from the Clerk in final form. Thanks.

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

From: Kavanaugh, Brett M.
Sent: Friday, May 09, 2003 6:45 AM
To: Miers, Harriet; Torgerson, Karin B.
Subject: Judges EO

Just checking in to make sure we are ok on the Judges EO. If any questions, I am here at 67984. Thanks.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 5/9/2003 8:17:32 AM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 12:17:32.00
SUBJECT:: Re:
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

Yes, thanks, trying to get that spruced up and current. A video of Judge will on it later today.

David S. Addington
05/09/2003 12:01:12 PM
Record Type: Record

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

Brett:

You might want to ask the White House webmaster to fix this sentence (bolded below) that appears on the White House website opening page under the POTUS/Judge picture.

As Counsel Judge Alberto Gonzales stands by his side, President George W. Bush delivers remarks regarding his judicial nominations in the Rose Garden Friday, May 9, 2003. President Bush has sent 34 judicial nominees to the Senate , but only 17 of those nominated have received a vote.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
CC: ashley snee/who/eop@exchange [WHO] <ashley snee>
Sent: 5/9/2003 4:50:48 AM
Subject: : RE: Fact Sheet for Friday Morning

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 08:50:48.00
SUBJECT:: RE: Fact Sheet for Friday Morning
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
CC: ashley snee (CN=ashley snee/OU=who/O=eop@exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

not too late; agreed

From: David G. Leitch/WHO/EOP@Exchange on 05/09/2003 08:50:46 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Ashley Snee/WHO/EOP@Exchange
cc:
Subject: RE: Fact Sheet for Friday Morning

Don,t know if this is too late, but we should use the same font throughout.

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

From: Kavanaugh, Brett M.
Sent: Thursday, May 08, 2003 11:21 PM
To: Gonzales, Alberto R.; Leitch, David G.
Subject: Fact Sheet for Friday Morning

fyi -- draft Fact Sheet.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/08/2003 11:20 PM -----

From: Ashley Snee/WHO/EOP@Exchange on 05/08/2003 11:16:10 PM
Record Type: Record

To: Staff Secretary@EOP
cc: Lawrence A. Fleischer/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Fact Sheet for Friday Morning

Please put me down for the contact. Please send remarks by 9:30 AM ph: 62115 fax: 60126

Thank you! << File: judges 5 9 03 #2.doc >>

From: Kavanaugh, Brett M.
To: <Leitch, David G.>
CC: <Snee, Ashley>
Sent: 5/9/2003 8:50:19 AM
Subject: RE: Fact Sheet for Friday Morning

not too late; agreed

From: David G. Leitch/WHO/EOP@Exchange on 05/09/2003 08:50:46 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Ashley Snee/WHO/EOP@Exchange

cc:

Subject: RE: Fact Sheet for Friday Morning

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REV_00235835

Thank you! << File: judges 5 9 03 #2.doc >>

From: CN=Matthew E. Smith/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 4:53:29 AM
Subject: : Re: NEW FOR WEATHER DECISION RE: Judicial Event

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 08:53:29.00
SUBJECT:: Re: NEW FOR WEATHER DECISION RE: Judicial Event
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

PRA 6 the minute you here of any changes. Thanks.

Brett M. Kavanaugh
05/09/2003 08:50:01 AM
Record Type: Record

To: Matthew E. Smith/WHO/EOP@EOP
cc:
Subject: NEW FOR WEATHER DECISION RE: Judicial Event

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/09/2003 08:49 AM -----

From: Kara G. Figg/WHO/EOP@Exchange on 05/09/2003 08:17:31 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Carolyn
Nelson/WHO/EOP@Exchange, Charlotte L. Montiel/WHO/EOP@Exchange
cc: Blake Gottesman/WHO/EOP@Exchange, Ashley
Estes/WHO/EOP@Exchange, Jeanie L. Figg/WHO/EOP@Exchange
Subject: RE: Judicial Event

Per Dan;- the weather call will now be made 45 min out.

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

From: Figg, Kara G.
Sent: Friday, May 09, 2003 7:55 AM
To: Kavanaugh, Brett M.; Nelson, Carolyn
Cc: Gottesman, Blake
Subject: Judicial Event

Per Brad, they decided in Sr Staff to use Room 450 for the event.
Check in;w/David Hobbs - he mentioned that if Sen;Zell;Miller attends, the
Members will be in;a holding room;in EEOB.

;

From: Snee, Ashley
To: <Kavanaugh, Brett M.>;<Leitch, David G.>
Sent: 5/9/2003 8:54:41 AM
Subject: RE: Fact Sheet for Friday Morning

Agreed. It should all be the same - I'll check it.

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

From: Kavanaugh, Brett M.
Sent: Friday, May 09, 2003 8:50 AM
To: Leitch, David G.
Cc: Snee, Ashley
Subject: RE: Fact Sheet for Friday Morning

not too late; agreed

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REV_00235839

From: Leitch, David G.
To: <Orr, Christopher J.>;<Gonzales, Alberto R.>;<Kavanaugh, Brett M.>;<Snee, Ashley>;<Haymes, William C.>
Sent: 5/9/2003 8:57:08 AM
Subject: RE: Thanks

One other thought -- is it possible to have this translated and put on the Spanish side of the web site? What do folks think?

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From: Orr, Christopher J.
Sent: Thursday, May 08, 2003 6:50 PM
To: Gonzales, Alberto R.; Kavanaugh, Brett M.; Snee, Ashley; Leitch, David G.; Haymes, William C.
Subject: Thanks

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Thanks again. The transcript is included in this email. It is also located at:

www.whitehouse.gov/ask/20030508.html

Jimmy

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Today's guest: Counsel to the President Judge Alberto Gonzales

Today's topic: The President's judicial nominees and the nominating process.

Judge Gonzales

Good afternoon. Thanks for joining me on "Ask the White House". This is an important day to participate in this online discussion as tomorrow is the two year anniversary of the president's first 11 Appeals Court nominations. Of those nominations, four still have yet to receive an up or down vote. Let's get started.

Eddie, from Macon Ga writes:

On today's local news there was a story about a possible lawsuit by Senators Saxby Chambliss Ga and Lindsey Graham SC regarding the democrats blocking of President Bush's nominations. What kind of results or impact do you think will be made by such a move? Thank you!

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As the President has said, the Senate has a constitutional responsibility to provide an up or down vote on judicial nominees. Without endorsing any specific approach, we applaud Senators Chambliss and Graham for seeking a solution to a broken process.

Karen, from Needham MA writes:

REV_00235841

What are the presidents plans regarding the filibuster against Miguel Estrada?

Judge Gonzales

As the President has said, he intends to stand beside Miguel Estrada until he is sworn in as a judge on the D. C. Circuit Court of Appeals. Miguel is well qualified and represents the American dream. Despite a remarkable record of achievement he is being held to a double standard. The President will continue to work with Senators of both parties to get him the up or down vote he deserves.

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Lori, from Corpus Christi, TX writes:

Have you found a good tex-mex restaurant in the nations capital?

Judge Gonzales

My family and I miss Texas and the great Tex-Mex food in Austin...and of course Corpus Christi. Although we love Washington, we look forward to the day we can return to my beloved State. Go Astros!

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Judge Gonzales, heres a tough one for you... Dallas Cowboys or Houston Texans?

Judge Gonzales

Houston Oilers!!!!!!!

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majority vote is required, is it not unconstitutional for the Senate Democrats to insist that a 60 favorable vote to break a filibuster is needed for the whole Senate to vote up or down on a judicial nomination?

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James, from New York, NY writes:

When you say nine appeals court nominees have been waiting for more than one year, are you including Justice Owen and Judge Pickering? They did receive votes, after all, even though the votes were negative. Then the President renominated them when the Republicans regained control of the Senate, and they've been waiting about four months since then. In fact, is it not disregarding the Senates constitutional function of advice and consent for the President to reappoint nominees who were voted down?

Judge Gonzales

The President continues to support both nominees, believes they deserve a vote, and is confident they will be confirmed. And to clarify, in the last Congress, they did not receive a vote in the full Senate and we know that both would have been confirmed if they received an up or down vote.

Curtis, from Washington, DC writes:

The Senate Democrats have used one of your statements on a Priscilla Owen dissent to discredit her. However, you issued a statement on July 16, 2002 supporting Justice Owen. Can you clarify the discrepancy?

Judge Gonzales

There is no discrepancy. I strongly support Priscilla Owen and continue to believe she is well qualified. She is a woman of integrity and will be an outstanding judge on the Fifth Circuit. The fact that she and I disagreed on some opinions is not unusual or noteworthy and does not in any way affect my strong support for her.

Rich, from New York City writes:

What is your reaction to Senator Schumers idea that the President give up his right to nominating judges and hand over the process to unelected and unaccountable boards in the states?

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I responded to Senator Schumer's letter earlier this week and advised him that we believed his plan to be inconsistent with the Constitution and would not produce the best qualified judges. We will post my response to the Senator after my online discussion is over. Check back in about 30 minutes.

** Posted at 6:45pm **

[Click here to read the letter \(in PDF format\).](#)

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Does the President employ a litmus test when selecting his nominees?

Judge Gonzales

No.

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What is it like to work in the White House?

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Will the White House pressure the Senate to hold hearings and confirm the Sixth Circuit nominees from Michigan despite the negative blue slips submitted by Michigans Democrat senators?

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oops, got to go! Thank you all for joining me today in this on line discussion. Everyone should watch the President's speech tomorrow on judicial independence and the confirmation process at 10:30 a.m. ET. It will be web cast on WhiteHouse.Gov. Thanks again.

From: Orr, Christopher J.
To: <Leitch, David G.>;<Orr, Christopher J.>;<Gonzales, Alberto R.>;<Kavanaugh, Brett M.>;<Snee, Ashley>;<Haymes, William C.>;<Viana, Mercedes M.>
Sent: 5/9/2003 9:12:02 AM
Subject: Re: Thanks

Yes again

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

From: David G. Leitch/WHO/EOP@Exchange

To: Christopher J. Orr/WHO/EOP@EOP,

Alberto R. Gonzales/WHO/EOP@Exchange,

Brett M. Kavanaugh/WHO/EOP@EOP,

Ashley Snee/WHO/EOP@Exchange,

William C. Haymes/OA/EOP@Exchange

Cc:

Date: 05/09/2003 08:57:08 AM

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REV_00235845

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Sent: 5/9/2003 9:57:48 AM
Subject: Re: Thanks

That'll be fixed shortly.

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

From: Leitch, David G.
To: Orr, Christopher J. ; Gonzales, Alberto R. ; Kavanaugh, Brett M. ; Snee, Ashley ; Haymes, William C.

Sent: Fri May 09 08:54:57 2003
Subject: RE: Thanks

There's one typo ("recevied") in response to the fifth question. Can it be fixed?

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The Senate has a constitutional responsibility to provide an up or down vote. It is unprecedented for a minority of Senators to block a vote on an appeals court nominee by means of a filibuster. Both Miguel Estrada and Priscilla Owen have the support of a majority of Senators, and should receive a vote and be confirmed.

James, from New York, NY writes:

When you say nine appeals court nominees have been waiting for more than one year, are you including Justice Owen and Judge Pickering? They did receive votes, after all, even though the votes were negative. Then the President renominated them when the Republicans regained control of the Senate, and theyve been waiting about four months since then. In fact, is it not disregarding the Senates constitutional function of advice and consent for the President to reappoint nominees who were voted down?

Judge Gonzales

The President continues to support both nominees, believes they deserve a vote, and is confident they will be confirmed. And to clarify, in the last Congress, they did not receive a vote in the full Senate and we know that both would have been confirmed if they received an up or down vote.

Curtis, from Washington, DC writes:

The Senate Democrats have used one of your statements on a Priscilla Owen dissent to discredit her. However, you issued a statement on July 16, 2002 supporting Justice Owen. Can you clarify the discrepancy?

Judge Gonzales

There is no discrepancy. I strongly support Priscilla Owen and continue to believe she is well qualified. She is a woman of integrity and will be an outstanding judge on the Fifth Circuit. The fact that she and I disagreed on some opinions is not unusual or noteworthy and does not in any way affect my strong support for her.

Rich, from New York City writes:

What is your reaction to Senator Schumers idea that the President give up his right to nominating judges and hand over the process to unelected and unaccountable boards in the states?

Judge Gonzales

I responded to Senator Schumer's letter earlier this week and advised him that we believed his plan to be inconsistent with the Constitution and would not produce the best qualified judges. We will post my response to the Senator after my online discussion is over. Check back in about 30 minutes.

** Posted at 6:45pm **

[Click here to read the letter \(in PDF format\).](#)

Rafael, from Englewood, Colorado writes:

Does the President employ a litmus test when selecting his nominees?

Judge Gonzales

No.

George, from Maryland writes:

What is it like to work in the White House?

Judge Gonzales

It is an honor. People from all over the world come to Washington and peer through the black iron rod gates for just a glimpse of the President or First Lady. I have yet to meet an American who is not in awe when they step into the White House for the first time. I am proud and privileged.

susan, from Michigan writes:

Will the White House pressure the Senate to hold hearings and confirm the Sixth Circuit nominees from Michigan despite the negative blue slips submitted by Michigans Democrat senators?

Judge Gonzales

There is a vacancy crisis in the Sixth Circuit. The President has four nominees from Michigan to that court pending; three have been pending more than a year without even a hearing. These well qualified nominees deserve hearings and votes. The people of Michigan and the other people in the Sixth Circuit are being harmed by these delays.

Alexander, from Hebron, CT writes:

Mr. Gonzales, Senate Democrats alledge that the Constitutions advise and consent provisions not only empower the Senate to push against a judicial nominee who hasnt fully answered questions, but requires the Senate to do so. How would you respond to those who say that the President shouldnt have nominees rubber stamped.

Judge Gonzales

Your question refers to Miguel Estrada. Mr. Estrada answered questions in an all day hearing, responded to numerous written questions, and met with a number of Senators all to provide information about his qualifications. He provided more information than has been required of past appeals court nominees. He is being held to an unfair double standard. While we do not expect the Senate to rubber stamp the President's nominees we expect the Senate to treat the nominees fairly and give them votes.

Rich, from New York City writes:

Could you and Miguel Estrada take Chuck Schumer and Ted Kennedy in a tag team wrestling match? Could tag team wrestling be a compromise to the gridlock which has kept so many nominees in limbo?

Judge Gonzales

oops, got to go! Thank you all for joining me today in this on line discussion. Everyone should watch the President's speech tomorrow on judicial independence and the confirmation process at 10:30 a.m. ET. It will be web cast on WhiteHouse.Gov. Thanks again.

From: Kavanaugh, Brett M.
To: <Mamo, Jeanie S.>;<Snee, Ashley>
Sent: 5/9/2003 12:15:01 PM
Subject: AP
Attachments: ~~DLNK0.URL; ~~DLNK1.URL

Alfred P. Carlton, Jr.

Member

Kilpatrick Stockton LLP <>

Suite 400, 3737 Glenwood Avenue

Raleigh, North Carolina 27612

(Wake Co.)

Telephone: 919-420-1700

Facsimile: 919-420-1800

Email: [Send an Email](#) <>

[InternetShortcut]

URL=http://www.martindale.com/xp/Martindale/Lawyer_Locator/Search_Lawyer_Locator/listing.xml?STYPE=N&lid=1407774&PRV=LL2&org=1&searchid=

[InternetShortcut]

URL=http://www.martindale.com/xp/Martindale/Lawyer_Locator/Search_Lawyer_Locator/mailform.xml?ctype=Atty_Email&type=2&EM=83C41558B92C980D7CEA2B76DF4CBC1E92056ED13D900574D743B72795C3279604&FN=Alfred P. Carlton&lid=1408658&PRV=LL2&searchid=

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Christopher J. Orr/WHO/EOP@EOP [WHO] <Christopher J. Orr>
CC: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 5/9/2003 8:17:32 AM
Subject: : 2 things

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 12:17:32.00
SUBJECT: : 2 things
TO: Christopher J. Orr (CN=Christopher J. Orr/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
CC: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

1. we are ok on the Gonzales video.
2. please delete the bolded part below on the web site.

THANKS!

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/09/2003 12:04 PM -----

David S. Addington
05/09/2003 12:01:12 PM
Record Type: Record

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

Brett:

You might want to ask the White House webmaster to fix this sentence (bolded below) that appears on the White House website opening page under the POTUS/Judge picture.

As Counsel Judge Alberto Gonzales stands by his side, President George W. Bush delivers remarks regarding his judicial nominations in the Rose Garden Friday, May 9, 2003. President Bush has sent 34 judicial nominees to the Senate , but only 17 of those nominated have received a vote.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 5/9/2003 8:19:53 AM
Subject: : Did you notice this from Assoc Press story

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-MAY-2003 12:19:53.00
SUBJECT:: Did you notice this from Assoc Press story
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Bush and his aides argue that the Senate should hold an up-or-down vote on every judicial nominee the president submits. He uses carefully crafted rhetoric to plant the notion that the Constitution isn't being followed - by referring to senators' "constitutional responsibility" without explicitly saying such votes are required. The Constitution gives senators the power to advise and consent on judicial nominations.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 5/9/2003 2:54:58 PM
Subject: how can..

the dems say they have confirmed 124 out of the President's 126 nominees? what are they talking about? i have the 42 number, but what is the bigger number - not just appeals court, but all article iii?

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 11:12:07 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 9-MAY-2003 15:12:07.00
SUBJECT: :
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Know this isn't as interesting to you as it is to me, but Judge is hear
now and leaving within about a 1/2 hour or so, if you want to talk to him
about CA4.; It can, of course, wait until next week.;

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Nelson, Carolyn>
Sent: 5/9/2003 3:14:14 PM
Subject: NARA REMARKS FOR THE JUDGE

I cannot believe I suggested this.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/09/2003 03:14 PM -----

From: Carolyn Nelson/WHO/EOP@Exchange on 05/09/2003 03:14:58 PM

Record Type: Record

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

cc:

Subject: NARA REMARKS FOR THE JUDGE

remarks from 8:45-9:30 (including 10 mins Q&A), Tuesday, May 13

"...audience would be interested in hearing your thoughts about the importance of records in both documenting the decisions and actions of the federal government as well as providing an historical legacy for future generations."

Have fun!!!!

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/9/2003 11:30:46 AM
Subject: : RE: NARA REMARKS FOR THE JUDGE

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 9-MAY-2003 15:30:46.00
SUBJECT:: RE: NARA REMARKS FOR THE JUDGE
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

You are soooooo lucky LCR hasn't posted an article on their website.

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

From: Kavanaugh, Brett M.
Sent: Friday, May 09, 2003 3:14 PM
To: Gonzales, Alberto R.; Leitch, David G.; Nelson, Carolyn
Subject: NARA REMARKS FOR THE JUDGE

I cannot believe I suggested this.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/09/2003 03:14 PM -----

From: Carolyn Nelson/WHO/EOP@Exchange on 05/09/2003 03:14:58 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: NARA REMARKS FOR THE JUDGE

remarks from 8:45-9:30 (including 10 mins Q&A), Tuesday, May 13

"....audience would be interested in hearing your thoughts about the importance of records in both documenting the decisions and actions of the federal government as well as providing an historical legacy for future generations."

Have fun!!!!

From: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
Sent: 5/9/2003 1:11:08 PM
Subject: : FYI -- Estrada withdrawal story

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])

CREATION DATE/TIME: 9-MAY-2003 17:11:08.00

SUBJECT:: FYI -- Estrada withdrawal story

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

<http://quote.bloomberg.com/apps/news?pid=10000103&sid=aG1Y9jqHk3nM&refer=us>

Miguel Estrada Wants Name Withdrawn From Nomination, CNBC Says

By Patricia Azer

Washington, May 9 (Bloomberg) -- Miguel Estrada has ``raised the possibility'' with the White House of withdrawing his name from the appeals court nomination, financial news network CNBC reported, citing unidentified people close to Estrada.

Estrada, President George W. Bush's choice for a federal judgeship, will likely not withdraw his name because the White House ``would like to continue the fight to break that Democratic filibuster threat up on Capitol Hill,'' CNBC said.

(CNBC 5-9)

Steven J. Duffield
Judiciary Policy Analyst & Counsel
Senate Republican Policy Committee
347 Russell Senate Office Building
(202) 224-3463 Fax (202) 224-1235

REV_00235905

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 5/10/2003 4:17:12 AM
Subject: : Today's Post Article on Speech

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:10-MAY-2003 08:17:12.00
SUBJECT:: Today's Post Article on Speech
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Two things of note. First, it says that the President asserted the Senate has a constitutional duty to hold an up or down vote on all noms "regardless of whether the Judiciary Committee supported them."; Don't know where that's coming from. Second, it says Dems have accused us of not sending the Committee adequate background materials on noms. That's a new one to me.; Is that so?

.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/10/2003 6:41:52 AM
Subject: : Fw:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:10-MAY-2003 10:41:52.00
SUBJECT:: Fw:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Here you go.

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

From: PRA 6
To: Leitch, David G. <David_G_Leitch@who.eop.gov>
Sent: Sat May 10 10:39:10 2003
Subject:

President Criticizes Filibusters
Senate Majority Leader Offers Plan to Get Judges Confirmed

By Amy Goldstein and Helen Dewar
Washington Post Staff Writers
Saturday, May 10, 2003; Page A06

President Bush yesterday used the second anniversary of his earliest judicial nominations to deliver a fresh attack on Senate Democrats, saying it was a "disgrace" that they have impeded the confirmation of two of his selections for federal courts. Meanwhile, the Senate's top Republican proposed a plan that would make it easier for the White House to win approval of the judges it wants.

Democrats immediately opposed the idea of changing the way judges are confirmed, saying lawmakers have approved virtually all of Bush's judicial nominees who have come to a vote.

"What's broken is not the Senate confirmation process, it's the White House nomination process," said Sen. Edward M. Kennedy (D-Mass.), a Judiciary Committee member. "The process isn't working now because President Bush is trying to stack the courts with right-wing nominees."

Yesterday's sharp rhetoric, which has become typical of debate over the federal judiciary's makeup, came as the GOP seeks ways to overcome Democrats' opposition to nominees they considers too conservative.

Bush restated his assertion that the Senate has a constitutional duty to guarantee an "up or down vote" by the full Senate to all judicial nominees, regardless of whether the Judiciary Committee supported them. And, in a new proposal, Senate Majority Leader Bill Frist (R-Tenn.) introduced a plan that would essentially guarantee such a vote to any nominee -- for judgeships or other appointive jobs -- as long as at least half the senators agree.

While the president did not explicitly endorse Frist's plan during his speech from the White House Rose Garden, both men's proposals would circumvent a Senate rule that Democrats have used lately to prevent votes on at least two nominees. Through a filibuster, a final vote can be blocked, by means of delay, unless 60 of the 100 senators vote to end

debate. Republicans hold 51 Senate seats, and the GOP has been unable recently to break filibusters thwarting confirmation votes on Miguel Estrada, for the U.S. Court of Appeals for the District of Columbia, and Patricia R. Owen, for the New Orleans-based 5th Circuit.

Frist, backed by fellow GOP leaders, proposed gradually reducing the 60-vote requirement on successive "cloture" votes, until a filibuster could eventually be broken by a simple majority of 51 votes. The rule change would apply only to nominations, not to legislation.

"The need to reform the filibuster on nominations is obvious, and it is now urgent," Frist told the Senate. His proposal faces considerable hurdles, because, under the Senate's rules, the change probably would require 67 votes for approval -- which is impossible without substantial Democratic support.

Democrats yesterday did not sound amenable. Senate Minority Leader Thomas A. Daschle (D-S.D.) noted that 124 of Bush's judicial nominees had been confirmed and only two have been filibustered. The confirmation system "ain't broke," he said, and does not need changing.

Sen. Charles E. Schumer (D-N.Y.) was more pointed, saying Frist's plan had "not a snowball's chance in Hades" of getting the two-thirds majority.

Bush couched the dispute in broad terms, saying, "the obstructionist tactics of a small group of senators are setting a pattern that threatens judicial independence."

Bush said the Senate has not voted on 18 of his 42 choices for appeals courts, eight of whom were nominated at least a year ago. He said that has exacerbated what he and other Republicans call a judicial "vacancy crisis."

Democrats countered that the vacancy rate on federal courts is at its lowest in more than a decade, and that the Judiciary Committee has acted on Bush's nominees more swiftly than it had during portions of President Bill Clinton's tenure.

Bush said Democrats were threatening the "design of a separate and independent judicial branch" of government by trying "to force nominees to take positions on controversial issues before they even take the bench." Democrats, meanwhile, have accused the administration of not sending the Judiciary Committee adequate background materials to help the Senate evaluate some of the nominees.

From: Leitch, David G.
To: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>
Sent: 5/10/2003 10:48:47 AM
Subject: Re: Today's Post Article on Speech

I guess that's right.

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

From: Kavanaugh, Brett M.
To: Leitch, David G. ; Gonzales, Alberto R. ; Kavanaugh, Brett M.

Sent: Sat May 10 10:46:18 2003
Subject: Re: Today's Post Article on Speech

On number 2 that is referring to SG memos issue it appears.

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

From: David G. Leitch/WHO/EOP@Exchange
To: Alberto R. Gonzales/WHO/EOP@Exchange,
Brett M. Kavanaugh/WHO/EOP@EOP

Cc:
Date: 05/10/2003 08:17:44 AM
Subject: Today's Post Article on Speech

Two things of note. First, it says that the President asserted the Senate has a constitutional duty to hold an up or down vote on all noms "regardless of whether the Judiciary Committee supported them." Don't know where that's coming from. Second, it says Dems have accused us of not sending the Committee adequate background materials on noms. That's a new one to me. Is that so?

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 5/12/2003 3:36:24 AM
Subject: : Report on Estrada considering withdrawal

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 07:36:24.00
SUBJECT:: Report on Estrada considering withdrawal
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Miguel Estrada Wants Name Withdrawn From Nomination, CNBC Says
By Patricia Azer

Washington, May 9 (Bloomberg) -- Miguel Estrada has ``raised the possibility'' with the White House of withdrawing his name from the appeals court nomination, financial news network CNBC reported, citing unidentified people close to Estrada.

Estrada, President George W. Bush's choice for a federal judgeship, will likely not withdraw his name because the White House ``would like to continue the fight to break that Democratic filibuster threat up on Capitol Hill,'' CNBC said.

(CNBC 5-9)

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 7:53:30 AM
Subject: : RE: timing

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 11:53:30.00
SUBJECT:: RE: timing
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes, perhaps stray comment was too understated. One thing that might be helpful to give some context to the letter, then, is to begin it by mentioning that his comments were on the Senate floor and were in direct response to the President's remarks.

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

From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 11:33 AM
To: Gonzales, Alberto R.; Leitch, David G.
Subject: RE: timing

Agree with general concern, but also note that this was much more than a stray comment. This was Sen. Daschle's response on Senate floor to the President's Rose Garden speech -- and obviously is and will be their primary talking point on this issue as reflected in NY Times yesterday.

From: David G. Leitch/WHO/EOP@Exchange on 05/12/2003 11:29:54 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@Exchange
cc:
Subject: RE: timing

I sent you a few suggestions, but the bigger question to me is whether we continue to respond to every stray comment by the leadership and if so whether the letters should continue to go out over the Judge's signature. On balance, I think we should continue current practice, but perhaps it's worth the three of us having a conversation with Hobbs & Bartlett to make sure.

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

From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 11:13 AM
To: Gonzales, Alberto R.; Leitch, David G.
Subject: timing

If you all agree with general idea, we should try to get Daschle letter out today.

From: Brian.A.Benczkowski@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Adam.Charnes@usdoj.gov <Adam.Charnes@usdoj.gov>
Sent: 5/12/2003 8:59:29 AM
Subject: : RE: can we get transcript of roberts hearing #2

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> (
"Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:12-MAY-2003 12:59:29.00
SUBJECT:: RE: can we get transcript of roberts hearing #2
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> ("Adam.Charnes@usdoj.gov"
<Adam.Charnes@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Actually, if you want one, you need to send a messenger to us. Sorry about the mix-up. Will also contact Miguel re: sending over a messenger to DoJ.

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, May 12, 2003 12:29 PM
To: Benczkowski, Brian A
Cc: Charnes, Adam
Subject: RE: can we get transcript of roberts hearing #2

Please also messenger one to Miguel. Thanks.

(Embedded
image moved "Brian.A.Benczkowski@usdoj.gov"
to file: <Brian.A.Benczkowski
pic19855.pcx) 05/12/2003 12:18:54 PM

Record Type: Record

To: "Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov>, Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: can we get transcript of roberts hearing #2

Sheila is messengering over a paper copy. We do not have the electronic version.

-----Original Message-----
From: Charnes, Adam
Sent: Monday, May 12, 2003 11:44 AM

To: Benczkowski, Brian A
Subject: FW: can we get transcript of roberts hearing #2

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

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, May 12, 2003 11:23 AM
To: Charney, Adam
Subject: can we get transcript of roberts hearing #2

From: Nelson, Carolyn
To: <Bartolomucci, H. Christopher>; <Ullyot, Theodore W.>; <Leitch, David G.>; <Gonzales, Alberto R.>; <Kavanaugh, Brett M.>; <Newstead, Jennifer G.>; <Powell, Benjamin A.>; <Sampson, Kyle>; <Brosnahan, Jennifer R.>
CC: <Montiel, Charlotte L.>; <Bumatay, Patrick J.>
Sent: 5/12/2003 10:55:33 AM
Subject: Meeting with the President re: Judges

We're confirmed for a meeting with the President THIS FRIDAY, May 16, at 9:25 am.

Please keep in mind that the binder is due to Staff Secretary no later than C.O.B. Wednesday - materials should be provided to Patrick accordingly.

Thanks!

From: Leitch, David G.
To: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>
Sent: 5/12/2003 11:29:54 AM
Subject: RE: timing

I sent you a few suggestions, but the bigger question to me is whether we continue to respond to every stray comment by the leadership and if so whether the letters should continue to go out over the Judge's signature. On balance, I think we should continue current practice, but perhaps it's worth the three of us having a conversation with Hobbs & Bartlett to make sure.

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

From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 11:13 AM
To: Gonzales, Alberto R.; Leitch, David G.
Subject: timing

If you all agree with general idea, we should try to get Daschle letter out today.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
Sent: 5/12/2003 7:33:21 AM
Subject: : RE: timing

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAY-2003 11:33:21.00
SUBJECT:: RE: timing
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Agree with general concern, but also note that this was much more than a stray comment. This was Sen. Daschle's response on Senate floor to the President's Rose Garden speech -- and obviously is and will be their primary talking point on this issue as reflected in NY Times yesterday.

From: David G. Leitch/WHO/EOP@Exchange on 05/12/2003 11:29:54 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@Exchange
cc:
Subject: RE: timing

I sent you a few suggestions, but the bigger question to me is whether we continue to respond to every stray comment by the leadership and if so whether the letters should continue to go out over the Judge's signature. On balance, I think we should continue current practice, but perhaps it's worth the three of us having a conversation with Hobbs & Bartlett to make sure.

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

From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 11:13 AM
To: Gonzales, Alberto R.; Leitch, David G.
Subject: timing

If you all agree with general idea, we should try to get Daschle letter out today.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 8:06:49 AM
Subject: : RE: recent speeches
Attachments: P_SODCG003_WHO.TXT_1.doc; P_SODCG003_WHO.TXT_2.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 12:06:49.00
SUBJECT:: RE: recent speeches
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 11:57 AM
To: Nelson, Carolyn
Subject: RE: recent speeches

No, I mean to a group that is not a national security group.

From: Carolyn Nelson/WHO/EOP@Exchange on 05/12/2003 11:54:38 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: recent speeches

He hasn't spoken to any administration groups (assuming that's what you mean by domestic?) in a long time. I'll send some older ones in a min.

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Monday, May 12, 2003 11:51 AM
To: Nelson, Carolyn
Subject: Re: recent speeches

How about 2 more to "domestic" audiences?

From: Carolyn Nelson/WHO/EOP@Exchange on 05/12/2003 11:50:10 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: recent speeches

<< File: May 2, 2003 NSA Law Day.doc >> << File: March 31, 2003
Washington & Lee.doc >> << File: April 30, 2003 Navy JAG.doc >>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_SODCG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_SODCG003_WHO.TXT_2>

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

HISPANIC LEADERSHIP
LUNCHEON

HOUSTON, TEXAS

FRIDAY,
APRIL 25, 2003

Thank you. Good afternoon, ladies and gentlemen. I am delighted to be back in my beloved Texas, back in the Houston community that nurtured me as a boy and embraced me as a young man. Today we recognize some of the favorite sons and daughters of the Hispanic community - our elected officials – people of my community who are our leaders and role models.

Earlier we heard from another of our country's leaders. Kay Bailey Hutchinson has been a champion for the Hispanic community for many years as a United States Senator. She is a friend and close ally of the President, and I am grateful for her unwavering support for our President.

When I think of leadership, I often repeat in my mind a quote I heard many years ago – “In every age there comes a time when leadership suddenly springs forth to meet the needs of the hour. And so, there is no man that does not have his time, and no hour that does not have its leader.” This quote steadies me – it grounds me – reassuring my faith that our needs will always be provided for. True leadership abounds in the human spirit and with the nurturing of God and man – this leadership can be realized.

Following September 11th we know that our country is confronting a historic threat. We are facing a type of enemy never seen before – an enemy that does not respect our values. They do not love liberty, they do not respect law, they do not cherish life. Defeating such an extraordinary threat requires an extraordinary leader. Many people have told me they believe God gave George W. Bush to us for this moment.

This President, this Administration, has been commissioned to discharge a solemn duty in a uniquely singular moment in the history of America.

But there are other threats, other dangers closer to home that also require a response. The elected officials we recognize today have been given a sacred trust to make decisions that address the needs of others. These ordinary Americans have been chosen to meet the needs of this hour – of this time.

As we honor their commitment, it is natural to ask how did these leaders come to be? What is the source of their achievements? What events led them to this hour – this very moment? Each of them has a story with many twists and turns. A story that could have had a different outcome depending on the choices they made when opportunities presented themselves... opportunities that simply were not available to many of our parents.

Years ago, Hispanic children had to attend separate schools in some parts of our great country. Perhaps someone in the audience remembers not being allowed to serve on a jury or live in a certain neighborhood because of their ethnicity ... I have visited the graves of my relatives buried in the “Mexican” section of a cemetery in San Antonio.

We all know that today, the opportunities for the Hispanic community are better. Our booming population growth makes it dangerous for politicians wanting our votes and companies coveting our dollars to ignore the needs of our community. Many of my friends draw comfort from the fact that we are no longer few in numbers. But like some of you, I still worry when I see so many unmet needs.

Our children continue to be endangered by a rising tide of drugs, crime and indifference that threatens to wash away the opportunity for even a high school education. Now, we have recognized the problem for years, and talked and talked about the solutions. But, every day another child is lost as we continue to wring our hands within indecision. (PAUSE)

It is time to stop talking.

My wife, Rebecca, and I have two young sons at home. Sometimes, when I am driving them, they ask me, “Daddy, where are you taking us?”

It is a legitimate question to ask of you – our elected leaders, “Where are you taking our community?”

Because you see, having placed our future in your hands, we have a right to ask that question. And you have a duty to have an answer.

I believe that a person's character can best be measured after you give them power. What will you do with the power that comes with your office? How will your character measure up?

In the future as we assume more power, we will be to blame if our children continue to be illiterate, if our small businesses continue to remain shut out from government contracts, and if our parents cannot afford healthcare? So where are you taking us?

Will you lead us forward with an eye upon the lessons of the past? There is little question that life was more difficult for people named Villalreal, Longoria, and Fernandez, but in an ironic way, the old prejudices – the bigotries of the past - served to strengthen our community.

In dealing with social and economic barriers, we have always been sustained by family and religion, ... and in so doing, we discovered the strength of our faith, the beauty of our culture, and we developed strong, visionary leadership.

Our experience, though they may be painful, provide important lessons. It is so important that our children understand these lessons, that they learn and are continuously reminded of the importance of personal responsibility... reminded not just by our words but by our actions. If we are silent during the debate about public education in this country ... if we are timid in the face of discrimination ... if we are absent at the ballot box on Election Day, then we fail in our mission to prepare the next generation of leaders.

So, where are you taking us?

As a young man, my father picked crops as a migrant worker in the fields of South Texas and across the Midwest where he met my mother.

Later – limited by a second grade education –

Dad worked construction and eventually on a maintenance crew at a rice mill just a few miles

down the road from here until he died during

my last semester in law school. My mother

would often wake me as a boy before dawn so I

could have eggs and tortillas with my father

before he left for work.

Last month Mom – now seventy- visited me in Washington for the first time. We visited the monuments and the museums like other tourists, but I also took her into the Oval Office to see the President. It was important for me to be able to do that for her – this little woman with virtually no formal education who struggled with my father all of her life to provide for her children – I took her to thank her and to show her what I had accomplished because of her sacrifices and those of my father.

At dawn on the last day that she stayed with my family before returning home to Houston, she was there to say goodbye as I left for work – just as she had done for my father on so many mornings. Only I wasn't going to a construction site, I was heading to the White House to advise the most powerful person in the world.

Think of the pride and wonder that must have filled her heart. She never dreamed that I would take her from the cotton fields to the Oval Office. Where are you going to take us?

As I look around this room, I see such a remarkable collection of talent that gives me great hope. All of you are success stories - with chapters of accomplishments still unwritten.

You are smart, ambitious, and hardworking...but, I promise you – particularly for the elected officials we recognize today, you are here because somewhere, sometime in your life, there was someone that made a sacrifice so you would have a chance; somewhere, a parent, a teacher, an employer, gave you an opportunity and opened the doors to your success.

I am the beneficiary of the sacrifices of my parents, and the many opportunities given to me by our President. There were many others of course, who are less recognizable. I do not know their names, but we are all familiar with their faces: the Panamanian woman who served your meal, the Columbian janitor who will sweep these floors when you are gone, the Guatemalan cook, the Peruvian shoemaker, the Honduran seamstress, the Puerto Rican teenager who cuts your grass, the Cuban roofer putting the shingles on your neighbor's house, the

Mexican construction worker like my father
before me.

I am all of these people who have sacrificed
because I am Hispanic. As are you. As are you.

Because I enjoy the privileges of success, I believe I have a responsibility of giving back to our community - giving someone else a chance and pulling them along ... to prepare the next Counsel to the President, the next State Supreme Court justice ... the next Al Gonzales for that time when I am no longer here. I know you feel that same duty. Last year I attended the Hispanic Heritage Awards at the Kennedy Center, and watched with pride and inspiration as five Hispanics were recognized for

excellence in their chose field. One of the honorees was Derek Para from California.

You may remember that Para became the first Mexican American to compete in, and medal in the Olympic Winter Games.

Following his historic achievement Derek spoke of his struggles and his joy in being the first Latino to bring home Olympic Gold. I was moved by his public acknowledgment of his faith in God and his obvious pride in our community.

I think faith is a common trait found in many of our leaders. Faith in the outcome of the risks they took. Faith in their abilities to succeed in their efforts. Faith in those family and friends that stood by believing in them even before they reached the pinnacles in their careers. And faith in an almighty God that would assure them that “His will be done.”

The President is also a man of faith. He has an insightful sense of his destiny ... his place in time, and he has a remarkable skill in choosing wisely the battles to fight, knowing that there is so much good that can be achieved through the majestic power of the Presidency, but accepting that there are limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can
... and he is very comfortable knowing that is
all he can do. That serenity and quiet
confidence is evidence of his very real and
strong faith.

Few of us will have the opportunity to compete for gold in the Winter Olympics or for the Presidency of the United States. But we can all be heroes by simply believing in a child. It is particularly important that our Hispanic leaders nurture and encourage others – because as you know better than most the needs of our community are still so great.

When I was a Texas state official I often said that one of the most important gifts we can give a child is hope...to leave them with a dream...to convince them that anything is possible. I often asked young students “How big can you dream?” It is a question that often caused them to fidget, eliciting nervous laughter – as if it is silly or childish to dream big dreams.

In President Bush's second inaugural address as Texas Governor, he spoke of my parent's struggles, working hard to raise eight children in a two bedroom house...sacrificing so that we would have a chance to succeed.

Referring to my then recent appointment to the Texas Supreme Court, Governor Bush said that I had realized my parent's dreams.

So I ask you today, “how big can you dream?” The answer to that question says more to me than anything else about how soon we achieve the President’s vision of a country in which no child is left behind, a country in which armies of compassion rise up to wage battle against the evils of our society — a country where every person, no matter their ethnicity, gender or race is given an equal opportunity, where an African American little boy can become a United States Senator, a Hispanic child from the barrios of Los Angeles or Miami

can become a United States Supreme Court
Justice, a country in which a little girl can
become its President.

If you are still dreaming big dreams, not just
for yourself, but for others - if that is where you
are taking us - then that's where I want to be –
with you...working side by side, shoulder to
shoulder for America.

I close by confessing that being the lawyer for this President is the best legal job in America. If Rebecca and I could afford it, I would serve this President and our country for free. I have perhaps the most important client in the world, a man whom I admire and respect so much, and the quality of work is unparalleled - what we do more than satisfies the hopes and dreams I had as a young man contemplating a career in the law because I wanted a job where I could make a difference in the lives of ordinary people and for my community.

I know most Americans do not care that the President's lawyer is Hispanic. Because the legal issues we confront on a daily basis can have enormous domestic and international consequences, Americans are concerned most that the President's lawyer just does a good job. But I am always mindful that for some in this country there is a special pride that someone named Gonzales provides legal advice to the President of the United States.

My thanks to the Hispanic Public Policy
Institute and the Republican National Hispanic
Assembly. Our country is becoming
increasingly more diverse, and the face of its
leadership must change to keep pace.

Thank you for doing your part in teaching civic responsibility, highlighting role models, educating our children, and in providing leadership for our community. I pray that God will continue to watch over your leadership, may He guide your decisions and may He continue to bless the United States of America.

Thank you.

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

O'Melveny & Myers

Ritz Carlton
Tyson's Corner, VA

Saturday, March 1, 2003

Good morning, ladies and gentlemen.

Eight years ago I left the security and financial comfort of private practice to work for a political newcomer – our then newly elected Texas governor, George W. Bush. I had, of course,

no idea at the time of the incredible journey that I was about to travel.

During my absence from private practice, our country has witnessed the impeachment and trial of a sitting President, agonized over a contested Presidential election that involved two decisions by our Supreme Court as some of you know all too well, we have grieved over the losses from the horrific attacks on September 11th, and we have prosecuted with grim determination a military campaign in Afghanistan and beyond, in our war on terrorism and in pursuit of the national security of this great country.

By any measure it has been a historic period for our beloved America; and my two young sons, as well as your children, will face a world far different than the one you and I know.

Life is the sum of the choices we make. I have been blessed with a remarkable series of good choices, including my decision to go into public service.

I believe public service is important. As lawyers we have unique skills that imposes a special obligation of service to our communities and government. And that service will often make you a better lawyer ... and it will surely always make you a better person.

It is a testament to the strength of O'Melveny & Mets, as well as the wisdom of the members of your management, that so many of your lawyers have held key government positions during other historic periods.

This morning I will sketch a picture for you about life today in the White House by answering questions most often asked of the people who advise the President.

But before I do, let me give you a quick lesson on the “balance of power” among the branches of government. This is a subject that most Americans outside of Washington care little about, but for us in the White House, the success and failure of the President often depends upon our relationship with Congress.

I begin with the most obvious question, what is it like to work in the White House? After all, people from all over the world travel to Washington for a look at the President's home. They stand outside the black iron rod gates peering in for just a glimpse of the President or First Lady. Most Americans scramble to get White House tour tickets and are often willing to wait in line for hours for the opportunity to attend events like the White House Easter Egg Roll or T-ball on the South Lawn.

And then there are the few lucky Americans who actually know someone who works in the White House and are able to get a special West Wing tour - these visitors are afforded a rare after hours peek of the Oval Office, the Rose Garden and the Press Room where White House Spokesman Ari Fleischer gives his daily briefings.

I am fortunate to work in a place where history is made every hour of every day. But as A.B. knows senior advisors to the President are not just innocent observers, we have an active hand in helping the President shape the events that our children will one day study in school. Most of you only know of General Ashcroft, Secretary Powell and Secretary Rumsfeld from briefings on television, but I work with them every day.

My meetings often involve discussions of classified materials and occur in the Oval Office and in the Situation Room. So, working in the White House is everything you could imagine and much, much more.

What are my days like? Well, they are long. I usually drive into the 18 acre White House compound between 6:00 and 6:15 in the morning.

The Assistants to the President meet every morning at 7:30 in the Roosevelt Room, located across the hall from the Oval Office.

Brad Blakeman, the President's scheduler, begins each meeting by announcing the President's public schedule for that day.

Ari Fleischer then ticks off the headlines from newspapers around the country. Often he solicits guidance on how he should respond to a particular story if asked at his daily press briefings.

David Hobbs, the Legislative Director, reports on pending legislation and raises other issues of interest involving the Congress.

Following David, we go around the table, reporting as necessary. Dr. Rice, for example, might discuss the latest finding by the UN Weapons inspectors. Admiral Abbot, the Acting Homeland Security Advisor might explain the latest homeland threat assessment.

Immediately afterwards, at 8:15 I assemble in my office with my staff of 13 lawyers.

As you might imagine, the President of the United States is often able to attract the cream of legal talent, and this President is no exception. A reporter for the Washington Post once described the current collection of talent in the Counsel's Office as the best law firm in the country – second, of course, only to O'Melveny & Myers.

One of the lawyers on my team is the designated ethics expert; she handles questions about the appropriate acceptance of gifts, financial disclosures, and conflicts of interest; another lawyer is a national security law expert who reports jointly to Dr. Rice and to me on all National Security legal issues, and yet another lawyer reports jointly to Admiral Abbott and to me on all legal matters related to Homeland Security.

And one more lawyer serves as Clearance Counsel. He works with the FBI, IRS and other agencies doing the background checks on all White House employees and presidential appointees. No one is employed within the Executive Office of the President or is appointed by the President unless my office clears them for suitability.

The remaining nine lawyers on the staff , including my deputy, handle all of the many other legal issues that we have to deal with in the White House, ranging from judicial selection to judicial interpretation of Administration policies, from presidential pardons to protection of presidential power. All nine lawyers have federal appellate clerkship experience, seven clerked for the U.S. Supreme Court. So it is a pretty strong group.

After my staff meeting, I usually go down to the Situation Room in the basement of the West Wing for either a National Security Council meeting or a Homeland Security Council meeting with the President and various cabinet officers. These meetings often focus on the crises of the day.

At 9:50 my regularly scheduled activities end and my working day really begins. My calendar often includes meeting after meeting, with various people ranging from the President of the United States to the Managing Partner of this firm. I have legislative strategy meetings and discussions with our domestic policy team on national policy issues such as immigration and gun control.

There are constant meetings with DOJ lawyers to discuss litigations strategy for cases like the Michigan affirmative action litigation and yesterday's 9th Circuit decision on the pledge of allegiance, and of course the war on terror.

Blocks of time are allocated for judicial interviews because my office is primarily responsible for recommending to the President men and women to the federal bench. Then there are trips to the Hill to visit with Senators regarding judicial candidates, or with other members of Congress about legislation important to the President. Like you, each day is different and each day brings its own challenges.

I am often asked what I did on September 11th?

Well, I was scheduled to speak at a government ethics conference that morning in Norfolk, Virginia. Like you I had no idea of the extraordinary events that were about to unfold when I flew out of Dulles airport about an hour before American Flight 77 departed Dulles and crashed into the Pentagon.

I arrived at 8:45 at the hotel in Norfolk that I was scheduled to speak at around 9:00.

As I made my way up to the ballroom, my assistant called on my cell phone to tell me to get to a television, something, some sort of aircraft, had crashed into one of the World Trade Center Towers.

I really did not know what to think as I watched those first pictures. Like some of you, I found it hard to believe that this kind of accident could happen.

While I was not sure of the cause of this tragedy, I was certain that I should get back to Washington as quickly as possible.

Immediately following my shortened remarks, I was again hustled to a television set. By this time the second plane had hit the other tower, thus confirming our worst fears, and my office was already scrambling to get me back to D.C. on the earliest possible flight.

During the next hour, before most cell phone communication in and out of Washington was shut down, I stayed on the phone trying to collect the most current information from my deputy who had been moved into the Situation Room in the basement of the West Wing. I was told the President was safe in Florida, but beyond that details were sketchy as the fog of war started to settle in.

When I arrived at the gate at the Norfolk airport I was advised that the airport had been closed by the FAA. I remember strangers stood huddled together quietly staring at television sets in the terminal as reports began to confirm that the Pentagon had been hit.

Fortunately, I quickly found a military office at the airport and a navy officer graciously offered to drive me to Norfolk Naval Station. There was a lot of activity when we arrived. The base like other bases around the country was transitioning to the highest state of military alert.

When we entered the base headquarters we received erroneous reports that the State Department had now been hit and there were still unconfirmed reports of other hijacked aircraft.

Because I am an Assistant to the President
and a civilian commissioned officer, the military
recognized the need to assist me and offered to
fly me back to Washington in a Navy helicopter.

One of the senior military officers asked me where exactly did I want to go - and I said as close as you can get me to the White House. He said they would arrange to land me on the South Lawn of the White House. I said no immediately. I knew that any aircraft approaching the White House might well be shot down and I knew that nobody but the President lands on the South Lawn.

For over an hour I waited in frustration as the Navy worked to obtain flight clearance.

Finally at half past noon we boarded the military helicopter and headed for Andrews Air Force Base. Nothing was said during the ride. I wondered how the President was doing and what I would find when I got back to my office.

When I arrived at the White House I went immediately to an underground secure location where the Vice President, most of the Senior staff, and other senior administration officials were working.

I had been to this bunker several times in the past for classified briefings - but that day it was crowded, bustling with activity and surrounded by heavily armed Secret Service agents with machine guns.

The situation appeared stable, Congressional leaders and cabinet secretaries in the line of Presidential succession had been located and moved to secure locations, and, except for essential personnel, the White House staff had either been relocated to various buildings in Washington or told to go home - but all of us in that bunker were aware that the President still was not home.

Later in the afternoon we had a secure video call with the President and he announced that he would return to Washington - where he felt he should be - even though there were still concerns about his safety.

The rest of the day is a blur. I remember at some point in the early evening finding Karen Hughes, one of the President's advisors, and walking with her to the Oval Office to meet the President who was by then en route to the White House aboard Marine One.

She and I waited outside of the Oval Office as it was being prepared for an address to the nation that night. When the President landed on the South Lawn, we immediately went back into his study behind the Oval and worked on his remarks - Karen and I, Ari Fleischer, Andy Card, Condi Rice and the President. Everybody was serious and we began the work of assessing what had happened and deciding the appropriate response.

Has my life and work changed since September 11th? Of course it has.

Not surprisingly my responsibilities as the President's lawyer have transitioned as a result of last fall's attacks. I am still involved in the appointment of federal judges and in defending the powers and privileges of the Presidency.

But, more of my days are now consumed with the requirements of the Geneva Convention, the treatment of battlefield detainees at Guantanamo Bay, Cuba and the President's powers as Commander in Chief.

The international war on terrorism has challenged some of the basic legal principles that form the foundation of our domestic and international systems of justice. Americans have already discovered this new type of conflict doesn't always fit neatly within our traditional notions of civil liberties, and so your government is continually striving to find the right balance between protecting our country and preserving our freedoms.

The President, as the head of the executive branch and the Commander in Chief of our armed forces – and the only political leader directly accountable to all Americans – has a unique personal responsibility to ensure our safety and security.

As other Presidents have done during times of war or emergency, President Bush has taken difficult steps to preserve the long-term survival of this country. Beginning with his order, on the morning of September 11th, that military jets were to shoot down all commercial aircraft that approached Washington, D.C. with hostile intent.

But in exercising the serious responsibilities and duties of the Commander in Chief, the President has been careful to consult with his lawyers, he is mindful that even a President exercising his Commander in Chief powers must abide by the Constitution.

Yes the world has changed...but the words of the Constitution have not.

Members of the media, legal groups, and scholars have weighed in with strong opinions regarding the legality of certain decisions by this Administration in our war against terrorism.

Contrary to what some in the press would have you believe, we welcome the examination. Such debates are an absolutely necessary check in ensuring that the actions of our government are consistent with the rule of law.

And lawyers play the preeminent role in protecting and defending the precious words of the Constitution. Your work in this endeavor arguably is no less patriotic than the actions of our soldiers on the battlefield – both are in defense of our freedoms.

Am I surprised that some have questioned Administration policies in the war on terrorism?
No, quite the contrary.

America is confronting an unfamiliar enemy, sometimes hidden here in our community, waiting to deliver terror upon innocent people.

Despite this new type of threat, some assert that it is obvious that people waging war on America are entitled to lawyers, it is obvious they say that government proceedings should be open to the public, it is obvious they claim that foreign nationals doing battle against America have a right of access to our courts.

Respectfully, it is not so obvious as a matter of law.

Some of the issues we litigate today have not been argued in federal court in over 50 years ... some questions have never been litigated.

The novel issues generated by this conflict are not easily answered, as we have already seen in the conflicting decisions among district and circuit courts around the country.

History may show that a particular decision by the President was unwise or unnecessary. I do not think so, but we will see. I am confident history will confirm that the Administration did what it believed it lawfully could to safeguard our long-term freedoms and to prevent another horrific attack.

I am sometimes asked if I am having fun.

Well, this is without question the most difficult thing I have ever done. The pressure is relentless. Political opponents scrutinize every word and deed. The media is ever present to publicize every disagreement or misstep.

Mistakes can have enormous domestic and international consequences... but aside from all of that...yes, I do have fun.

Obviously, there is no other job that can offer perks comparable to presidential motorcades, rides aboard Air Force One and weekends at Camp David, but I would say that my job is more gratifying than fun. In 25 months I have advised our President on the first federal executions in 40 years, defended the institution of the Presidency in discussions with the Congress over the limits of Congressional oversight, and my office negotiated a historic Congressional resolution for use of force in Iraq.

I have given my best legal judgment whether significant legislation such as campaign finance reform is constitutional, reviewed the Geneva and Hague Conventions, studied whether the laws of war permit the United States to strike a target located adjacent to a mosque in Afghanistan, and I've supervised the nomination of over 130 federal judges, 90 U.S. Attorneys and 90 United States Marshals.

These are just a few examples of my public service, and why I say that this job more than satisfies the hopes and dreams I had as a young man of becoming a lawyer because I wanted a job where I could make a difference in the lives of ordinary Americans.

The final question I will answer this morning is perhaps the most personal. What is the President really like? Some here may know the President better than I, but here is what I think.

It is hard to be around George W. Bush and not learn, simply by watching and listening.

It is also hard to be around the President and not like him.

As you know, a lawyer who interacts with a client on a daily basis ... who weathers storms together, and who celebrate achievements together ... that lawyer is going to develop a pretty good understanding of the client's priorities and needs, his strengths and weaknesses. There are very few people I admire more than our President.

He is thoughtful, deliberate and serious about his duties in these extraordinarily difficult times. But he has a wonderful sense of humor and charm that is disarming and comforting.

The President also has an insightful sense of his destiny ... his place in time. He understands the majestic power of the Presidency to do good, to tackle difficult problems that no other person or institution can solve.

Equally important, President Bush has the courage to use that power even when it is not politically expedient – and I have seen it done time and time again. But what I admire most is his skill in choosing wisely the battles to fight, and accepting that there are limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can
... and he is very comfortable knowing that is
all he can do. I think that serenity and quite
confidence comes from his very real and strong
faith.

Now, you may be wondering whether I can properly discharge my responsibilities as the White House Counsel – can I say no to a President that I hold in such high regard. It is not as hard as you might imagine. I accepted this job knowing that I have a duty to the institution of the Presidency that goes beyond the person who occupies the office, and it is a duty that this President likewise recognizes and respects.

I close by confessing that I have the best legal position in America. I know that may be viewed as a challenge in a room full of lawyers,. But if I could afford to, I would do this for free. But it is only a job and like every other job it will end someday. As my wife Rebecca is quick to remind me, the Office of the Presidency did just fine before the arrival of Al Gonzales and it will survive long after I am no longer the White House Counsel.

I have a great deal of respect and affection for our President, but I also love my family. They need me and I have an obligation to them as well as a duty to my client. That is something lawyers all too often forget.

As I grow older I realize more and more the importance of finding the right balance between responsibilities to family and to the profession, mindful of the irrefutable truth that nothing in work, nothing, – no closing, no jury verdict, no paycheck – is, or ever will be, as satisfying as the adoring hug of your child, or as comforting as the warm embrace of a loyal and loving spouse. That too is something that professionals such as you and I too often forget.

I must also confess that although I am in a great position, President Bush and I have spoken often about the good old days in Texas, of returning to the place where our life seemed simpler, less hectic and where doing the right thing seemed easier to define and to accomplish.

In the daily fog of Congressional subpoenas,
breaking press stories and international
confrontations threatening war, I sometimes find
myself yearning for just one quiet moment,
wondering if I will ever get to a point in my
career when I can just appreciate my family and
the wonderful life that God has given me.

Then my wife reminds me that whenever my professional life settles down, my telephone stops ringing and there are no back-to-back meetings I grow restless and unhappy. The lesson, she says, is to just be still and appreciate the moment. God gives you the quiet times for a reason, an opportunity to rest and refocus, and he prepares you in his own way to deal with those difficult periods that all of us in positions of power and responsibility will surely confront.

These days there are few quiet moments for rest and personal reflection. But every time I drive through the gates into the White House compound, or whenever I walk into the Oval Office to brief the most powerful person in the world, I do think about the awesome responsibility that the President has -- and the corresponding duty that falls upon all of us who serve him. Those are indescribable moments, and I will hold this privilege near my heart for the rest of my life.

Thank you very much.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 12:36:50 PM
Subject: :
Attachments: P_IHRCG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 16:36:50.00
SUBJECT:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

pls review
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_IHRCG003_WHO.TXT_1>

REMARKS BY
ALBERTO R. GONZALES
COUNSEL TO THE PRESIDENT

National Archives and Records
Administration

International Trade Center
Washington, D.C.

Tuesday, May 13, 2003

Good morning, ladies and gentlemen.

Eight years ago I left the security and financial comfort of private practice to work for a political newcomer – our then newly elected Texas governor, George W. Bush as Counsel to the Governor. I had, of course, no idea at the time of the incredible journey that I was about to travel.

During my absence from private practice over the last eight years, our country has witnessed the impeachment and trial of a sitting President, agonized over a contested Presidential election that involved two decisions by our Supreme Court, we have grieved over the losses from the horrific attacks on September 11th, and we have prosecuted with grim determination a military campaign in Afghanistan and beyond, in our war on terrorism and in pursuit of the national security of this great country.

By any measure it has been a historic period for our beloved America; and my two young sons, as well as your children, will face a world far different than the one you and I know.

Life is the sum of the choices we make. I have been blessed with a remarkable series of good choices, including my decision to go into public service. And those of you here today likewise have devoted your lives and careers to public service – and ensuring that policymakers have the records and tools they need to do their job. Your public service is important and

valuable to this nation, this President, and all
Presidents.

This morning I thought what would be most interesting is for me to sketch a picture for you about life today in the White House by answering questions most often asked of the people who advise the President.

I begin with the most obvious question, what is it like to work in the White House? After all, people from all over the world travel to Washington for a look at the President's home. They stand outside the black iron rod gates peering in for just a glimpse of the President or First Lady. Most Americans scramble to get White House tour tickets and are often willing to wait in line for hours for the opportunity to attend events like the White House Easter Egg Roll or T-ball on the South Lawn.

And then there are the few lucky Americans who actually know someone who works in the White House and are able to get a special West Wing tour - these visitors are afforded a rare after hours peek of the Oval Office, the Rose Garden and the Press Room where White House Spokesman Ari Fleischer gives his daily briefings.

I am fortunate to work in a place where history is made every hour of every day. But senior advisors to the President are not just innocent observers, we have an active hand in helping the President shape the events that our children will one day study in school. Most of you only know of General Ashcroft, Secretary Powell and Secretary Rumsfeld from briefings on television, but I work with them every day.

My meetings often involve discussions of classified materials and occur in the Oval Office and in the Situation Room. So, working in the White House is everything you could imagine and much, much more.

What are my days like? Well, they are long. I usually drive into the 18 acre White House compound between 6:00 and 6:15 in the morning.

The Assistants to the President meet every morning at 7:30 in the Roosevelt Room, located across the hall from the Oval Office.

Brad Blakeman, the President's scheduler, begins each meeting by announcing the President's public schedule for that day.

Ari Fleischer then ticks off the headlines from newspapers around the country. Often he solicits guidance on how he should respond to a particular story if asked at his daily press briefings.

David Hobbs, the Legislative Director, reports on pending legislation and raises other issues of interest involving the Congress.

Following David, we go around the table, reporting as necessary. Dr. Rice, for example, might discuss the latest finding by the UN Weapons inspectors. Admiral Abbot, the Homeland Security Advisor, might explain the latest homeland threat assessment.

Immediately afterwards, at 8:15 I assemble in my office with my staff of 13 lawyers.

As you might imagine, the President of the United States is often able to attract the cream of legal talent, and this President is no exception. A reporter for the Washington Post once described the current collection of talent in the Counsel's Office as the best law firm in the country.

One of the lawyers on my team is the designated ethics expert; she handles questions about the appropriate acceptance of gifts, financial disclosures, and conflicts of interest; another lawyer is a national security law expert who reports jointly to Dr. Rice and to me on all National Security legal issues, and yet another lawyer reports jointly to Admiral Abbott and to me on all legal matters related to Homeland Security.

And one more lawyer serves as Clearance Counsel. He works with the FBI, IRS and other agencies doing the background checks on all White House employees and presidential appointees. No one is employed within the Executive Office of the President or is appointed by the President unless my office clears them for suitability.

The remaining nine lawyers on the staff, including my deputy, handle all of the many other legal issues that we have to deal with in the White House, ranging from judicial selection to judicial interpretation of Administration policies, from presidential pardons to protection of presidential power. All nine lawyers have federal appellate clerkship experience, seven clerked for the U.S. Supreme Court. So it is a pretty strong group.

Several of my lawyers work on issues related to the Presidential Records Act and helping to ensure

that the records are properly maintained by White House officials. The President is committed to ensuring an accurate and well-documented record of his administration.

After my staff meeting, I usually go down to the Situation Room in the basement of the West Wing for either a National Security Council meeting or a Homeland Security Council meeting with the President and various cabinet officers. These meetings often focus on the crises of the day.

At 9:50 my regularly scheduled activities end and my working day really begins. My calendar often includes meeting after meeting, with various people ranging from the President of the United States to a reporter drafting an article about judicial nominees. I have legislative strategy meetings and discussions with our domestic policy team on national policy issues such as immigration and gun control.

There are constant meetings with DOJ lawyers to discuss litigations strategy for cases like the Michigan affirmative action litigation and the 9th Circuit decision on the pledge of allegiance, and of course the war on terror.

Blocks of time are allocated for judicial interviews because my office is primarily responsible for recommending to the President men and women to the federal bench. Then there are trips to the Hill to visit with Senators regarding judicial candidates, or with other members of Congress about legislation important to the President. Each day is different and each day brings its own challenges.

I am often asked what I did on September 11th?

Well, I was scheduled to speak at a government ethics conference that morning in Norfolk, Virginia. Like you I had no idea of the extraordinary events that were about to unfold when I flew out of Dulles airport about an hour before American Flight 77 departed Dulles and crashed into the Pentagon.

I arrived at 8:45 at the hotel in Norfolk that I was scheduled to speak at around 9:00.

As I made my way up to the ballroom, my assistant called on my cell phone to tell me to get to a television, something, some sort of aircraft, had crashed into one of the World Trade Center Towers.

I really did not know what to think as I watched those first pictures. Like some of you, I found it hard to believe that this kind of accident could happen.

While I was not sure of the cause of this tragedy, I was certain that I should get back to Washington as quickly as possible.

Immediately following my shortened remarks, I was again hustled to a television set. By this time the second plane had hit the other tower, thus confirming our worst fears, and my office was already scrambling to get me back to D.C. on the earliest possible flight.

During the next hour, before most cell phone communication in and out of Washington was shut down, I stayed on the phone trying to collect the most current information from my deputy who had been moved into the Situation Room in the basement of the West Wing. I was told the President was safe in Florida, but beyond that details were sketchy as the fog of war started to settle in.

When I arrived at the gate at the Norfolk airport I was advised that the airport had been closed by the FAA. I remember strangers stood huddled together quietly staring at television sets in the terminal as reports began to confirm that the Pentagon had been hit.

Fortunately, I quickly found a military office at the airport and a navy officer graciously offered to drive me to Norfolk Naval Station. There was a lot of activity when we arrived. The base like other bases around the country was transitioning to the highest state of military alert.

When we entered the base headquarters we received erroneous reports that the State Department had now been hit and there were still unconfirmed reports of other hijacked aircraft.

Because I am an Assistant to the President
and a civilian commissioned officer, the military
recognized the need to assist me and offered to
fly me back to Washington in a Navy helicopter.

One of the senior military officers asked me where exactly did I want to go - and I said as close as you can get me to the White House. He said they would arrange to land me on the South Lawn of the White House. I said no immediately. I knew that any aircraft approaching the White House might well be shot down and I knew that nobody but the President lands on the South Lawn.

For over an hour I waited in frustration as the Navy worked to obtain flight clearance.

Finally at half past noon we boarded the military helicopter and headed for Andrews Air Force Base. Nothing was said during the ride. I wondered how the President was doing and what I would find when I got back to my office.

When I arrived at the White House I went immediately to an underground secure location where the Vice President, most of the Senior staff, and other senior administration officials were working.

I had been to this bunker several times in the past for classified briefings - but that day it was crowded, bustling with activity and surrounded by heavily armed Secret Service agents with machine guns.

The situation appeared stable, Congressional leaders and cabinet secretaries in the line of Presidential succession had been located and moved to secure locations, and, except for essential personnel, the White House staff had either been relocated to various buildings in Washington or told to go home - but all of us in that bunker were aware that the President still was not home.

Later in the afternoon we had a secure video call with the President and he announced that he would return to Washington - where he felt he should be - even though there were still concerns about his safety.

The rest of the day is a blur. I remember at some point in the early evening finding Karen Hughes, one of the President's advisors, and walking with her to the Oval Office to meet the President who was by then en route to the White House aboard Marine One.

She and I waited outside of the Oval Office as it was being prepared for an address to the nation that night. When the President landed on the South Lawn, we immediately went back into his study behind the Oval and worked on his remarks - Karen and I, Ari Fleischer, Andy Card, Condi Rice and the President. Everybody was serious and we began the work of assessing what had happened and deciding the appropriate response.

Has my life and work changed since September 11th? Of course it has.

Not surprisingly my responsibilities as the President's lawyer have transitioned as a result of last fall's attacks. I am still involved in the appointment of federal judges and in defending the powers and privileges of the Presidency. I am still involved in ensuring that records are maintained and ethics rules are complied with.

But, more of my days are now consumed with the requirements of the Geneva Convention, the

treatment of battlefield detainees at Guantanamo
Bay, Cuba and the President's powers as
Commander in Chief.

The international war on terrorism has challenged some of the basic legal principles that form the foundation of our domestic and international systems of justice. Americans have already discovered this new type of conflict doesn't always fit neatly within our traditional notions of civil liberties, and so your government is continually striving to find the right balance between protecting our country and preserving our freedoms.

The President, as the head of the executive branch and the Commander in Chief of our armed forces – and the only political leader directly accountable to all Americans – has a unique personal responsibility to ensure our safety and security.

As other Presidents have done during times of war or emergency, President Bush has taken difficult steps to preserve the long-term survival of this country. Beginning with his order, on the morning of September 11th, that military jets were to shoot down all commercial aircraft that approached Washington, D.C. with hostile intent.

But in exercising the serious responsibilities and duties of the Commander in Chief, the President has been careful to consult with his lawyers, he is mindful that even a President exercising his Commander in Chief powers must abide by the Constitution.

Yes the world has changed...but the words of the Constitution have not.

Members of the media, legal groups, and scholars have weighed in with strong opinions regarding the legality of certain decisions by this Administration in our war against terrorism.

Contrary to what some in the press would have you believe, we welcome the examination. Such debates are an absolutely necessary check in ensuring that the actions of our government are consistent with the rule of law.

Am I surprised that some have questioned
Administration policies in the war on terrorism?

No, quite the contrary.

America is confronting an unfamiliar enemy, sometimes hidden here in our community, waiting to deliver terror upon innocent people.

Despite this new type of threat, some assert that it is obvious that people waging war on America are entitled to lawyers, it is obvious they say that government proceedings should be open to the public, it is obvious they claim that foreign nationals doing battle against America have a right of access to our courts.

Respectfully, it is not so obvious as a matter of law.

Some of the issues we litigate today have not been argued in federal court in over 50 years ... some questions have never been litigated.

The novel issues generated by this conflict are not easily answered, as we have already seen in the conflicting decisions among district and circuit courts around the country.

History may show that a particular decision by the President was unwise or unnecessary. I do not think so, but we will see. I am confident history will confirm that the Administration did what it believed it lawfully could to safeguard our long-term freedoms and to prevent another horrific attack.

I am sometimes asked if I am having fun.

Well, this is without question the most difficult thing I have ever done. The pressure is relentless. Political opponents scrutinize every word and deed. The media is ever present to publicize every disagreement or misstep.

Mistakes can have enormous domestic and international consequences... but aside from all of that...yes, I do have fun.

Obviously, there is no other job that can offer perks comparable to presidential motorcades, rides aboard Air Force One and weekends at Camp David, but I would say that my job is more gratifying than fun. In 28 months I have advised our President on the first federal executions in 40 years, defended the institution of the Presidency in discussions with the Congress over the limits of Congressional oversight, and my office negotiated a historic Congressional resolution for use of force in Iraq.

I have given my best legal judgment whether significant legislation such as campaign finance reform is constitutional, reviewed the Geneva and Hague Conventions, studied whether the laws of war permit the United States to strike a target located adjacent to a mosque in Afghanistan, and I've supervised the nomination of over 140 federal judges, 90 U.S. Attorneys and 90 United States Marshals.

These are just a few examples of my public service, and why I say that this job more than satisfies the hopes and dreams I had as a young man of becoming a lawyer because I wanted a job where I could make a difference in the lives of ordinary Americans.

The final question I will answer this morning is perhaps the most personal. What is the President really like?

It is hard to be around George W. Bush and not learn, simply by watching and listening.

It is also hard to be around the President and not like him.

A lawyer who interacts with a client on a daily basis ... who weathers storms together, and who celebrate achievements together ... that lawyer is going to develop a pretty good understanding of the client's priorities and needs, his strengths and weaknesses. There are very few people I admire more than our President.

He is thoughtful, deliberate and serious about his duties in these extraordinarily difficult

times. But he has a wonderful sense of humor and charm that is disarming and comforting.

The President also has an insightful sense of his destiny ... his place in time. He understands the majestic power of the Presidency to do good, to tackle difficult problems that no other person or institution can solve.

Equally important, President Bush has the courage to use that power even when it is not politically expedient – and I have seen it done time and time again. But what I admire most is his skill in choosing wisely the battles to fight, and accepting that there are limits to what can be accomplished – even for the President of the United States.

This President does the very best that he can
... and he is very comfortable knowing that is
all he can do. I think that serenity and quite
confidence comes from his very real and strong
faith.

Now, you may be wondering whether I can properly discharge my responsibilities as the White House Counsel – can I say no to a President that I hold in such high regard. It is not as hard as you might imagine. I accepted this job knowing that I have a duty to the institution of the Presidency that goes beyond the person who occupies the office, and it is a duty that this President likewise recognizes and respects.

Am I concerned that government is too open or too secret, that there is a lack of balance between the public right to know and the need for candid advice? To me, this is an ongoing process our country goes through and constantly re-examines. It does concern me that the Executive Branch is subject to open records laws that do not apply to Congress. The public interest in knowing what the Senate Majority or Minority Leader is doing and writing would seem at least as great as what most Executive Branch officials below the President or Cabinet

Rank are doing and writing. Beyond that issue of selective application, we always need to strive to ensure balance. For the most partm permanent confidentiality is both unnecessary and deprives Americans of the teachings of history that is informative and necessary in a free and open society.

On the other hand, some time for the confidentiality if high-level deliberations is critical to ensure that the President and Cabinet officers and others can deliberate freely, and the Supreme Court has rightly recognized the

importance. It also bears mention that much documentary history will be lost because it will never be documented if confidentiality is not assured. The framers of the Constitution sealed the records of their deliberations for 30 years to ensure frank debate.

There may be no precise formula, but to ensure the effective operation of the Executive Branch and the best available historical records, we believe that records of candid high-level deliberations should remain secure and confidential for a reasonable period of time, at

least in the absence of a serious and credible allegation of wrongdoing.

I close by confessing that I have the best legal position in America. But if I could afford to, I would do this for free. But it is only a job and like every other job it will end someday. As my wife Rebecca is quick to remind me, the Office of the Presidency did just fine before the arrival of Al Gonzales and it will survive long after I am no longer the White House Counsel.

I must also confess that although I am in a great position, President Bush and I have spoken often about the good old days in Texas, of returning to the place where our life seemed simpler, less hectic and where doing the right thing seemed easier to define and to accomplish.

In the daily fog of Congressional subpoenas,
breaking press stories and international
confrontations threatening war, I sometimes find
myself yearning for just one quiet moment,
wondering if I will ever get to a point in my
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These days there are few quiet moments for rest and personal reflection. But every time I drive through the gates into the White House compound, or whenever I walk into the Oval Office to brief the most powerful person in the world, I do think about the awesome responsibility that the President has -- and the corresponding duty that falls upon all of us who serve him. Those are indescribable moments, and I will hold this privilege near my heart for the rest of my life.

Thank you very much.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Francisco, Noel J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>
Sent: 5/12/2003 5:55:31 PM
Subject: Ari comment at briefing today re Dems on tax plan seems potentially applicable in other areas

"I mean, there are -- you know, the Democratic Party and the Senate particularly can be broken down to three groups. There's the leadership, which is very liberal and will oppose the President. There are the candidates who, of course, will never support the President. And then there's a small group of potential swing voters. They are very small. And it only takes one or two of them to make the difference."

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Records Management@EOP [UNKNOWN] <Records Management@EOP>
Sent: 5/12/2003 3:00:42 PM
Subject: : Official USSS WAVES Request - Records Management Document

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 12-MAY-2003 19:00:42.00
SUBJECT: : Official USSS WAVES Request - Records Management Document
TO: Records Management@EOP (Records Management@EOP [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Requestor: Kavanaugh, Brett M
Requestor Phone: 4567900
Requestor Pass Type: WHS
Presidential Attendance: No
Event Name:
Appointment With: Kavanaugh, Brett M
Appointment Room: 156
Appointment Date: 5/13/2003
Appointment Building: EEOB
UNumber:
Comments:

Visitors
Time Last Name First Name
DOB Cit COA SSN
03:00:00 PM IMMERGUT KARIN

PRA 6

From: WAVES_CONF@mhub.eop.gov [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 3:02:31 PM
Subject: : WAVES APPOINTMENT REQUEST FOR KAVANAUGH, BRETT M

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:WAVES_CONF@mhub.eop.gov (WAVES_CONF@mhub.eop.gov [UNKNOWN])
CREATION DATE/TIME:12-MAY-2003 19:02:31.00
SUBJECT:: WAVES APPOINTMENT REQUEST FOR KAVANAUGH, BRETT M
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ADDRESSEES: BRETT_M._KAVANAUGH@WHO.EOP.GOV
SUBJECT: WAVES APPOINTMENT REQUEST FOR KAVANAUGH, BRETT M
Date: 5/12/03

The appointment request listed below was rejected by the
Waves Center for the following reason:

Invalid Message Format: No appointment building

The following additional information about this appointment is included
to assist you in determining what is wrong with the request. If you
have any questions, please call the Waves Center at 456-6742.

Appointment With: KAVANAUGH, BRETT M
Appointment Date: 05/13/03
Appointment Time:
Appointment Room: 156
Appointment Building:
Appointment Requested by: KAVANAUGH BRETT M
Phone Number of Requestor: 4567900
Comments:
Requestor's Badge: WHS
NT Filename: VA1320E1

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/12/2003 3:20:52 PM
Subject: : Consuelo Callahan got 1 question at her hearing

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:12-MAY-2003 19:20:52.00
SUBJECT:: Consuelo Callahan got 1 question at her hearing
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

From: CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/12/2003 4:34:35 PM
Subject: : Please call me ASAP **PRA 6**

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:12-MAY-2003 20:34:35.00
SUBJECT:: Please call me ASAP **PRA 6**
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We need to clear the following language for inclusion in the President's remarks for tomorrow:

;
ú;;;;;;;;; Thank you for the warm Hoosier welcome.; I brought along Mitch Daniels with me.; You may remember Mitch) I suspect you will be hearing more from him soon.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 5/13/2003 8:16:58 AM
Subject: RE: The Politics Of Filibusters (WSJournal) - Editorial Today -

Yeah, he is fine with it. But, I think it should be a little shorter. I'll work with it after the morning meetings and show you before I start calling around.

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

From: Kavanaugh, Brett M.
Sent: Tuesday, May 13, 2003 8:06 AM
To: Snee, Ashley
Subject: Re: The Politics Of Filibusters (WSJournal) - Editorial Today -

Has dan looked at judge's op ed?

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>
Sent: 5/13/2003 10:46:36 AM
Subject: : Prep

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:13-MAY-2003 14:46:36.00

SUBJECT:: Prep

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

CC:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

End Original ARMS Header

JSC Prep will be in the Judge's Office at 3:45.

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

From: Nelson, Carolyn

Sent: Tuesday, May 13, 2003 2:35 PM

To: wendy keefer; adam ciongoli; albert brewster; amy bass; andrew beach; Bartolomucci, H. Christopher; Bennett, Melissa S.; Brilliant, Hana F.; Brosnahan, Jennifer R.; Bumatay, Patrick J.; Ellison, Kimberly; evelyn long; Francisco, Noel J.; Gray, Ann; Grubbs, Wendy J.; Heather McNaught; Jones, Alison ; Kavanaugh, Brett M.; Kristi Remington; Kyle, Ross M.; Leitch, David G.; Lockart, Sarah K.; McMaster, David; Montiel, Charlotte L.; Newstead, Jennifer G.; Powell, Benjamin A.; Ralston, Susan B.; Sampson, Kyle; tracy washington; Ulyot, Theodore W.; viet dinh
Subject: WHJSC meeting- 5/14/03

WHJSC will meet tomorrow, May 14, at 4:00pm in the Judge's Office.

;
Thanks!

REV_00236213

From: CN=Katherine M. Walters/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/13/2003 1:35:14 PM
Subject: : Ken's update bio
Attachments: P_LR2EG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Katherine M. Walters (CN=Katherine M. Walters/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:13-MAY-2003 17:35:14.00
SUBJECT:: Ken's update bio
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Ken wanted to run this by you. He would not distribute until appropriate.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LR2EG003_WHO.TXT_1>

Kenneth B. Mehlman

Ken Mehlman is Campaign Manager for Bush-Cheney 2004.

Mehlman served as Deputy Assistant to the President and Director of Political Affairs since President Bush's inauguration in January 2001. As White House Political Director, Ken oversaw and executed all aspects of President George W. Bush and the Administration's political strategy, working with members of Congress, Federal agencies, state and national parties, and state and local elected officials throughout the historic 2002 midterm elections.

Mehlman served as National Field Director for Bush-Cheney 2000, where he worked with the campaign leadership in all fifty states and the Republican National Committee to execute winning political plans and mobilize strong grassroots.

Before joining President Bush, Ken was Congresswoman Kay Granger's (TX-12) Chief of Staff and Congressman Lamar Smith's (TX-21) Legislative Director. He practiced environmental law in Washington and worked on campaigns in Massachusetts, Ohio, Virginia, Texas, and Georgia, as well as the 1992 and 1996 Presidential campaigns.

He is a graduate of Harvard Law School and Franklin and Marshall College.

From: Camp, Libby <Libby.Camp@DHS.GOV>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/14/2003 5:21:06 AM
Subject: : FW: Memo re Political Activity
Attachments: P_VVFEG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Camp, Libby" <Libby.Camp@DHS.GOV> ("Camp, Libby" <Libby.Camp@DHS.GOV> [UNKNOWN])
CREATION DATE/TIME:14-MAY-2003 09:21:06.00
SUBJECT:: FW: Memo re Political Activity
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

FYI. Bob Coyle is the DAEO for DHS. Nanette works with him on Ethics issues for nominees as well.

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

From: Clark, Lucy
Sent: Wednesday, May 14, 2003 9:19 AM
To: Camp, Libby; Clark, Lucy; Whitley, Joe
Cc: Hill, Ken; Lauckhardt, Zach
Subject: RE: Memo re Political Activity

Nothing has gone out. Coyle is working on it.

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

From: Camp, Libby
Sent: Wednesday, May 14, 2003 9:19 AM
To: Lucy Clark (Lucy.Clark@DHS.GOV); Whitley, Joe
Cc: Hill, Ken; Lauckhardt, Zach
Subject: Memo re Political Activity

Has anything gone out yet? I have been asked by a number of folks what kind of activities folks can be involved in so if nothing has been put out yet please give me an ETA - if we have one.

I'd like to be kept in the loop on this so please keep me posted and include me in review process.

Thanks!

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VVFEG003_WHO.TXT_1>

REV_00236232

FYI. Bob Coyle is the DAEO for DHS. Nanette works with him on Ethics issues for nominees as well.

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

From: Clark, Lucy
Sent: Wednesday, May 14, 2003 9:19 AM
To: Camp, Libby; Clark, Lucy; Whitley, Joe
Cc: Hill, Ken; Lauckhardt, Zach
Subject: RE: Memo re Political Activity

Nothing has gone out. Coyle is working on it.

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

From: Camp, Libby
Sent: Wednesday, May 14, 2003 9:19 AM
To: Lucy Clark (Lucy.Clark@DHS.GOV); Whitley, Joe
Cc: Hill, Ken; Lauckhardt, Zach
Subject: Memo re Political Activity

Has anything gone out yet? I have been asked by a number of folks what kind of activities folks can be involved in so if nothing has been put out yet please give me an ETA – if we have one.

I'd like to be kept in the loop on this so please keep me posted and include me in review process.

Thanks!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Leonard B. Rodriguez/WHO/EOP@EOP [WHO] <Leonard B. Rodriguez>
Sent: 5/14/2003 9:58:09 AM
Subject: : Re: New American Alliance has decided to endorse Miguel Estrada

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:14-MAY-2003 13:58:09.00
SUBJECT:: Re: New American Alliance has decided to endorse Miguel Estrada
TO:Leonard B. Rodriguez (CN=Leonard B. Rodriguez/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Excellent!!! Thank you.

Leonard B. Rodriguez
05/14/2003 01:56:09 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@Exchange@EOP, Abel Guerra/WHO/EOP@EOP, Mercedes M. Viana/WHO/EOP@EOP
cc: Matthew A. Schlapp/WHO/EOP, Karl C. Rove/WHO/EOP@Exchange@EOP, Ken Mehlman/WHO/EOP@EOP, Israel Hernandez/WHO/EOP@Exchange@EOP
Subject: New American Alliance has decided to endorse Miguel Estrada

This is the organization created by Raul Yzaguirre (NCLR) and Henry Cisneros.

They will be forwarding a letter of support to the Senate Judiciary Committee.

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 5/14/2003 1:01:33 PM
Subject: Is leonard leo cleared to see me at 230? Can you.

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 5/14/2003 1:18:44 PM
Subject: FW: WAVES Appt. U18069 Confirmation for CAROLYN NELSON

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

From: WAVES_CONF@mhub.eop.gov [mailto:WAVES_CONF@mhub.eop.gov]
Sent: Wednesday, May 14, 2003 2:16 PM
To: Nelson, Carolyn
Subject: WAVES Appt. U18069 Confirmation for CAROLYN NELSON

ADDRESSEES: CAROLYN_NELSON@WHO.EOP.GOV
SUBJECT: WAVES Appt. U18069 Confirmation for CAROLYN NELSON
FROM: WAVES OPERATIONS CENTER - ACO: Samuel Hampton
Date: 05-14-2003
Time: 13:17:14

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: CAROLYN NELSON
Appointment Date: 5/14/2003
Appointment Time: 2:30:00 PM
Appointment Room: 154
Appointment Building: OEOB
Appointment Requested by: NELSON CAROLYN
Phone Number of Requestor: 65081

WAVES APPOINTMENT NUMBER: U18069

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

LEO, LEONARD

PRA 6

From: Rodriguez, Leonard B.
To: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>;<Guerra, Abel>;<Viana, Mercedes M.>
CC: <Schlapp, Matthew A.>;<Rove, Karl C.>;<Mehlman, Ken>;<Hernandez, Israel>
Sent: 5/14/2003 1:46:04 PM
Subject: New American Alliance has decided to endorse Miguel Estrada

This is the organization created by Raul Yzaguirre (NCLR) and Henry Cisneros.

They will be forwarding a letter of support to the Senate Judiciary Committee.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>;Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Ashley Snee/WHO/EOP@Exchange [WHO] <Ashley Snee>
Sent: 5/14/2003 1:48:55 PM
Subject: : From the Weekly Standard

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:14-MAY-2003 17:48:55.00
SUBJECT:: From the Weekly Standard
TO:Daniel J. Bartlett (CN=Daniel J. Bartlett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Karl C. Rove (CN=Karl C. Rove/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Filibuster Again! And Again!
by Terry Eastland, for the Editors
05/19/2003, Volume 008, Issue 35

SIX TIMES NOW Senate Democrats have blocked a vote on Miguel Estrada's nomination to the U.S. Court of Appeals for the District of Columbia. And twice Senate Democrats have blocked a vote on Priscilla Owen's nomination to the U.S. Court of Appeals for the Fifth Circuit. Republicans are outraged by the filibusters. And they are outrageous. But permit us to invite the Democrats to stay their stupid course: Filibuster again! And again!

Okay, if you're Miguel or Priscilla or Carolyn Kuhl, a Ninth Circuit nominee who may be the next to be filibustered, it's no fun watching Republicans move to cut off debate and then seeing Democrats again muster more than the 40 votes needed (a supermajority of 60 being necessary under Senate rules to end debate) to keep you from being voted on. Which is to say from being confirmed, since you know just as the rest of the world does that there is a Senate majority that includes the few sensible Democrats still remaining in the upper chamber, like Zell Miller of Georgia, who would say yes if only the roll were called.

But if the Democrats are going to persist in what Sen. Russell Feingold has conceded is "an extreme step," then by all means the nominees should allow, and the Republican Senate should create, opportunities for them to be extreme. Majority Leader Bill Frist: Keep calling those cloture votes. And you Democrats: Keep voting no.

Is there any better way to publicize the message about "Democratic obstruction on judges" (a principal Republican talking point) than by repeated votes by Senate minorities made up exclusively of Democrats that prevent Senate majorities from approving the president's nominees? Keep in mind that we're not talking here about less visible means of obstruction.

We're not talking about what the Democratic-run Judiciary Committee did in 2001-02 --when it failed to hold, or unreasonably delayed, hearings, or when it held a hearing but declined to vote on the nominee. No, here we're talking about quite public blocking actions--recorded votes. If the Democrats keep committing them, the Republicans should gleefully advertise them throughout the country.

Right now, the Republicans are trying to find ways to fix "the broken confirmation process" (another Republican talking point). Some Republicans have suggested that the president should sue filibustering Democrats on account of the Appointments Clause injury he is suffering by not having his nominees voted on; or that Estrada or Owen should complain because of some (unspecified) injury they have endured by not being voted on; or that some Republican senators should file a suit, since they are part of a majority that would confirm but for the bad Dems, and that therefore they are being denied their constitutional "right to consent," a right found somewhere in the spilt ink between the lines of the original text. Of course, any judge worth his clerk would throw out any such lawsuit on the understanding that the Senate should work out its own rules. Speaking of which, the Republicans do have lots of ways to change the rules so as to overcome or prevent filibusters of nominations, and there is a good proposal or two among them. But no changes in Senate rules can be made except by a two-thirds vote--an even bigger hill to climb.

The truth is that there is no way other than ordinary politics truly to "fix" the process. Not incidentally, the Senate Republican leadership could force the Democrats to conduct a real filibuster--marathon, stay-up-all-night sessions like those of yesteryear. That might fix the process real quick. A larger Republican majority--obtained through electoral politics--could also fix the process. Consider that a majority of 56 Republicans--five more than now--is all that would be needed (since four Democrats would join them) to force a vote on the Estrada nomination.

The chief utility, we suppose, of the loud search for ways to "fix" the process is to draw media attention to the Democrats' extremism. And of course the Republicans know that. (Maybe that's why they haven't forced a classic filibuster.) The wonder is that the Democrats seem clueless about the degree to which their blocking votes on nominees could hurt their chances for retaking the Senate in 2004.

Have they not seen, have they not heard, that in 2002 Republicans won the Senate in part because Bush made the Democrats' treatment of his nominees an issue? "And I'll tell you another big issue, . . ." he said on election eve in Missouri. "I have a responsibility to name good people to the bench. I've named a lot of really good people . . . but the bunch running the Senate [the Democrats] has done a lousy job on my nominees."

In 2004, 19 of the 34 seats at stake in the Senate are Democratic, and independent observers believe Democrats can be confident of retaining no more than 9 of the 19, while Republicans can count on holding at least 10 of their 15. Can Democrats really relish the prospect of President Bush's campaigning in states like Georgia, South Carolina, North Carolina, Florida, Arkansas, Nevada, North Dakota, and South Dakota, and talking, as he did in Rose Garden remarks last week, about the "crisis in our Senate" and "therefore . . . in our judiciary" produced by Democratic filibusters designed "to prevent an up-or-down vote on an appeals court nominee"? The vote-blocking Democrats are not only hurting their own party's chances of recapturing the Senate but also handicapping their presidential nominee. What's that person going to say--"I favor filibusters of Bush's nominees, but not of my own"? Come to think of it, what are Joe Lieberman, Bob Graham, John Edwards, and John Kerry--vote-blockers all--going to say?

If the Democrats were smart, they would quit standing in the way of votes on nominees right now. They would see that what is sauce for the Republican goose could someday be sauce for their gander, and they shouldn't like that prospect one bit. More important, they would recognize that blocking votes on nominees who enjoy majority support, while not exactly unconstitutional, shows disrespect for the exclusive authority of

the president to nominate judges.

Democrats once understood the nominating power. Maybe they can recall the example of FDR. But then again, maybe they can't. And maybe they really do think that their filibustering is good for the country. If so, no one--tongue in cheek or not--need admonish them to keep on filibustering. They'll do it anyway, borrowing trouble all the way through Election Day.

--Terry Eastland, for the Editors

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
CC: H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
Sent: 5/14/2003 1:49:31 PM
Subject: : when it rains it pours; Washington Post has suggested a Judge op-ed on the double standard theme; please review draft

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 14-MAY-2003 17:49:31.00

SUBJECT: : when it rains it pours; Washington Post has suggested a Judge op-ed on the double standard theme; please review draft

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

CC: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Last week, the Senate confirmed John Roberts to be a judge on the U.S. Court of Appeals for the D.C. Circuit. Roberts has served as Deputy Solicitor General of the United States, Associate Counsel to President Reagan, and Law Clerk to then-Justice Rehnquist. He has argued numerous cases before the U.S. Supreme Court and federal and state appeals courts and is widely recognized as one of the very best appellate lawyers in America. When a large bipartisan group of state attorneys general needed a lawyer to represent them in the landmark Microsoft litigation, they hired John Roberts, a good example of his reputation and respect. The American Bar Association unanimously rated him well qualified. In short, John Roberts exemplifies the kind of judge President Bush has nominated to the federal courts, and he will be a distinguished appeals court judge on the D.C. Circuit.

The Senate's confirmation of Roberts is noteworthy for two additional reasons, however, both of which demonstrate the serious breakdown in the Senate confirmation process about which President Bush and many Senators of both parties have spoken in recent years.

First, the Roberts saga -- namely, the Senate's extended and unjustified delays in considering his nomination -- illustrates that the process is broken better than any set of statistics possibly could. Roberts was first nominated to the D.C. Circuit in January 1992, yet did not receive a hearing before the end of President George H.W. Bush's term. President George W. Bush then nominated Roberts on May 9, 2001, shortly after taking office. But the Senate Judiciary Committee did not hold a hearing on his nomination during the entire last Congress, even though no serious objections were lodged against him. President Bush then re-nominated Roberts on January 7, 2003. And Roberts finally received his Senate vote on May 8, 2003 -- two years after nomination by President George W. Bush and more than 11 years after his first nomination. And when Roberts finally received that elusive vote, the Senate unanimously confirmed him, which makes the many years of delay all the more disturbing.

Senate delays of judicial nominees without holding a vote) which have been all too common in recent years -- flout the intention of the Constitution and the tradition of the Senate. No judicial nominee ever should have to wait years for a vote in the Senate. So that the federal courts are fully staffed to do their jobs for the American people and in order to attract the best and brightest to judicial service, the Senate

should fulfill its constitutional responsibility and ensure that every judicial nominee receives an up-or-down Senate vote within a reasonable period of time after nomination.

Second, the confirmation of John Roberts also dramatically exposes the double standard being applied to the President's other D.C. Circuit nominee, Miguel Estrada. The career records of Roberts and Estrada could not be more similar. Both Estrada and Roberts were unanimously rated well-qualified by the ABA. Both have argued numerous cases before the Supreme Court, including as attorneys in the Solicitor General's office. Both have devoted large portions of their legal careers to public service. Both have clerked for Supreme Court Justices. Both have the very strong support of prominent Democrat attorneys who served in high-ranking positions in the Clinton Administration. Neither has served previously as a judge or a professor and therefore neither has written widely about their personal views on legal issues. Both have served instead as superb and well-respected lawyers for public and private clients throughout their careers.

But the similarities between Roberts and Estrada end there. Senate Democrats never requested memoranda written by Roberts from his time in the Solicitor General's office. Yet they are insisting on reviewing memoranda written by Estrada from his time in the Solicitor General's office as a condition of ending a 3-month filibuster and finally allowing a vote on Estrada's nomination. Consistent with judicial independence and the traditional practice of judicial nominees, Senate Democrats did not demand that Roberts answer questions about his personal views on legal and policy issues. These same Senators are demanding that Estrada answer the same questions that Roberts did not answer as a condition of ending the filibuster and allowing a vote on Estrada's nomination.

The 45 Senate Democrats who are filibustering Estrada's nomination are applying a double standard. There is no rational or legitimate justification for the disparate treatment of Roberts and Estrada, particularly by means of an extraordinary and unprecedented filibuster when Estrada has the clear support of a majority of Senators. These 45 Senate Democrats should halt the filibuster and allow an up-or-down vote on Estrada. As the President has said, let each Senator vote as he or she thinks best, but end the double standard, stop the unfair treatment, and give the man a vote.

From: Jackie Bennett <JMB@mtlitig.com>
To: TSusanin@gibbonslaw.com [UNKNOWN] <TSusanin@gibbonslaw.com>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 5/15/2003 1:57:21 AM
Subject: : Fwd: Blumenthal book review
Attachments: P_2FTFG003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jackie Bennett <JMB@mtlitig.com> (Jackie Bennett <JMB@mtlitig.com> [UNKNOWN])
CREATION DATE/TIME:15-MAY-2003 05:57:21.00
SUBJECT:: Fwd: Blumenthal book review
TO:TSusanin@gibbonslaw.com (TSusanin@gibbonslaw.com [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Received: from ohsmt03.ogw.rr.com by mail.mtlitig.com; Thu, 15 May 2003 04:39:23 -0500
Received: from 0kzmq (dhcp024-208-223-090.indy.rr.com [24.208.223.90]) by ohsmt03.ogw.rr.com (8.12.5/8.12.2) with SMTP id h4F9bF6F015302; Thu, 15 May 2003 05:39:03 -0400 (EDT)
Date: Thu, 15 May 2003 04:38:10 -0500
From: "jackie bennett" <jbennett1@indy.rr.com>
Subject: Blumenthal book review
To: "Mary Ann Wirth" <maw@bpslaw.com>, "Sol Wisenberg" <swisenberg@rdbl.com>, "Mary Ann Parks" <mparks12@satx.rr.net>, "Jim Mulligan" <Jim@cardinalmfginc.com>, "Stephen M. Lucas" <SMLUCAS@CCIM.net>, "Jim Curtis" [PRA 6], "Bill Harvey" [PRA 6], "JackieM&T Bennett" <jbennett@mtlitig.com>
Message-id: <000b01c31ac55f0fe8f4056401a8c0@0kzmq.indy.rr.com>
MIME-version: 1.0
X-MIMEOLE: Produced By Microsoft MimeOLE V4.72.3110.3
X-Mailer: Microsoft Outlook Express 4.72.3110.1
Content-type: multipart/alternative;
boundary="Boundary_(ID_tcjuCY19WqSG7MEHVMhk1w)"
X-Priority: 3
X-MSMail-priority: Normal
<http://www.observer.com/pages/frontpage5.asp>
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2FTFG003_WHO.TXT_1>

<http://www.observercom/page s/frontpage5.asp>

From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 5/15/2003 8:18:49 AM
Subject: Myers message

Bill Myers will email you the info. Please call him at **PRA 6** if you don't get it. Also, he asked that you call him when the nomination has gone up.

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Abegg, John (McConnell) <John_Abegg@mcconnell.senate.gov>
Sent: 5/15/2003 5:11:07 AM
Subject: : FW: Kuhl conf call

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:15-MAY-2003 09:11:07.00

SUBJECT:: FW: Kuhl conf call

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Abegg, John (McConnell)" <John_Abegg@mcconnell.senate.gov> ("Abegg, John (McConnell)" <John_Abegg@mcconnell.senate.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

Thursday, May 15th at 10:00 am

Dial in: 202-353-0878

Passcode: 1645

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>; Brian.A.Benczkowski@usdoj.gov [UNKNOWN] <Brian.A.Benczkowski@usdoj.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Keys, Elizabeth (Republican-Conf) <Elizabeth_Keys@src.senate.gov>; Abegg, John (McConnell) <John_Abegg@mccconnell.senate.gov>; Kristi.L.Remington@usdoj.gov [UNKNOWN] <Kristi.L.Remington@usdoj.gov>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Ledeen, Barbara (Republican-Conf) <Barbara_Ledeen@src.senate.gov>
Sent: 5/15/2003 5:13:22 AM
Subject: : reminder

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:15-MAY-2003 09:13:22.00

SUBJECT:: reminder

TO:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Keys, Elizabeth (Republican-Conf)" <Elizabeth_Keys@src.senate.gov> ("Keys, Elizabeth (Republican-Conf)" <Elizabeth_Keys@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> ("Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Kristi.L.Remington@usdoj.gov (Kristi.L.Remington@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> ("Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

Subject: Kuhl conf call

Thursday, May 15th at 10:00 am

Dial in: 202-353-0878

Passcode: 1645

REV_00236356

From: Bumatay, Patrick J.
To: <Powell, Benjamin A.>;<Kavanaugh, Brett M.>;<Brosnahan, Jennifer R.>
Sent: 5/15/2003 11:01:57 AM
Subject: Judicial press info

Attached is the final bios and contact lists for the press. Please let me know of any changes asap.

thanks

.

From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
Sent: Thursday, May 15, 2003 11:32 AM
To: John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
Subject: : <no subject>

Begin Original ARMS Header ##### RECORD TYPE: PRESIDENTIAL (NOTES MAIL) CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]) CREATION DATE/TIME:15-MAY-2003 11:31:59.00
SUBJECT:: <no subject>
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD]) READ:UNKNOWN
End Original ARMS Header

This email came from a friend of mine from growing up who was one of the founders of the Nantucket Nectars juice company (of "Tom and Tom" fame).

Anyway, he wants to help. Any thoughts where to point him? I thought you might have an idea.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/15/2003 11:29 AM -----

Tom Scott [Redacted]
05/05/2003 05:12:32 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, [Redacted]
cc:
Subject: <no subject>

Hey Brett-

[Redacted]

Was wondering if you could help me with something? George Bush has blown me

away. The guy is making history every day. I love his style, his sense of ethics and incredible courage and determination. I'm an overboard patriotic, I love the constitution and am an avid fan of US/World history.

I want to work for this administration and for our country. I have an idea as to how. I have started a business with my wife and a friend. My wife was founder of J Crew. She stepped down as CEO of the company a couple of years ago. My other partner is a film producer who has produced 18 movies including Kids, Scream, Copland, Godzilla and Rudy. Our business is a combination of Entertainment and Marketing. We help our clients market

their cause. We are extremely focused. We will have no more than three projects at any one time. Preferably it is one client and one project.

I want to help President Bush promote knowledge of American History. We consider it a great challenge, yet we know we can do this as well or better than anyone in the country. I have no idea how this kind of thing is handled. I am looking for help. This decision may have already been made and may not involve the private sector. I am hoping it does and that it is not too late.

We have access to the best of the best. We are passionate about ethical, honest communication. Performing a task we have the skill, the experience, and more importantly passion to carry off well, would be the professional and patriotic highlight of my career/life.

Please let me know if you can point me in the right direction.

Thanks for your consideration.

Tom Scott

From: CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/15/2003 8:06:19 AM
Subject: : Myers message

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:15-MAY-2003 12:06:19.00
SUBJECT:: Myers message
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Bill Myers will email you the info.; Please call him at 202-262-0139 if you don't get it.; Also, he asked that you call him when the nomination has gone up.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>
CC: J. Elizabeth Farrell/WHO/EOP@EOP [WHO] <J. Elizabeth Farrell>;Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>;Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>
Sent: 5/15/2003 8:08:37 AM
Subject: : REMINDER: Meeting with the President

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:15-MAY-2003 12:08:37.00

SUBJECT:: REMINDER: Meeting with the President

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

CC:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

End Original ARMS Header

Our meeting is still confirmed for 9:25 tomorrow morning in the Oval Office.

;

Staff prep will begin at 9:00 in the Judge's Office.

;

Thanks!

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

From: Nelson, Carolyn

Sent: Monday, May 12, 2003 10:56 AM

To: Bartolomucci, H. Christopher; Ulyot, Theodore W.; Leitch, David G.; Gonzales, Alberto R.; Kavanaugh, Brett M.; Newstead, Jennifer G.; Powell, Benjamin A.; Sampson, Kyle; Brosnahan, Jennifer R.

Cc: Montiel, Charlotte L.; Bumatay, Patrick J.

Subject: Meeting with the President re: Judges

We're confirmed for a meeting with the President THIS FRIDAY, May 16, at

REV_00236374

9:25 am.

;

Please keep in mind that the binder is due to Staff Secretary no later than C.O.B. Wednesday - materials should be provided;to Patrick accordingly.

;

Thanks!

From: Grubbs, Wendy J.
To: <Kavanaugh, Brett M.>
Sent: 5/15/2003 12:59:47 PM
Subject: Re:

Will you please share supreme court info? I need to pull some leg thoughts together and any reading about past noms or current thoughts/strategies would be most helpful. Thanks.

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
To: Keys, Elizabeth (Republican-Conf)
<Elizabeth_Keys@src.senate.gov>; Brian.A.Benczkowski@usdoj.gov [UNKNOWN]
<Brian.A.Benczkowski@usdoj.gov>; Dahl, Alex (Judiciary)
<Alex_Dahl@Judiciary.senate.gov>; Abegg, John (McConnell)
<John_Abegg@mccconnell.senate.gov>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J.
Grubbs>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Ashley
Snee/WHO/EOP@EOP [WHO] <Ashley Snee>; Comisac, RenaJohnson (Judiciary)
<Rena_Johnson_Comisac@Judiciary.senate.gov>; Wichterman, Bill (Frist)
<Bill_Wichterman@frist.senate.gov>; Duffield, Steven (RPC)
<Steven_Duffield@rpc.senate.gov>; Ledeen, Barbara (Republican-Conf)
<Barbara_Ledeen@src.senate.gov>; kmajor@GOPAC.org [UNKNOWN]
<kmajor@GOPAC.org>
Sent: 5/15/2003 1:49:47 PM
Subject: : Kuhl planning
Attachments: P_2ZXGG003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel
(Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:15-MAY-2003 17:49:47.00

SUBJECT:: Kuhl planning

TO:"Keys, Elizabeth (Republican-Conf)" <Elizabeth_Keys@src.senate.gov> ("Keys, Elizabeth
(Republican-Conf)" <Elizabeth_Keys@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ("Dahl, Alex (Judiciary)"
<Alex_Dahl@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> ("Abegg, John (McConnell)"
<John_Abegg@mccconnell.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("
Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN]
)

READ:UNKNOWN

TO:"Wichterman, Bill (Frist)" <Bill_Wichterman@frist.senate.gov> ("Wichterman, Bill
(Frist)" <Bill_Wichterman@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)"
<Steven_Duffield@rpc.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> ("Ledeen, Barbara
(Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:kmajor@GOPAC.org (kmajor@GOPAC.org [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

Kristi,

Tomorrow morning I will collect two email lists as we discussed for
conference calls on Monday, that you might respond to with call in
codes. This email is a preliminary notice just to lock in times for
those few listed.

REV_00236395

Monday 10:00 (30 Minutes) - inter-staff call

Monday 12:00 (45 minutes) - groups and communications call

If anyone has suggestions as to who should be on the second call, use tomorrow to recruit.

Thanks

Manny

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_2ZXGG003_WHO.TXT_1>

Kristi,

Tomorrow morning I will collect two email lists as we discussed for conference calls on Monday, that you might respond to with call in codes. This email is a preliminary notice just to lock in times for those few listed.

Monday 10:00 (30 Minutes) – inter-staff call

Monday 12:00 (45 minutes) – groups and communications call

If anyone has suggestions as to who should be on the second call, use tomorrow to recruit.

Thanks

Manny

From: Caramanica, Jessica (Judiciary) <Jessica_Caramanica@Judiciary.senate.gov>
To: Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>; Ledeen, Barbara (Republican-Conf) <Barbara_Leedeen@src.senate.gov>; Gumerson, Katie (RPC) <Katie_Gumerson@rpc.senate.gov>; Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>; Abegg, John (McConnell) <John_Abegg@mccconnell.senate.gov>; Galyean, James (L. Graham) <James_Galyean@lgraham.senate.gov>; ashley_m._snee@who.eop.gov [UNKNOWN] <ashley_m._snee@who.eop.gov>; adam.charnes@usdoj.gov [UNKNOWN] <adam.charnes@usdoj.gov>; brian.a.benczkowski@usdoj.gov [UNKNOWN] <brian.a.benczkowski@usdoj.gov>; Jamie.E.Brown@usdoj.gov [UNKNOWN] <Jamie.E.Brown@usdoj.gov>; Dahl, Alex (Judiciary) <Alex_Dahl@Judiciary.senate.gov>; Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>; Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>; Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>; Smith, William (Judiciary) <William_Smith@Judiciary.senate.gov>; Vogel, Alex (Frist) <Alex_Vogel@frist.senate.gov>; Monica.goodling@usdoj.gov [UNKNOWN] <Monica.goodling@usdoj.gov>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; viet.dinh@usdoj.gov [UNKNOWN] <viet.dinh@usdoj.gov>; Caramanica, Jessica (Judiciary) <Jessica_Caramanica@Judiciary.senate.gov>
Sent: 5/15/2003 3:31:27 PM
Subject: : Meeting Friday at 10:30 a.m.
Attachments: P_Z41HG003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> ("Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:15-MAY-2003 19:31:27.00

SUBJECT:: Meeting Friday at 10:30 a.m.

TO:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Ledeen, Barbara (Republican-Conf)" <Barbara_Leedeen@src.senate.gov> ("Ledeen, Barbara (Republican-Conf)" <Barbara_Leedeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Gumerson, Katie (RPC)" <Katie_Gumerson@rpc.senate.gov> ("Gumerson, Katie (RPC)" <Katie_Gumerson@rpc.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> ("Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Galyean, James (L. Graham)" <James_Galyean@lgraham.senate.gov> ("Galyean, James (L. Graham)" <James_Galyean@lgraham.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:ashley_m._snee@who.eop.gov (ashley_m._snee@who.eop.gov [UNKNOWN])

READ:UNKNOWN

TO:adam.charnes@usdoj.gov (adam.charnes@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:brian.a.benczkowski@usdoj.gov (brian.a.benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:Jamie.E.Brown@usdoj.gov (Jamie.E.Brown@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> ("Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

REV_00236400

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)"
<Manuel_Miranda@frist.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)"
<Steven_Duffield@rpc.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Smith, William (Judiciary)" <William_Smith@Judiciary.senate.gov> ("Smith, William
(Judiciary)" <William_Smith@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Vogel, Alex (Frist)" <Alex_Vogel@frist.senate.gov> ("Vogel, Alex (Frist)"
<Alex_Vogel@frist.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Monica.goodling@usdoj.gov (Monica.goodling@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:viet.dinh@usdoj.gov (viet.dinh@usdoj.gov [UNKNOWN])
READ:UNKNOWN
TO:"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> (
"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Just a reminder of the Friday meeting in Makan's office (SD-145) to
discuss judicial nominations. Hope you can make it.

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and
confidential information intended only for the use of the individuals or
entities named as addressees. If you, the reader of this message, are
not the intended recipient, you are hereby notified that any
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strictly prohibited. If you have received this message in error, please
forgive the inconvenience, immediately notify the sender, and delete the
original message without keeping a copy.

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_Z41HG003_WHO.TXT_1>

Just a reminder of the Friday meeting in Makan's office (SD-145) to discuss judicial nominations.
Hope you can make it.

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From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Sampson, Kyle>
Sent: 5/15/2003 10:16:25 PM
Subject: basic stats

- * 124 confirmed (23 circuit and 101 district)
- * 63 pending in Senate (19 circuit and 44 district)
- * After meeting with President Friday, 5 in background process (2 circuit and 3 district)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 5/16/2003 6:40:43 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 16-MAY-2003 10:40:43.00
SUBJECT: :
TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

permanent dct seat for Utah was part of markup yesterday

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/16/2003 9:40:57 AM
Subject: : RE:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:16-MAY-2003 13:40:57.00
SUBJECT:: RE:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

What are you hearing?

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

From: Kavanaugh, Brett M.
Sent: Friday, May 16, 2003 1:19 PM
To: Leitch, David G.; Sampson, Kyle
Subject:

think one of you two may want to gently remind folks that what President says in his meetings stays in his meetings.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; viet.dinh@usdoj.gov @ inet [UNKNOWN] <viet.dinh@usdoj.gov @ inet>
Sent: 5/16/2003 11:37:39 AM
Subject: : No judicial nominating commissions in NC -- no fears

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 16-MAY-2003 15:37:39.00
SUBJECT: : No judicial nominating commissions in NC -- no fears
TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: viet.dinh@usdoj.gov @ inet (viet.dinh@usdoj.gov @ inet [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

From: CN=Cesar Conda/OU=OVP/O=EOP [OVP]
To: Stephen J. Yates/OVP/EOP [OVP] <Stephen J. Yates>;Candida P. Wolff/OVP/EOP@Exchange [OVP] <Candida P. Wolff>;Katie W. Wilson/OVP/EOP@Exchange [OVP] <Katie W. Wilson>;Daniel K. Wilmot/OVP/EOP@Exchange [OVP] <Daniel K. Wilmot>;Laura C. Welborn/OVP/EOP [OVP] <Laura C. Welborn>;Chad A. Weaver/OVP/EOP [OVP] <Chad A. Weaver>;Didi Watson/OVP/EOP [OVP] <Didi Watson>;Kristin Warren/OVP/EOP [OVP] <Kristin Warren>;Larry D. Walker/OVP/EOP [OVP] <Larry D. Walker>;Alexandra Vukisch/OVP/EOP [OVP] <Alexandra Vukisch>;Catherine W. Tobias/OVP/EOP [OVP] <Catherine W. Tobias>;Jorge Tavel/OVP/EOP [OVP] <Jorge Tavel>;Melinda C. Sweet/OVP/EOP [OVP] <Melinda C. Sweet>;Sarah M. Straka/OVP/EOP [OVP] <Sarah M. Straka>;Robert B. Stephan/OVP/EOP [OVP] <Robert B. Stephan>;James E. Steen/OVP /EOP@Exchange [OVP] <James E. Steen>;Karen Starr/OVP/EOP [OVP] <Karen Starr>;Benjamin Shuster/OVP/EOP [OVP] <Benjamin Shuster>;Joseph J. Shattan/OVP/EOP [OVP] <Joseph J. Shattan>;Natalie Rule/OVP/EOP [OVP] <Natalie Rule>;Peter M. Rowan/OVP /EOP@Exchange [OVP] <Peter M. Rowan>;Bettina K. Roundey/OVP/EOP [OVP] <Bettina K. Roundey>;David J. Rodriguez/OVP/EOP [OVP] <David J. Rodriguez>;Jeffrey A. Reed/OVP/EOP [OVP] <Jeffrey A. Reed>;Karen A. Reaves/OVP/EOP [OVP] <Karen A. Reaves>;Samantha F. Ravich/OVP/EOP [OVP] <Samantha F. Ravich>;Mary M. Raether/OVP/EOP [OVP] <Mary M. Raether>;John W. Poulsen/OVP/EOP [OVP] <John W. Poulsen>;Susan L. Posey/OVP/EOP@Exchange [OVP] <Susan L. Posey>;Travis W. Pope/OVP /EOP@Exchange [OVP] <Travis W. Pope>;Philip R. Pietras/OVP/EOP [OVP] <Philip R. Pietras>;David C. Picard/OVP/EOP [OVP] <David C. Picard>;Steve Payne/OVP/EOP [OVP] <Steve Payne>;Neil S. Patel/OVP/EOP@Exchange [OVP] <Neil S. Patel>;Thomas R. Parker/OVP/EOP [OVP] <Thomas R. Parker>;Kevin M. O'Donovan/OVP/EOP [OVP] <Kevin M. O'Donovan>;Claire M. O'Donnell/OVP/EOP@Exchange [OVP] <Claire M. O'Donnell>;Frances E. Norris/OVP/EOP@Exchange [OVP] <Frances E. Norris>;Sara E. Nokes/OVP/EOP [OVP] <Sara E. Nokes>;Julie L. Nichols/OVP/EOP@Exchange [OVP] <Julie L. Nichols>;Marvin Murray/OVP/EOP@Exchange [OVP] <Marvin Murray>;Manson O. Morris/OVP/EOP [OVP] <Manson O. Morris>;Penelope P. Miller/OVP/EOP [OVP] <Penelope P. Miller>;Bruce E. Miller/OVP/EOP [OVP] <Bruce E. Miller>;Benjamin A. Miller/OVP/EOP [OVP] <Benjamin A. Miller>;Jennifer Millerwise/OVP/EOP [OVP] <Jennifer Millerwise>;Charles D. McGrath Jr/OVP/EOP@Exchange [OVP] <Charles D. McGrath Jr>;Megan McGinn/OVP/EOP [OVP] <Megan McGinn>;Brian V. McCormack/OVP/EOP@Exchange [OVP] <Brian V. McCormack>;Jennifer H. Mayfield/OVP/EOP@Exchange [OVP] <Jennifer H. Mayfield>;Gary A. Mayes/OVP/EOP [OVP] <Gary A. Mayes>;Elizabeth L. Mason/OVP/EOP [OVP] <Elizabeth L. Mason>;Daniel W. Martin/OVP/EOP [OVP] <Daniel W. Martin>;Catherine J. Martin/OVP/EOP [OVP] <Catherine J. Martin>;Jaime E. Martinez/OVP/EOP [OVP] <Jaime E. Martinez>;James Marrs/OVP/EOP [OVP] <James Marrs>;Ado A. Machida/OVP/EOP [OVP] <Ado A. Machida>;Lisa Lybbert/OVP/EOP [OVP] <Lisa Lybbert>;Stephanie J. Lundberg/OVP/EOP [OVP] <Stephanie J. Lundberg>;Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>;Joseph S. Leventhal/OVP/EOP@Exchange [OVP] <Joseph S. Leventhal>;Jennifer A. Lee/OVP/EOP [OVP] <Jennifer A. Lee>;Emily A. Lawrimore/OVP/EOP [OVP] <Emily A. Lawrimore>;Mary K. Lang/OVP/EOP [OVP] <Mary K. Lang>;Bryan J. Langley/OVP/EOP [OVP] <Bryan J. Langley>;Julia F. Kyle/OVP/EOP [OVP] <Julia F. Kyle>;Carol R. Kuntz/OVP/EOP [OVP] <Carol R. Kuntz>;Lindley Kratovil/OVP/EOP@Exchange [OVP] <Lindley Kratovil>;Cecile B. Kramer/OVP/EOP [OVP] <Cecile B. Kramer>;Karen Y. Knutson/OVP/EOP [OVP] <Karen Y. Knutson>;Matthew S. Klimow/OVP/EOP [OVP] <Matthew S. Klimow>;Elizabeth W. Kleppe/OVP/EOP [OVP] <Elizabeth W. Kleppe>;Robert Keenan/OVP/EOP [OVP] <Robert Keenan>;Terry L. Karow/OVP/EOP [OVP] <Terry L. Karow>;Nathaniel Johnson/OVP/EOP [OVP] <Nathaniel Johnson>;Chevelle A. Johnson/OVP/EOP [OVP] <Chevelle A. Johnson>;A. Merrill Hughes/OVP/EOP [OVP] <A. Merrill Hughes>;Darian Horn/OVP/EOP [OVP] <Darian Horn>;Elyssa S. Hijazi/OVP/EOP [OVP] <Elyssa S. Hijazi>;Debra Heiden/OVP/EOP@Exchange [OVP] <Debra Heiden>;Michelle L. Harvey/OVP/EOP [OVP] <Michelle L. Harvey>;John P. Hannah/OVP/EOP [OVP] <John P. Hannah>;Anne Marie Gunther/OVP/EOP@Exchange [OVP] <Anne Marie Gunther>;Michael A. Gould/OVP/EOP [OVP] <Michael A. Gould>;John C. Gossel/OVP/EOP@Exchange [OVP] <John C. Gossel>;Jennifer H. Gibbs/OVP/EOP@Exchange [OVP] <Jennifer H. Gibbs>;Jose A. Fuentes/OVP/EOP@Exchange [OVP] <Jose A. Fuentes>;Aaron L. Friedberg/OVP/EOP [OVP] <Aaron L. Friedberg>;William Fox/OVP/EOP [OVP] <William Fox>;Paul A. Flynn/OVP/EOP [OVP] <Paul A. Flynn>;Marie K. Fishpaw/OVP/EOP [OVP] <Marie K. Fishpaw>;Jennifer D. Field/OVP/EOP@Exchange [OVP] <Jennifer D. Field>;Timothy M. Fermoile/OVP/EOP [OVP]

<Timothy M. Fermoile>;Jessica L. Emond/OVP/EOP [OVP] <Jessica L. Emond>;Courtney S. Elwood/OVP/EOP@Exchange [OVP] <Courtney S. Elwood>;Christian J. Edward/OVP/EOP [OVP] <Christian J. Edward>;Eric S. Edelman/OVP/EOP [OVP] <Eric S. Edelman>;Elizabeth A. Denny/OVP/EOP [OVP] <Elizabeth A. Denny>;Jose L. Delgado/OVP/EOP [OVP] <Jose L. Delgado>;Mark A. DeLeo/OVP/EOP [OVP] <Mark A. DeLeo>;Cesar Conda/OVP/EOP [OVP] <Cesar Conda>;Patricia T. Clarey/OVP/EOP [OVP] <Patricia T. Clarey>;Stephen J. Claey's/OVP/EOP [OVP] <Stephen J. Claey's>;Lynne V. Cheney/OVP/EOP [OVP] <Lynne V. Cheney>;Heather A. Byrne/OVP/EOP [OVP] <Heather A. Byrne>;Cecelia Boyer/OVP /EOP@Exchange [OVP] <Cecelia Boyer>;Matthew J. Borges/OVP/EOP [OVP] <Matthew J. Borges>;Christopher J. Bolan/OVP/EOP [OVP] <Christopher J. Bolan>;David R. Bohrer/OVP/EOP [OVP] <David R. Bohrer>;Janet L. Berman/OVP/EOP [OVP] <Janet L. Berman>;Erin Benit/OVP/EOP [OVP] <Erin Benit>;George S. Beebe/OVP/EOP [OVP] <George S. Beebe>;Thomas M. Barnes/OVP/EOP [OVP] <Thomas M. Barnes>;Denise W. Balzano/OVP/EOP [OVP] <Denise W. Balzano>;James Babbitt/OVP/EOP [OVP] <James Babbitt>;Matthew F. Ardelean/OVP/EOP [OVP] <Matthew F. Ardelean>;Gustav F. Anies/OVP/EOP [OVP] <Gustav F. Anies>;Elmer F. Anies/OVP/EOP [OVP] <Elmer F. Anies>;Cora A. Allman/OVP/EOP [OVP] <Cora A. Allman>;Larry Adkins/OVP/EOP [OVP] <Larry Adkins>;David S. Addington/OVP/EOP [OVP] <David S. Addington>;Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Eric C. Pelletier/WHO/EOP@Exchange@EOP [WHO] <Eric C. Pelletier>;Matthew R. Rees/NSC /EOP@EOP [NSC] <Matthew R. Rees>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;William D. Badger/OPD /EOP@EOP [OPD] <William D. Badger>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>;Mark A. Weatherly/OMB /EOP@EOP [OMB] <Mark A. Weatherly>;Alan Hecht/CEQ/EOP@EOP [CEQ] <Alan Hecht>;Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>;Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>;David R. Anderson/CEQ/EOP@EOP [CEQ] <David R. Anderson>;Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>;Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>;Stephen Friedman/OPD /EOP@Exchange@EOP [OPD] <Stephen Friedman>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;David W. Hobbs/WHO/EOP@Exchange@EOP [WHO] <David W. Hobbs>;Ginger G. Loper/WHO/EOP@Exchange@EOP [WHO] <Ginger G. Loper>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Matthew Kirk/WHO /EOP@Exchange@EOP [WHO] <Matthew Kirk>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Claire E. Buchan/WHO/EOP@Exchange@EOP [WHO] <Claire E. Buchan>;Tevi Troy/WHO/EOP@Exchange@EOP [WHO] <Tevi Troy>;Jay P. Lefkowitz/OPD /EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Dina Powell/WHO /EOP@Exchange@EOP [WHO] <Dina Powell>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Kenneth L. Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>;William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>;Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>;Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Dinah Bear/CEQ/EOP@EOP [CEQ] <Dinah Bear>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;David M. Thomas/WHO /EOP@EOP [WHO] <David M. Thomas>;Christine M. Burgeson/WHO/EOP@Exchange@EOP [WHO] <Christine M. Burgeson>;Sean B. O'Hollaren/WHO/EOP@Exchange@EOP [WHO] <Sean B. O'Hollaren>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Ziad S. Ojakli/WHO/EOP@Exchange@EOP [WHO] <Ziad S. Ojakli>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Keith_Hennessey@opd.eop.gov [UNKNOWN] <Keith_Hennessey@opd.eop.gov>;Margaret M. Spellings/OPD /EOP@Exchange@EOP [OPD] <Margaret M. Spellings>;Joel D. Kaplan/WHO /EOP@Exchange@EOP [WHO] <Joel D. Kaplan>

Sent: 5/16/2003 11:45:46 AM

Subject: : You're invited to Farewell Reception for Karen Knutson

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
CREATION DATE/TIME:16-MAY-2003 15:45:46.00
SUBJECT:: You're invited to Farewell Reception for Karen Knutson
TO:Stephen J. Yates (CN=Stephen J. Yates/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Candida P. Wolff (CN=Candida P. Wolff/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Katie W. Wilson (CN=Katie W. Wilson/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Daniel K. Wilmot (CN=Daniel K. Wilmot/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Laura C. Welborn (CN=Laura C. Welborn/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Chad A. Weaver (CN=Chad A. Weaver/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Didi Watson (CN=Didi Watson/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Kristin Warren (CN=Kristin Warren/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Larry D. Walker (CN=Larry D. Walker/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Alexandra Vukisch (CN=Alexandra Vukisch/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Catherine W. Tobias (CN=Catherine W. Tobias/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jorge Tavel (CN=Jorge Tavel/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Melinda C. Sweet (CN=Melinda C. Sweet/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Sarah M. Straka (CN=Sarah M. Straka/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Robert B. Stephan (CN=Robert B. Stephan/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:James E. Steen (CN=James E. Steen/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Karen Starr (CN=Karen Starr/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Benjamin Shuster (CN=Benjamin Shuster/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Joseph J. Shattan (CN=Joseph J. Shattan/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Natalie Rule (CN=Natalie Rule/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Peter M. Rowan (CN=Peter M. Rowan/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Bettina K. Roundey (CN=Bettina K. Roundey/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:David J. Rodriguez (CN=David J. Rodriguez/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Jeffrey A. Reed (CN=Jeffrey A. Reed/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Karen A. Reaves (CN=Karen A. Reaves/OU=OVP/O=EOP [OVP])
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TO:Samantha F. Ravich (CN=Samantha F. Ravich/OU=OVP/O=EOP [OVP])
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TO:Mary M. Raether (CN=Mary M. Raether/OU=OVP/O=EOP [OVP])
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TO:John W. Poulsen (CN=John W. Poulsen/OU=OVP/O=EOP [OVP])
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TO:Susan L. Posey (CN=Susan L. Posey/OU=OVP/O=EOP@Exchange [OVP])
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TO:Travis W. Pope (CN=Travis W. Pope/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN

TO:Philip R. Pietras (CN=Philip R. Pietras/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:David C. Picard (CN=David C. Picard/OU=OVP/O=EOP [OVP])
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TO:Steve Payne (CN=Steve Payne/OU=OVP/O=EOP [OVP])
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TO:Neil S. Patel (CN=Neil S. Patel/OU=OVP/O=EOP@Exchange [OVP])
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TO:Thomas R. Parker (CN=Thomas R. Parker/OU=OVP/O=EOP [OVP])
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TO:Kevin M. O'Donovan (CN=Kevin M. O'Donovan/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Claire M. O'Donnell (CN=Claire M. O'Donnell/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Frances E. Norris (CN=Frances E. Norris/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Sara E. Nokes (CN=Sara E. Nokes/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Julie L. Nichols (CN=Julie L. Nichols/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Marvin Murray (CN=Marvin Murray/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Manson O. Morris (CN=Manson O. Morris/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Penelope P. Miller (CN=Penelope P. Miller/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Bruce E. Miller (CN=Bruce E. Miller/OU=OVP/O=EOP [OVP])
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TO:Jennifer Millerwise (CN=Jennifer Millerwise/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Charles D. McGrath Jr (CN=Charles D. McGrath Jr/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Megan McGinn (CN=Megan McGinn/OU=OVP/O=EOP [OVP])
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TO:Brian V. McCormack (CN=Brian V. McCormack/OU=OVP/O=EOP@Exchange [OVP])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@Exchange [OVP])
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TO:Gary A. Mayes (CN=Gary A. Mayes/OU=OVP/O=EOP [OVP])
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TO:Elizabeth L. Mason (CN=Elizabeth L. Mason/OU=OVP/O=EOP [OVP])
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TO:Daniel W. Martin (CN=Daniel W. Martin/OU=OVP/O=EOP [OVP])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP [OVP])
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TO:Jaime E. Martinez (CN=Jaime E. Martinez/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:James Marrs (CN=James Marrs/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Ado A. Machida (CN=Ado A. Machida/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lisa Lybbert (CN=Lisa Lybbert/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Stephanie J. Lundberg (CN=Stephanie J. Lundberg/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Joseph S. Leventhal (CN=Joseph S. Leventhal/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Jennifer A. Lee (CN=Jennifer A. Lee/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Emily A. Lawrimore (CN=Emily A. Lawrimore/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Mary K. Lang (CN=Mary K. Lang/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

TO:Bryan J. Langley (CN=Bryan J. Langley/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Julia F. Kyle (CN=Julia F. Kyle/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Carol R. Kuntz (CN=Carol R. Kuntz/OU=OVP/O=EOP [OVP])
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TO:Lindley Kratovil (CN=Lindley Kratovil/OU=OVP/O=EOP@Exchange [OVP])
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TO:Cecile B. Kramer (CN=Cecile B. Kramer/OU=OVP/O=EOP [OVP])
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TO:Matthew S. Klimow (CN=Matthew S. Klimow/OU=OVP/O=EOP [OVP])
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TO:Chevelle A. Johnson (CN=Chevelle A. Johnson/OU=OVP/O=EOP [OVP])
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TO:Darian Horn (CN=Darian Horn/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elyssa S. Hijazi (CN=Elyssa S. Hijazi/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Michelle L. Harvey (CN=Michelle L. Harvey/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:John P. Hannah (CN=John P. Hannah/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Anne Marie Gunther (CN=Anne Marie Gunther/OU=OVP/O=EOP@Exchange [OVP])
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TO:Michael A. Gould (CN=Michael A. Gould/OU=OVP/O=EOP [OVP])
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TO:John C. Gossel (CN=John C. Gossel/OU=OVP/O=EOP@Exchange [OVP])
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TO:Jennifer H. Gibbs (CN=Jennifer H. Gibbs/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Jose A. Fuentes (CN=Jose A. Fuentes/OU=OVP/O=EOP@Exchange [OVP])
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TO:William Fox (CN=William Fox/OU=OVP/O=EOP [OVP])
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TO:Paul A. Flynn (CN=Paul A. Flynn/OU=OVP/O=EOP [OVP])
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TO:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP [OVP])
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TO:Jennifer D. Field (CN=Jennifer D. Field/OU=OVP/O=EOP@Exchange [OVP])
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TO:Timothy M. Fermoile (CN=Timothy M. Fermoile/OU=OVP/O=EOP [OVP])
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TO:Jessica L. Emond (CN=Jessica L. Emond/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Christian J. Edward (CN=Christian J. Edward/OU=OVP/O=EOP [OVP])
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TO:Eric S. Edelman (CN=Eric S. Edelman/OU=OVP/O=EOP [OVP])
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TO:Elizabeth A. Denny (CN=Elizabeth A. Denny/OU=OVP/O=EOP [OVP])
READ:UNKNOWN

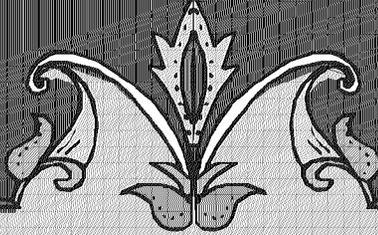
TO:Jose L. Delgado (CN=Jose L. Delgado/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Mark A. DeLeo (CN=Mark A. DeLeo/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cesar Conda (CN=Cesar Conda/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Patricia T. Clarey (CN=Patricia T. Clarey/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Stephen J. Claeys (CN=Stephen J. Claeys/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Lynne V. Cheney (CN=Lynne V. Cheney/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Heather A. Byrne (CN=Heather A. Byrne/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Cecelia Boyer (CN=Cecelia Boyer/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Matthew J. Borges (CN=Matthew J. Borges/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Christopher J. Bolan (CN=Christopher J. Bolan/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:David R. Bohrer (CN=David R. Bohrer/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Janet L. Berman (CN=Janet L. Berman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Erin Benit (CN=Erin Benit/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:George S. Beebe (CN=George S. Beebe/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Thomas M. Barnes (CN=Thomas M. Barnes/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Denise W. Balzano (CN=Denise W. Balzano/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:James Babbitt (CN=James Babbitt/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Matthew F. Ardelean (CN=Matthew F. Ardelean/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Gustav F. Anies (CN=Gustav F. Anies/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Elmer F. Anies (CN=Elmer F. Anies/OU=OVP/O=EOP [OVP])
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TO:Cora A. Allman (CN=Cora A. Allman/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Larry Adkins (CN=Larry Adkins/OU=OVP/O=EOP [OVP])
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TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP [OVP])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Matthew R. Rees (CN=Matthew R. Rees/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth A. Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:David R. Anderson (CN=David R. Anderson/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Edward A. Boling (CN=Edward A. Boling/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Claire E. Buchan (CN=Claire E. Buchan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
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TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Kenneth L. Peel (CN=Kenneth L. Peel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Horst Greczmiel (CN=Horst Greczmiel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Dinah Bear (CN=Dinah Bear/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN

TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad S. Ojakli (CN=Ziad S. Ojakli/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Keith_Hennessey@opd.eop.gov (Keith_Hennessey@opd.eop.gov [UNKNOWN])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ:UNKNOWN
TO:Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thursday, May 22nd, 4:00-5:30 p.m. in the Vice President's Ceremonial
Office of the E.O.B.
Click on this invite:

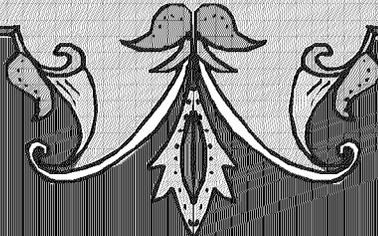
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_H9YHG003_WHO.TXT_1>



A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276
Date: Thursday, May 22, 2003
Time: 4:00 PM – 5:30 PM
RSVP: MFishpaw@ovp.eop.gov / 456.6655



From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 5/19/2003 9:59:39 AM
Subject: FW: MESSAGE MEETING REMINDER

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

From: Ritacco, Krista L.

Sent: Monday, May 19, 2003 9:58 AM

To: Yunker, Jacob H.; Allgood, Lauren K.; Ball, Andrea G.; Barrales, Ruben S.; Bennett, Melissa S.; Besanceney, Brian R.; Buchan, Claire ; Burkhart, Shannon; Burks, Jonathan W.; Campbell, Anne E.; Christie, Ronald I.; Ciafardini, Andrew D.; Conde, Roberta L.; Cooper, Rory S.; DeFrancis, Suzy; Devenish, Nicolle; Douglas, Penny G.; Duffy, Trent D.; Ellison, Kimberly; Eskew, Tucker A.; Figg, Kara G.; Gerdelman, Sue H.; Gillmor, Eleanor L.; Grant, Britt; Gray, Adrian G.; Gray, Ann ; Hager, Henry C; Healy, Erin E.; Hennessey, Keith; Hernandez, Israel; Hughes, Taylor A.; Ingle, Edward; Jackson, Barry S.; Kaplan, Joel; Kozberg, Lindsey C.; Kupfer, Jeffrey F.; Kyle, Ross M.; Lawrimore, Emily A.; Lefkowitz, Jay P.; Lineberry, Stephen M.; Litkenhaus, Colleen; Mallea, Jose; Martin, Catherine J.; McClellan, Scott ; McCord, Lauren; McDonald, Rebekah; McQuade, Vickie A.; Mehlman, Ken; Middlemas, A. Morgan; Millerwise, Jennifer; Millison, Cathy L.; Montiel, Charlotte L.; Nelson, Carolyn; Nipper, Wendy L.; Parell, Christie; Pelletier, Eric C.; Perez, Anna M.; Ralston, Susan B.; Reese, Shelley; Riepenhoff, Allison L.; Rodriguez, Noelia ; Rogers, Edwina C.; Rust, Kathryn E.; Ryun, Catharine A.; Schulte, Gregory L.; Sforza, Scott N.; Smith, Heidi M.; Snee, Ashley; Torgerson, Karin B.; Towey, Jim; Vestewig, Lauren J.; Walters, Katherine M.; Wehner, Peter H.; Westine, Lezlee J.; Williams, Mary C.; Wozniak, Natalie S.

Subject: MESSAGE MEETING REMINDER

There will be a message meeting today at noon in the Roosevelt Room.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 5/19/2003 3:57:06 PM
Subject: FW: UPDATE: LRM JAB82 - - OMB Request for Views on HR [2115] [Flight 100--Century of Aviation Reauthorization Act]

Just a reminder, this was due at 10 am

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

From: Brown, James A.

Sent: Friday, May 16, 2003 9:47 AM

To: dot.legislation@ost.dot.gov; Legislation.dhs@dhs.gov; usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; CLRM@doc.gov; dodtrs@osdgc.osd.mil; epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm; ocl@ios.doi.gov; justice.lrm@usdoj.gov; dol-soh-leg@dol.gov; state-lrm@state.gov; llr@do.treas.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov; mcculc@ntsb.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm

Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.; Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen; Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg, Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.; Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando, Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green, Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.; Bear, Dinah

Subject: UPDATE: LRM JAB82 - - OMB Request for Views on HR [2115] [Flight 100--Century of Aviation Reauthorization Act]

This bill, ordered reported by the House Aviation Subcommittee on Wednesday, was circulated for comment as an un-numbered bill. It was introduced yesterday as H.R. 2115.

LRM ID: JAB82

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Wednesday, May 14, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109
SUBJECT: OMB Request for Views on HR _____ Flight 100--Century of Aviation Reauthorization Act

DEADLINE: 10:00 a.m. Monday, May 19, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: The bill ordered reported by the House Aviation Subcommittee on May 14th is attached. It is anticipated that the full Transportation and Infrastructure Committee will mark up this bill on Wednesday, May 21st. If you have major concerns regarding this legislation, we therefore need to hear from you as soon as possible.

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117 & 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
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REV_00236475

007-AGRICULTURE - Jacquelyn Chandler - (202) 720-1272
006-AGRICULTURE (CR) - Wanda Worsham - (202) 720-7095
025-COMMERCE - Michael A. Levitt - (202) 482-3151
029-DEFENSE - Vic Bernson - (703) 697-1305
033-Environmental Protection Agency - Edward Krenik - (202) 564-5200
018-Council of Economic Advisers - Liaison Officer - (202) 395-5084
019-Council on Environmental Quality - Debbie S. Fiddelke - (202) 395-3113
059-INTERIOR - Jane Lyder - (202) 208-4371
061-JUSTICE - Daniel Bryant - (202) 514-2141
062-LABOR - Robert A. Shapiro - (202) 693-5500
114-STATE - Nicole Petrosino - (202) 647-1794
118-TREASURY - Thomas M. McGivern - (202) 622-2317
092-Office of Personnel Management - Harry Wolf - (202) 606-1424
093-Office of the Special Counsel - Jane McFarland - (202) 653-9001
128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755
085-National Transportation Safety Board - David Balloff - (202) 314-6120
069-National Aeronautics and Space Administration - Charles T. Horner III - (202) 358-1948
095-Office of Science and Technology Policy - Maureen O'Brien - (202) 456-6037

EOP:

Stephen S. McMillin
Kenneth L. Schwartz
Steven M. Mertens
Clare C. Doherty
Meredith G. Benson
Timothy A. Rosado
Stephen Suh
Kenneth S. Kelly
CEA LRM
NEC LRM
WHGC LRM
OVP LRM
David S. Addington
Elizabeth S. Dougherty
Jess Sharp
Philip J. Perry
John F. Wood
Kimberley S. Luczynski
Daryl L. Joseffer
Lauren C. Lobrano
Robert H. Goldberg
Alexander J. McClelland
Kevin F. Neyland
Carol R. Dennis
Mathew C. Blum
Michael D. Gerich
David P. Radzanowski
Hester C. Grippando
Julie L. Nichols
CEA LRM
OHS LRM
James J. Jukes
Richard E. Green
Robert N. Collender
Paul Shawcross
Edward A. Boling
Dinah Bear

LRM ID: JAB82 **SUBJECT:** OMB Request for Views on HR_____ Flight 100--Century of Aviation Reauthorization Act

RESPONSE TO

REV_00236476

LEGISLATIVE REFERRAL

MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109

Office of Management and Budget

FROM: _____ (Date)

_____ (Name)
_____ (Agency)
_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/19/2003 1:24:48 PM
Subject: : FW: Time Sensitive LRM JAB89 - - JUSTICE Report on HR2115 Flight 100--Century of Aviation Reauthorization Act
Attachments: P_KDQJG003_WHO.TXT_1.pdf

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:19-MAY-2003 17:24:48.00

SUBJECT:: FW: Time Sensitive LRM JAB89 - - JUSTICE Report on HR2115 Flight 100--Century of Aviation Reauthorization Act

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

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

From: Brown, James A.

Sent: Monday, May 19, 2003 5:23 PM

To: dot.legislation@ost.dot.gov; Legislation.dhs@dhs.gov;
usdaobpaleg@obpa.usda.gov; usdaocrleg@obpa.usda.gov; CLRM@doc.gov;
dodlrs@osdgc.osd.mil; epalrm@epamail.epa.gov; Cea Lrm; Ceq Lrm;
ocl@ios.doi.gov; dol-sol-leg@dol.gov; state-lrm@state.gov;
llr@do.treas.gov; ola@opm.gov; lrm@osc.gov; laffairs@ustr.gov;
mccullc@nts.gov; NASA_LRM@hq.nasa.gov; Ostp Lrm

Cc: McMillin, Stephen S.; Schwartz, Kenneth L.; Mertens, Steven M.;
Doherty, Clare C.; Benson, Meredith G.; Rosado, Timothy A.; Suh, Stephen;
Kelly, Kenneth S.; Cea Lrm; Nec Lrm; Whgc Lrm; Ovp Lrm; Addington, David
S.; Dougherty, Elizabeth S.; Sharp, Jess; Perry, Philip J.; Wood, John F.;
Luczynski, Kimberley S.; Joseffer, Daryl L.; Lobrano, Lauren C.; Goldberg,
Robert H.; McClelland, Alexander J.; Neyland, Kevin F.; Dennis, Carol R.;
Blum, Mathew C.; Gerich, Michael D.; Radzanowski, David P.; Grippando,
Hester C.; Nichols, Julie L.; Cea Lrm; Ohs Lrm; Jukes, James J.; Green,
Richard E.; Collender, Robert N.; Shawcross, Paul; Boling, Edward A.;
Bear, Dinah

Subject: Time Sensitive LRM JAB89 - - JUSTICE Report on HR2115
Flight 100--Century of Aviation Reauthorization Act

LRM ID: JAB89

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, May 19, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below

FROM: Richard E. Green (for) Assistant Director for
Legislative Reference

OMB CONTACT: James A. Brown

PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: JUSTICE Report on HR2115 Flight 100--Century of Aviation
Reauthorization Act

DEADLINE: 11:00 A.M. Tuesday, May 20, 2003

REV_00236478

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Absent objection, we plan to ask the Department of Justice to convert these views into a letter on the bill. This bill will be marked up by the House Transportation and Infrastructure on Wednesday. If we do not hear from you by the deadline, we will therefore assume that you have no objection to clearance.

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025-COMMERCE - Michael A. Levitt - (202) 482-3151
029-DEFENSE - Vic Bernson - (703) 697-1305
033-Environmental Protection Agency - Edward Krenik - (202) 564-5200
018-Council of Economic Advisers - Liaison Officer - (202) 395-5084
019-Council on Environmental Quality - Debbie S. Fiddelke - (202) 395-3113
059-INTERIOR - Jane Lyder - (202) 208-4371
062-LABOR - Robert A. Shapiro - (202) 693-5500
114-STATE - Nicole Petrosino - (202) 647-1794
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092-Office of Personnel Management - Harry Wolf - (202) 606-1424
093-Office of the Special Counsel - Jane McFarland - (202) 653-9001
128-US Trade Representative - Carmen Suro-Bredie - (202) 395-4755
085-National Transportation Safety Board - David Balloff - (202) 314-6120
069-National Aeronautics and Space Administration - Charles T. Horner III
- (202) 358-1948
095-Office of Science and Technology Policy - Maureen O'Brien - (202)
456-6037

EOP:

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Kenneth L. Schwartz
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John F. Wood
Kimberley S. Luczynski
Daryl L. Joseffer
Lauren C. Lobrano
Robert H. Goldberg
Alexander J. McClelland
Kevin F. Neyland
Carol R. Dennis
Mathew C. Blum

DOJ COMMENTS ON H.R. 2115, FLIGHT 100-CENTURY OF AVIATION
REAUTHORIZATION ACT

DOJ has serious concerns with two sections of H.R. 2115, the "Flight 100 - Century of Aviation Reauthorization Act." First, the language in section 204(c) "Judicial Review" amends 49 U.S.C. 46110 to correct a separate problem identified by DOT, but does NOT include the change requested by TSA. This language, if adopted as written, will actually damage positions we are currently taking in litigation, as Congress will have reviewed and amended sec. 46110 without correcting TSA's problem. Accordingly, we strongly recommend that the following language --- which encompasses both the FAA's and TSA's amendments to 46110 --- be substituted for the existing language of section 204(c):

(c) Judicial Review. The first sentence of sec. 46110(a) is amended to replace "under this part" with "in whole or in part, pursuant to this part, Part B of this subtitle, or subsection (l) or (s) of section 114 of this title,"

Second, section 409 of the bill would promote coordination among competing airlines of their flight schedules - potentially including coordinated reduction in the number of flights - as a means of dealing with congestion at airports. While the Department appreciates the concerns over airport congestion and flight delays underlying section 409, and could support a provision similar to section 409 with appropriate limits and safeguards, great care must be taken in drafting such a provision to ensure that it does not exacerbate competitive problems in the airline industry, resulting in diminished service and higher prices for the traveling public.

Scheduling is a critical element of competition among airlines, and airport congestion during peak travel times can be a byproduct of airlines competing to offer a substantial number flights at convenient times, especially for business passengers who pay significantly higher fares. If legislation is enacted permitting airlines to coordinate reductions in output, they will predictably endeavor to do so in the manner most profitable to themselves. It should be expected that each airline will negotiate for an arrangement that maximizes its ability to obtain, exert, or protect its market power in its "home" or "hub" airports - indeed, they would have little incentive to do otherwise.

By their nature, output-limiting agreements among competitors result in inflated prices. In the current hub-and-spoke system, where most hub airports are dominated by a few airlines at most and a particular city-pair market is often more important to one airline than to another, airlines will have a strong incentive to make anticompetitive "trades" where each agrees to reduce service in markets important to the others. And they can accomplish this without overtly doing so, and without even communicating directly with each other.

Experience shows that this concern is well-founded. In 1992, the Department sued the major airlines for using their electronic tariff publishing system to negotiate similar "trades" on fares. That is, one carrier proposed fare increases in markets important to another carrier, in exchange for the other carrier making fare increases in markets important to the first carrier. Having condemned such coordinated fare increases, it would be ironic to encourage coordinated output reductions, which can be just as harmful to consumers, and could also lead to "spill-over" cartel effects into other aspects of conduct on which the airlines should be competing.

In spite of these general concerns, the Department recognizes the legitimacy and persistence of concerns regarding airport congestion and flight delays. The Department would not be opposed to a narrowly focused provision similar to section 409, on an experimental basis and limited to short-term ad hoc responses to adverse weather conditions that the Secretary or FAA Administrator anticipates will severely disrupt the airlines' ability to make use of normal airport capacity. The Department believes that the provision as currently drafted can and should be tightened in order to avoid undue risk of harm to competition. We would be happy to work with the Committee to accomplish this goal.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 5/19/2003 8:00:54 PM
Subject: possible escort/spokesman for Hill visits for SCt nominee

Fred Thompson?

From: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; Ashley Holbrook/WHO/EOP@EOP [WHO] <Ashley Holbrook>; Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>; Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>
CC: Willcox, Lawrence (RPC) <Lawrence_Willcox@rpc.senate.gov>; Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>
Sent: 5/19/2003 5:05:38 PM
Subject: : Re: Kuhl

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> [UNKNOWN])

CREATION DATE/TIME:19-MAY-2003 21:05:38.00

SUBJECT:: Re: Kuhl

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Ashley Holbrook (CN=Ashley Holbrook/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

CC:"Willcox, Lawrence (RPC)" <Lawrence_Willcox@rpc.senate.gov> ("Willcox, Lawrence (RPC)" <Lawrence_Willcox@rpc.senate.gov> [UNKNOWN])

READ:UNKNOWN

CC:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

I will check availability for our Big Room and schedule this in coordination with Makan, Brett, and others.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

REV_00236494

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Charlotte L. Montiel/WHO/EOP@Exchange [WHO] <Charlotte L. Montiel>; Lockart, Sarah K. <Sarah_K_Lockart@who.eop.gov>; Ross M. Kyle/WHO/EOP@Exchange [WHO] <Ross M. Kyle>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Heather McNaught <Heather.McNaught@usdoj.gov>; Ann Gray/WHO/EOP@Exchange [WHO] <Ann Gray>; evelyn long <evelyn.v.long@usdoj.gov>; Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>; Hana F. Brilliant/WHO/EOP@EOP [WHO] <Hana F. Brilliant>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; amy bass <amy.bass@usdoj.gov>; adam ciongoli <adam.ciongoli@usdoj.gov>; viet dinh <viet.dinh@usdoj.gov>; tracy washington <tracy.t.washington@usdoj.gov>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David McMaster/WHO/EOP@EOP [WHO] <David McMaster>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Kristi Remington <Kristi.I.Remington@usdoj.gov>; Alison Jones/WHO/EOP@Exchange [WHO] <Alison Jones>; Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Kimberly Ellison/WHO/EOP@EOP [WHO] <Kimberly Ellison>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Melissa S. Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>; andrew beach <andrew.beach@usdoj.gov>; albert brewster <albert.brewster@usdoj.gov>; wendy keefer <wendy.j.keefer@usdoj.gov>
Sent: 5/20/2003 11:00:36 AM
Subject: : WHJSC tomorrow

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 20-MAY-2003 15:00:36.00

SUBJECT:: WHJSC tomorrow

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: "Lockart, Sarah K." <Sarah_K_Lockart@who.eop.gov>@SMTP@Exchange ("Lockart, Sarah K." <Sarah_K_Lockart@who.eop.gov>@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

TO: Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Heather McNaught <Heather.McNaught@usdoj.gov>@SMTP@Exchange (Heather McNaught <Heather.McNaught@usdoj.gov>@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

TO: Ann Gray (CN=Ann Gray/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: evelyn long <evelyn.v.long@usdoj.gov>@SMTP@Exchange (evelyn long <evelyn.v.long@usdoj.gov>@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

TO: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: Hana F. Brilliant (CN=Hana F. Brilliant/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: amy bass <amy.bass@usdoj.gov>@SMTP@Exchange (amy bass <amy.bass@usdoj.gov>@SMTP@Exchange [UNKNOWN])

READ: UNKNOWN

TO: adam ciongoli <adam.ciongoli@usdoj.gov>@SMTP@Exchange (adam ciongoli

<adam.ciongoli@usdoj.gov>@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:viet dinh <viet.dinh@usdoj.gov>@SMTP@Exchange (viet dinh
<viet.dinh@usdoj.gov>@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:tracy washington <tracy.t.washington@usdoj.gov>@SMTP@Exchange (tracy washington
<tracy.t.washington@usdoj.gov>@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David McMaster (CN=David McMaster/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kristi Remington <Kristi.l.Remington@usdoj.gov>@SMTP@Exchange (Kristi Remington
<Kristi.l.Remington@usdoj.gov>@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Alison Jones (CN=Alison Jones/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kimberly Ellison (CN=Kimberly Ellison/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:andrew beach <andrew.beach@usdoj.gov>@SMTP@Exchange (andrew beach
<andrew.beach@usdoj.gov>@SMTP@Exchange [UNKNOWN])
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TO:albert brewster <albert.brewster@usdoj.gov>@SMTP@Exchange (albert brewster
<albert.brewster@usdoj.gov>@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:wendy keefer <wendy.j.keefer@usdoj.gov>@SMTP@Exchange (wendy keefer
<wendy.j.keefer@usdoj.gov>@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

WHJSC will meet on 5/21 at 4:45 pm in Judge Gonzales' Office.

;

Thanks!

From: Nelson, Carolyn
To: wendy keefer <wendy.j.keefer@usdoj.gov>;adam ciongoli <adam.ciongoli@usdoj.gov>;albert brewster <albert.brewster@usdoj.gov>;amy bass <amy.bass@usdoj.gov>;andrew beach <andrew.beach@usdoj.gov>;<Bartolomucci, H. Christopher>;<Bennett, Melissa S.>;<Brilliant, Hana F.>;<Brosnahan, Jennifer R.>;<Bumatay, Patrick J.>;<Ellison, Kimberly>;evelyn long <evelyn.v.long@usdoj.gov>;<Francisco, Noel J.>;<Gray, Ann>;<Grubbs, Wendy J.>;Heather McNaught <Heather.McNaught@usdoj.gov>;<Jones, Alison>;<Kavanaugh, Brett M.>;Kristi Remington <Kristi.I.Remington@usdoj.gov>;<Kyle, Ross M.>;<Leitch, David G.>;Lockart, Sarah K. <Sarah_K_Lockart@who.eop.gov>;<McMaster, David>;<Montiel, Charlotte L.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Ralston, Susan B.>;<Sampson, Kyle>;tracy washington <tracy.t.washington@usdoj.gov>;<Ulyot, Theodore W.>;viet dinh <viet.dinh@usdoj.gov>
Sent: 5/20/2003 3:00:27 PM
Subject: WHJSC tomorrow

WHJSC will meet on 5/21 at 4:45 pm in Judge Gonzales' Office.

Thanks!

From: Nelson, Carolyn
To: wendy keefer <wendy.j.keefer@usdoj.gov>;adam ciongoli <adam.ciongoli@usdoj.gov>;albert brewster <albert.brewster@usdoj.gov>;amy bass <amy.bass@usdoj.gov>;andrew beach <andrew.beach@usdoj.gov>;<Bartolomucci, H. Christopher>;<Bennett, Melissa S.>;<Brilliant, Hana F.>;<Brosnahan, Jennifer R.>;<Bumatay, Patrick J.>;<Ellison, Kimberly>;evelyn long <evelyn.v.long@usdoj.gov>;<Francisco, Noel J.>;<Gray, Ann>;<Grubbs, Wendy J.>;Heather McNaught <Heather.McNaught@usdoj.gov>;<Jones, Alison>;<Kavanaugh, Brett M.>;Kristi Remington <Kristi.I.Remington@usdoj.gov>;<Kyle, Ross M.>;<Leitch, David G.>;Lockart, Sarah K. <Sarah_K_Lockart@who.eop.gov>;<McMaster, David>;<Montiel, Charlotte L.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Ralston, Susan B.>;<Sampson, Kyle>;tracy washington <tracy.t.washington@usdoj.gov>;<Ulyot, Theodore W.>;viet dinh <viet.dinh@usdoj.gov>
Sent: 5/20/2003 3:00:27 PM
Subject: WHJSC tomorrow

WHJSC will meet on 5/21 at 4:45 pm in Judge Gonzales' Office.

Thanks!

From: Grubbs, Wendy J.
To: <Kavanaugh, Brett M.>
Sent: 5/20/2003 3:38:41 PM
Subject: Re: from AP story about D Presidential candidates on judges

Stop it. Who did his background anyway?

From: Bumatay, Patrick J.
To: <Ullyot, Theodore W.>;<Bartolomucci, H. Christopher>;<Brosnahan, Jennifer R.>;<Francisco, Noel J.>;<Kavanaugh, Brett M.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 5/20/2003 5:54:23 PM
Subject: Noel's Docket

Time to play ... let's take all the good stuff from Noel's portfolio and give Reg Brown all the stuff I hate dealing with.

Please let me know if you want to switch anything in your portfolio. I will compile them and take them to David for his approval.

Thanks

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
CC: <Bumatay, Patrick J.>
Sent: 5/20/2003 7:51:53 PM
Subject:
Attachments: FINAL KUHL LETTER.pdf



THE WHITE HOUSE

WASHINGTON

May 20, 2003

Dear Senator Frist and Senator Hatch:

I write to provide you a summary of relevant information about Judge Carolyn Kuhl as the Senate prepares for debate on her nomination to the Ninth Circuit. Judge Kuhl is a woman of exceptional experience, integrity, and intellect who represents the mainstream of American law and values. Her record has been unfairly distorted and her character unfairly attacked by interest groups. They have done a disservice to this highly qualified woman and would do a disservice to the Judiciary and the American people if they were to succeed in blocking her from confirmation.

This letter first will summarize Judge Kuhl's record and support and then will respond to issues that have been raised by interest groups opposing her nomination.

I. Judge Kuhl's Record and Support

Judge Kuhl possesses superb qualifications, has strong bipartisan support, and received a "well qualified" rating from the American Bar Association, which Democrat Senators have referred to as the gold standard. Born in Missouri, she graduated with honors from Princeton University and Duke University Law School. She served as a law clerk on the Ninth Circuit to then-Judge Anthony Kennedy. She came to Washington at the beginning of President Reagan's Administration and served for five years in the Department of Justice. She began as a special assistant to the Attorney General, moved on to be Deputy Assistant Attorney General in the Civil Division, and then was named Deputy Solicitor General. She then returned to California in 1986 and became a partner at the prestigious Los Angeles firm of Munger Tolles & Olson. In 1995, Governor Wilson appointed her to the Los Angeles County Superior Court.

Judge Kuhl thus has extensive experience in federal and state government, in the Executive and Judicial Branches, and in public service and private legal practice. Since 1995, she has served on the Los Angeles Superior Court. Judge Kuhl now serves as the Supervising Judge of the Civil Department of that Court and is the first woman to hold that position. She supported Judge Richard Paez in his nomination to the Ninth Circuit, demonstrating her commitment to law and fair process without regard to politics or political gain. In short, Judge Kuhl has devoted extraordinary time and effort in her life to public service and the legal process, and she possesses a combination of intellect, experience, and character that makes her ideally suited to be an excellent circuit judge.

Given her record, it is no surprise that Judge Kuhl has garnered bipartisan support from California and national bar leaders, Republicans and Democrats, and defense lawyers and plaintiffs' lawyers. This support speaks volumes about the kind of judge she would be on the Ninth Circuit.

- **Vilma Martinez**, who is a Democrat, an accomplished and nationally respected California attorney, and a past President of the Mexican American Legal Defense and Educational Fund, wrote: “Kuhl is what I think of as an old fashioned judge. She cares about due process for everyone. In her seven years on the Superior Court bench, she has shown that she is careful to hear both sides. She does not try to influence the outcome of a case to favor one side or the other. She is serious about her oath to follow the law, whatever the result. . . . Both the plaintiff and defense bars in Los Angeles actively support Kuhl.”
- **The officers of the Litigation Section of the Los Angeles County Bar Association** (which has over 3000 members) have written in support of Judge Kuhl, both in May 2001 and April 2003. They stated that they are “life-long Democrats” who have “first-hand knowledge of Judge Kuhl’s integrity, intellect, judicial competence, fairness, and commitment to improving the administration of justice. . . . Those of us who appear before and work with Judge Kuhl know that she is a fair and caring person and an exceptional jurist.” They also stated that she has a “well-deserved reputation as being a fair minded judge who follows legal precedent. . . . On a personal level, we have come to know her as a warm, witty, and deeply caring person.”
- **A bipartisan group of nearly 100 judges who serve with Judge Kuhl on the Superior Court** have signed an extraordinary joint letter to the Senate supporting Judge Kuhl: “We have worked side by side with Judge Kuhl, have attended her judicial education presentations, talked with her about the law, and received reports from litigants who have appeared before her. We know she is a professional who administers justice without favor, without bias, and with an even hand. We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and to the Senate that confirms her. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.”
- **A bipartisan group of 23 women judges who have served with Judge Kuhl** wrote: “Judge Kuhl is seen by us and by the members of the Bar who appear before her as a fair, careful and thoughtful judge who applies the law without bias. She is respected by prosecutors, public defenders, and members of the plaintiffs’ and defense bar. . . . Judge Kuhl approaches her job with respect for the law and not a political agenda. Judge Kuhl has been a mentor to new women judges. . . . She has helped promote the careers of women, both Republican and Democrat. . . . She is also a very decent, caring, honest and patient human being who is a delight to have as a professional colleague and friend. As sitting Judges, we more than anyone appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.”
- **A bipartisan group of more than a dozen Justices of the California Court of Appeal** -- appointees of Democrat and Republican Governors who as appellate judges have worked directly with Judge Kuhl or have reviewed her work as a trial judge -- have written individual letters of support for Judge Kuhl. To take one example, Justice Paul Boland wrote: “[Judge Kuhl] has distinguished herself as a judge who is highly

intelligent, renders balanced, reasoned decisions, is intellectually honest, and is even-handed and fair.”

- **California Supreme Court Justice Carlos Moreno**, who previously was appointed to the federal district court in Los Angeles by President Clinton, wrote to express his “strong and unequivocal support” for Judge Kuhl. He wrote: “I had the pleasure of serving on the Los Angeles Superior Court with Judge Kuhl. She was widely respected among her fellow colleagues and lawyers for her dedication, scholarship, fairness, and adherence to the law. I have never discerned in her any ideological predisposition to decide a legal or factual issue in a predetermined manner. To the contrary, her reputation and practice is to decide matters with an open mind as to all issues. Judge Kuhl is a warm, intelligent, and decent person who should be fairly considered for this distinguished appointment. I can think of no one more qualified or deserving for this office.”
- **The President of the Consumer Attorneys Association of Los Angeles** wrote that “[t]hose who respect her judicial abilities, fairness, and temperament include attorneys on either side of an issue.” The Board of Governors of that Association voted to encourage individual members to support Judge Kuhl’s nomination.
- **Leo Terrell, a California civil rights lawyer**, wrote: “I am an attorney for the NAACP. . . . I am a lifelong Democrat. . . . I vigorously recommend the appointment of Judge Carolyn B. Kuhl to the United States Court of Appeals for the 9th Circuit.”

II. Responses to Issues Raised Against Judge Kuhl

Certain special-interest groups have raised questions about Judge Kuhl, but the allegations do not withstand scrutiny.

1. *Sanchez-Scott Case.* Some groups have raised questions about Judge Kuhl’s ruling as a state-court judge in the *Sanchez-Scott* case. We believe the case has been badly mischaracterized, and are disappointed that this case has unfairly become part of the brief against Judge Kuhl.

The plaintiff in the case sued four parties -- a doctor, the doctor’s employer medical partnership, a pharmaceutical company, and the pharmaceutical company’s representative -- after an incident in which the plaintiff was examined by the doctor in the presence of a pharmaceutical company representative. The company representative was present as part of an oncology mentorship program established to allow pharmaceutical company salespersons to better learn how an oncologist attends to patients and manages medications. It was common for physicians to explain the program and seek consent from the patient at the beginning of the visit, but the plaintiff alleged that this had not occurred in her case. The plaintiff knew that a third person was in the room (in other words, there was no *surreptitious* viewing or 2-way mirror) and, according to her complaint, was told that the company representative was a “person who was looking at Dr. Polonsky’s work.” But the plaintiff was not told of the third-party’s role or affiliation.

The fundamental wrong that occurred here -- as reflected in plaintiff's complaint -- was that the attending *doctor* failed to ask for the patient's consent to the presence of the third-party company representative before conducting the examination. If the doctor had asked and received consent, there could be no complaint about the third party's presence; if he had asked and not received consent, then the company representative would not have been present for the examination. *In short, the doctor was the clear wrongdoer for his failure to seek and obtain the patient's consent to the presence of the third party.*

The plaintiff did not just sue the doctor for failure to obtain consent, however, but also sued the pharmaceutical company and company representative. The plaintiff alleged two primary torts: (i) common-law "intrusion upon seclusion" against all defendants; and (ii) negligence by the doctor and medical partnership in failing to obtain the patient's consent to the presence of the company representative before conducting the examination. (The plaintiff also alleged a cause of action under the California Constitution, but ultimately did not pursue that claim.)

As often occurs in civil litigation, the plaintiff here asserted multiple causes of action arising out of a single incident. Judge Kuhl then was called upon to assess which causes of action did and did not apply to the facts as alleged by plaintiff, and thus which claims could proceed toward trial.

In this case, Judge Kuhl dismissed the common-law intrusion upon seclusion claim. *She thus allowed the other cause of action against the doctor and medical partnership for failure to obtain consent to proceed to trial.* In dismissing one cause of action and thus allowing the other to proceed to trial, she reasoned based on California precedent that (i) the plaintiff was aware that the third person was in the room so the incident was not a surreptitious taping or viewing or a trespass, which under California law were the types of cases in which intrusion upon seclusion had been recognized, (ii) the purpose for having the third party present was otherwise legitimate if consent had been requested by the doctor and provided by the patient, (iii) the fundamental problem here was the doctor's failure to seek and obtain consent from the patient, which was covered by the plaintiff's separate negligence claim against the doctor and medical partnership.

At the core, there are two critical points to keep in mind about this case. First, the negligence tort, which was based on the doctor's failure to seek and obtain consent, applied to these facts and would allow the plaintiff to obtain *full recovery*. Second, Judge Kuhl's ruling allowed this claim to move toward trial, and thus her ruling did not prevent the plaintiff from obtaining full recovery.

Justice Paul Turner was one of the three judges who heard this case on appeal. Although the three-judge panel allowed the intrusion upon seclusion claim to proceed, he wrote to the Judiciary Committee to explain that a claim for intrusion upon seclusion when there was no surreptitious viewing or taping or the like was a case of "first impression" under California law. (At oral argument in the trial court, plaintiff's counsel admitted that their theory would allow patients to sue and recover whenever *any* third party was present in an examination, including a medical student for example.) Justice Turner added that a "strong argument can be made that

[Judge Kuhl] correctly assessed the competing societal interests the California Supreme Court requires all jurists in this state to weigh in determining whether the tort of intrusion has occurred.” Justice Turner concluded: “With all respect to those who have criticized Judge Kuhl as insensitive or biased because of my opinion in *Sanchez-Scott*, they are simply incorrect.”

In sum, while one can debate the proper scope of the intrusion upon seclusion tort and whether it ordinarily should cover non-surreptitious activities (which also can be covered by other torts), we do not think this one ruling should be permitted to negate the strong record and support Judge Kuhl has amassed. Moreover, it is important to place this case in context. Judge Kuhl has handled more than 2000 civil cases during her 7-year tenure on the bench. This is the only case she ruled upon or decided as a judge that has engendered any criticism, and it was a case in which her decision allowed the plaintiff’s case to trial (contrary to the suggestion in much of the misleading commentary about it).

2. Thornburgh Case. Some groups have raised questions about the fact that Judge Kuhl, as a government lawyer in 1986 (before the Supreme Court’s 1992 decision in *Casey*), worked on a Supreme Court brief that re-stated President Reagan’s position that *Roe v. Wade* should be overruled. It bears mention that John Rogers, who was confirmed to the Sixth Circuit without controversy, also was listed as an attorney for the government on this brief. We do not know Judge Kuhl’s policy views on abortion or on *Roe v. Wade*, and we do not ask candidates their personal views on abortion or *Roe v. Wade*. But regardless of what her views may be, she was in that 1986 brief representing her client President Reagan, and we are confident based on her record that she would faithfully apply Supreme Court precedent as a judge on the Court of Appeals. She wrote to Senators Feinstein and Boxer, for example, that “[t]he constitutional right of a woman to make her own choices regarding personal medical issues, including choices regarding issues of reproductive freedom, has been established by both *Roe v. Wade* and *Planned Parenthood v. Casey* [citations omitted]. As a judge I am fully committed to following the precedent established by these cases and would do so fairly and properly.”

Many attorneys who indicated they are pro-choice have written to the Senate that they are confident, based on their personal knowledge of Judge Kuhl, that she will faithfully follow precedent as a lower-court judge. For example, Anne Egerton, former law partner of Judge Kuhl and current fellow judge, wrote:

I understand that some have raised concerns about Judge Kuhl’s commitment to gender equality and reproductive rights. I do not share those concerns. I have been active in feminist and pro-choice organizations since I first joined the nascent Arizona Women’s Political Caucus in 1971. . . . I provided legal services on a pro bono publico basis for Planned Parenthood Los Angeles, serving as their outside general counsel for about two years in the late 1980s. . . . I have been a registered Democrat for thirty years, and I have supported – financially and otherwise – [Senator Feinstein], Senator Boxer, and other Democratic legislators and candidates. I have no reservations in recommending Judge Carolyn Kuhl . . . for appointment to the Ninth Circuit Court of Appeals. I know Judge

Kuhl to be committed to the rule of law and to the application of governing precedent. In the area of reproductive freedom, that precedent of course includes *Roe v. Wade* and the many cases such as *Akron* that have applied its landmark holding.”

Gretchen Nelson, officer of the Litigation Section of the Los Angeles County Bar Association and prominent plaintiff’s attorney in Los Angeles, wrote:

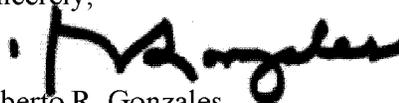
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3. Role as Special Assistant to the Attorney General in 1981. Some groups have raised questions about Judge Kuhl’s record as a 29-year-old special assistant to the Attorney General on the *Bob Jones* case. Judge Kuhl’s position at the time was that the Internal Revenue Service ruling at issue in the case was inconsistent with the governing statute, which of course is the kind of basic administrative law question that arises frequently in government litigation. In addition, as a policy matter, she was concerned about the effect a free-standing IRS power to decide “public policy” on its own and without congressional direction would have with respect to the tax-exempt status of all-girls and all-women’s schools.

As she testified at her hearing, however, she came to realize that the position taken by the Department of Justice in that case was a mistake for two reasons. First, the traditional role of the Department of Justice is to defend federal agencies if a reasonable argument can be made in support of the agency position (regardless whether the Justice Department lawyers might agree or disagree with that legal position), and a reasonable argument could have been made to defend the IRS position. Second, given the nature of the university’s policies, the position taken in the case badly undermined the Administration’s commitment to civil rights and became in her words a “disaster” for the Reagan Administration. There should be no suggestion, however, that Carolyn Kuhl was somehow sympathetic to the university’s practices at the time. Indeed, she testified that, as a Catholic, she brooked no sympathy for the university’s religious and racial discriminatory practices. Judge Kuhl made a basic analysis of administrative law principles (one which law professor Laurence Tribe subsequently stated was well-reasoned), but she ultimately came to believe that was not the right approach in that case under all of the circumstances.

Please do not hesitate to contact me with any questions about this superb nominee, and thank you for your support of her nomination.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable Bill Frist
The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

cc: The Honorable Thomas Daschle
The Honorable Patrick Leahy
The Honorable Dianne Feinstein
The Honorable Barbara Boxer

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/21/2003 5:32:27 AM
Subject: : Lott public statement

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 21-MAY-2003 09:32:27.00
SUBJECT: : Lott public statement
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
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TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

&I,m for the nuclear option,8 said Lott. &The filibuster of federal judges cannot stand.8

From: Mamo, Jeanie S.
To: <Snee, Ashley>;<Kavanaugh, Brett M.>
Sent: 5/21/2003 11:08:16 AM
Subject: Raleigh N&O (5/21/03) re: More judicial politics

More judicial politics

Raleigh News & Observer

May 21, 2003

Republicans are turning up the heat on U.S. Sen. John Edwards over another judicial nomination that he is effectively blocking.

State GOP chairman Bill Cobey on Tuesday called on Edwards, a Democrat, to return a "blue slip" that would allow a hearing on President Bush's nomination of Raleigh lawyer James Dever for a seat on the U.S. District Court for the Eastern District of North Carolina.

Dever was first nominated a year ago this week but never got a hearing. Bush resubmitted his name to the Senate in January.

"I just wish John Edwards would stop this obstructionism and let him have a hearing," Cobey said. "Were John Edwards president, he wouldn't appreciate this kind of obstructionism."

Edwards spokesman Mike Briggs said his boss is still reviewing Dever's nomination. "He's still taking a look at it," he said. "We're being very careful."

Dever is a lawyer with the Raleigh firm Maupin Taylor & Ellis.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 5/21/2003 7:09:38 AM
Subject: : Raleigh N&O (5/21/03) re: More judicial politics

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CREATOR:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2003 11:09:38.00
SUBJECT:: Raleigh N&O (5/21/03) re: More judicial politics
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

More judicial politics
Raleigh News & Observer
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From: Kavanaugh, Brett M.
To: <Kavanaugh, Brett M.>
Sent: 5/21/2003 11:27:19 AM
Subject: Letter re Kuhl's record and issues
Attachments: FINAL KUHL LETTER.pdf

<>

THE WHITE HOUSE

WASHINGTON

May 20, 2003

Dear Senator Frist and Senator Hatch:

I write to provide you a summary of relevant information about Judge Carolyn Kuhl as the Senate prepares for debate on her nomination to the Ninth Circuit. Judge Kuhl is a woman of exceptional experience, integrity, and intellect who represents the mainstream of American law and values. Her record has been unfairly distorted and her character unfairly attacked by interest groups. They have done a disservice to this highly qualified woman and would do a disservice to the Judiciary and the American people if they were to succeed in blocking her from confirmation.

This letter first will summarize Judge Kuhl's record and support and then will respond to issues that have been raised by interest groups opposing her nomination.

I. Judge Kuhl's Record and Support

Judge Kuhl possesses superb qualifications, has strong bipartisan support, and received a "well qualified" rating from the American Bar Association, which Democrat Senators have referred to as the gold standard. Born in Missouri, she graduated with honors from Princeton University and Duke University Law School. She served as a law clerk on the Ninth Circuit to then-Judge Anthony Kennedy. She came to Washington at the beginning of President Reagan's Administration and served for five years in the Department of Justice. She began as a special assistant to the Attorney General, moved on to be Deputy Assistant Attorney General in the Civil Division, and then was named Deputy Solicitor General. She then returned to California in 1986 and became a partner at the prestigious Los Angeles firm of Munger Tolles & Olson. In 1995, Governor Wilson appointed her to the Los Angeles County Superior Court.

Judge Kuhl thus has extensive experience in federal and state government, in the Executive and Judicial Branches, and in public service and private legal practice. Since 1995, she has served on the Los Angeles Superior Court. Judge Kuhl now serves as the Supervising Judge of the Civil Department of that Court and is the first woman to hold that position. She supported Judge Richard Paez in his nomination to the Ninth Circuit, demonstrating her commitment to law and fair process without regard to politics or political gain. In short, Judge Kuhl has devoted extraordinary time and effort in her life to public service and the legal process, and she possesses a combination of intellect, experience, and character that makes her ideally suited to be an excellent circuit judge.

Given her record, it is no surprise that Judge Kuhl has garnered bipartisan support from California and national bar leaders, Republicans and Democrats, and defense lawyers and plaintiffs' lawyers. This support speaks volumes about the kind of judge she would be on the Ninth Circuit.

- **Vilma Martinez**, who is a Democrat, an accomplished and nationally respected California attorney, and a past President of the Mexican American Legal Defense and Educational Fund, wrote: “Kuhl is what I think of as an old fashioned judge. She cares about due process for everyone. In her seven years on the Superior Court bench, she has shown that she is careful to hear both sides. She does not try to influence the outcome of a case to favor one side or the other. She is serious about her oath to follow the law, whatever the result. . . . Both the plaintiff and defense bars in Los Angeles actively support Kuhl.”
- **The officers of the Litigation Section of the Los Angeles County Bar Association** (which has over 3000 members) have written in support of Judge Kuhl, both in May 2001 and April 2003. They stated that they are “life-long Democrats” who have “first-hand knowledge of Judge Kuhl’s integrity, intellect, judicial competence, fairness, and commitment to improving the administration of justice. . . . Those of us who appear before and work with Judge Kuhl know that she is a fair and caring person and an exceptional jurist.” They also stated that she has a “well-deserved reputation as being a fair minded judge who follows legal precedent. . . . On a personal level, we have come to know her as a warm, witty, and deeply caring person.”
- **A bipartisan group of nearly 100 judges who serve with Judge Kuhl on the Superior Court** have signed an extraordinary joint letter to the Senate supporting Judge Kuhl: “We have worked side by side with Judge Kuhl, have attended her judicial education presentations, talked with her about the law, and received reports from litigants who have appeared before her. We know she is a professional who administers justice without favor, without bias, and with an even hand. We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and to the Senate that confirms her. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.”
- **A bipartisan group of 23 women judges who have served with Judge Kuhl** wrote: “Judge Kuhl is seen by us and by the members of the Bar who appear before her as a fair, careful and thoughtful judge who applies the law without bias. She is respected by prosecutors, public defenders, and members of the plaintiffs’ and defense bar. . . . Judge Kuhl approaches her job with respect for the law and not a political agenda. Judge Kuhl has been a mentor to new women judges. . . . She has helped promote the careers of women, both Republican and Democrat. . . . She is also a very decent, caring, honest and patient human being who is a delight to have as a professional colleague and friend. As sitting Judges, we more than anyone appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.”
- **A bipartisan group of more than a dozen Justices of the California Court of Appeal** -- appointees of Democrat and Republican Governors who as appellate judges have worked directly with Judge Kuhl or have reviewed her work as a trial judge -- have written individual letters of support for Judge Kuhl. To take one example, Justice Paul Boland wrote: “[Judge Kuhl] has distinguished herself as a judge who is highly

intelligent, renders balanced, reasoned decisions, is intellectually honest, and is even-handed and fair.”

- **California Supreme Court Justice Carlos Moreno**, who previously was appointed to the federal district court in Los Angeles by President Clinton, wrote to express his “strong and unequivocal support” for Judge Kuhl. He wrote: “I had the pleasure of serving on the Los Angeles Superior Court with Judge Kuhl. She was widely respected among her fellow colleagues and lawyers for her dedication, scholarship, fairness, and adherence to the law. I have never discerned in her any ideological predisposition to decide a legal or factual issue in a predetermined manner. To the contrary, her reputation and practice is to decide matters with an open mind as to all issues. Judge Kuhl is a warm, intelligent, and decent person who should be fairly considered for this distinguished appointment. I can think of no one more qualified or deserving for this office.”
- **The President of the Consumer Attorneys Association of Los Angeles** wrote that “[t]hose who respect her judicial abilities, fairness, and temperament include attorneys on either side of an issue.” The Board of Governors of that Association voted to encourage individual members to support Judge Kuhl’s nomination.
- **Leo Terrell, a California civil rights lawyer**, wrote: “I am an attorney for the NAACP. . . . I am a lifelong Democrat. . . . I vigorously recommend the appointment of Judge Carolyn B. Kuhl to the United States Court of Appeals for the 9th Circuit.”

II. Responses to Issues Raised Against Judge Kuhl

Certain special-interest groups have raised questions about Judge Kuhl, but the allegations do not withstand scrutiny.

1. *Sanchez-Scott Case.* Some groups have raised questions about Judge Kuhl’s ruling as a state-court judge in the *Sanchez-Scott* case. We believe the case has been badly mischaracterized, and are disappointed that this case has unfairly become part of the brief against Judge Kuhl.

The plaintiff in the case sued four parties -- a doctor, the doctor’s employer medical partnership, a pharmaceutical company, and the pharmaceutical company’s representative -- after an incident in which the plaintiff was examined by the doctor in the presence of a pharmaceutical company representative. The company representative was present as part of an oncology mentorship program established to allow pharmaceutical company salespersons to better learn how an oncologist attends to patients and manages medications. It was common for physicians to explain the program and seek consent from the patient at the beginning of the visit, but the plaintiff alleged that this had not occurred in her case. The plaintiff knew that a third person was in the room (in other words, there was no *surreptitious* viewing or 2-way mirror) and, according to her complaint, was told that the company representative was a “person who was looking at Dr. Polonsky’s work.” But the plaintiff was not told of the third-party’s role or affiliation.

The fundamental wrong that occurred here -- as reflected in plaintiff's complaint -- was that the attending *doctor* failed to ask for the patient's consent to the presence of the third-party company representative before conducting the examination. If the doctor had asked and received consent, there could be no complaint about the third party's presence; if he had asked and not received consent, then the company representative would not have been present for the examination. *In short, the doctor was the clear wrongdoer for his failure to seek and obtain the patient's consent to the presence of the third party.*

The plaintiff did not just sue the doctor for failure to obtain consent, however, but also sued the pharmaceutical company and company representative. The plaintiff alleged two primary torts: (i) common-law "intrusion upon seclusion" against all defendants; and (ii) negligence by the doctor and medical partnership in failing to obtain the patient's consent to the presence of the company representative before conducting the examination. (The plaintiff also alleged a cause of action under the California Constitution, but ultimately did not pursue that claim.)

As often occurs in civil litigation, the plaintiff here asserted multiple causes of action arising out of a single incident. Judge Kuhl then was called upon to assess which causes of action did and did not apply to the facts as alleged by plaintiff, and thus which claims could proceed toward trial.

In this case, Judge Kuhl dismissed the common-law intrusion upon seclusion claim. *She thus allowed the other cause of action against the doctor and medical partnership for failure to obtain consent to proceed to trial.* In dismissing one cause of action and thus allowing the other to proceed to trial, she reasoned based on California precedent that (i) the plaintiff was aware that the third person was in the room so the incident was not a surreptitious taping or viewing or a trespass, which under California law were the types of cases in which intrusion upon seclusion had been recognized, (ii) the purpose for having the third party present was otherwise legitimate if consent had been requested by the doctor and provided by the patient, (iii) the fundamental problem here was the doctor's failure to seek and obtain consent from the patient, which was covered by the plaintiff's separate negligence claim against the doctor and medical partnership.

At the core, there are two critical points to keep in mind about this case. First, the negligence tort, which was based on the doctor's failure to seek and obtain consent, applied to these facts and would allow the plaintiff to obtain *full recovery*. Second, Judge Kuhl's ruling allowed this claim to move toward trial, and thus her ruling did not prevent the plaintiff from obtaining full recovery.

Justice Paul Turner was one of the three judges who heard this case on appeal. Although the three-judge panel allowed the intrusion upon seclusion claim to proceed, he wrote to the Judiciary Committee to explain that a claim for intrusion upon seclusion when there was no surreptitious viewing or taping or the like was a case of "first impression" under California law. (At oral argument in the trial court, plaintiff's counsel admitted that their theory would allow patients to sue and recover whenever *any* third party was present in an examination, including a medical student for example.) Justice Turner added that a "strong argument can be made that

[Judge Kuhl] correctly assessed the competing societal interests the California Supreme Court requires all jurists in this state to weigh in determining whether the tort of intrusion has occurred.” Justice Turner concluded: “With all respect to those who have criticized Judge Kuhl as insensitive or biased because of my opinion in *Sanchez-Scott*, they are simply incorrect.”

In sum, while one can debate the proper scope of the intrusion upon seclusion tort and whether it ordinarily should cover non-surreptitious activities (which also can be covered by other torts), we do not think this one ruling should be permitted to negate the strong record and support Judge Kuhl has amassed. Moreover, it is important to place this case in context. Judge Kuhl has handled more than 2000 civil cases during her 7-year tenure on the bench. This is the only case she ruled upon or decided as a judge that has engendered any criticism, and it was a case in which her decision allowed the plaintiff’s case to trial (contrary to the suggestion in much of the misleading commentary about it).

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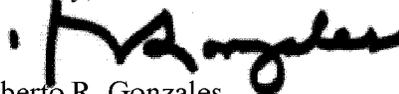
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Sincerely,



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Counsel to the President

The Honorable Bill Frist
The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

cc: The Honorable Thomas Daschle
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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
BCC: matthew e. smith (matthew e. smith/who/eop@eop [WHO]), wendy j. grubbs (wendy j. grubbs/who/eop@eop [WHO]), omar.franco@mail.house.gov (omar.franco@mail.house.gov [UNKNOWN]), katie_gumerson@rpc.senate.gov @ inet (katie_gumerson@rpc.senate.gov @ inet [UNKNOWN]), kyle_simmons@mccconnell.senate.gov @ inet (kyle_simmons@mccconnell.senate.gov @ inet [UNKNOWN]), leonard b. rodriguez (leonard b. rodriguez/who/eop@eop [WHO]), tim goeglein (tim goeglein/who/eop@eop [WHO]), paul_jacobson@frist.senate.gov @ inet (paul_jacobson@frist.senate.gov @ inet [UNKNOWN]), alex_vogel@frist.senate.gov @ inet (alex_vogel@frist.senate.gov @ inet [UNKNOWN]), elizabeth_keys@src.senate.gov @ inet (elizabeth_keys@src.senate.gov @ inet [UNKNOWN]), don_stewart@cornyn.senate.gov @ inet (don_stewart@cornyn.senate.gov @ inet [UNKNOWN]), krdaly@aol.com @ inet (krdaly@aol.com @ inet [UNKNOWN]), stephen_higgins@judiciary.senate.gov @ inet (stephen_higgins@judiciary.senate.gov @ inet [UNKNOWN]), alex_dahl@judiciary.senate.gov @ inet (alex_dahl@judiciary.senate.gov @ inet [UNKNOWN]), srushton@cagw.org @ inet (srushton@cagw.org @ inet [UNKNOWN]), barbara_ledeen@src.senate.gov @ inet (barbara_ledeen@src.senate.gov @ inet [UNKNOWN]), rena_johnson_comisac@judiciary.senate.gov @ inet (rena_johnson_comisac@judiciary.senate.gov @ inet [UNKNOWN]), monica.goodling@usdoj.gov (monica.goodling@usdoj.gov [UNKNOWN]), brian.a.benczkowski@usdoj.gov (brian.a.benczkowski@usdoj.gov [UNKNOWN]), scastillo@rnchq.org @ inet (scastillo@rnchq.org @ inet [UNKNOWN]), jeanie s. mammo (jeanie s. mammo/who/eop@eop [WHO]), ashley snee (ashley snee/who/eop@exchange@eop [WHO]), margaret.hoover@mail.house.gov (margaret.hoover@mail.house.gov [UNKNOWN]), john_abegg@mccconnell.senate.gov @ inet (john_abegg@mccconnell.senate.gov @ inet [UNKNOWN]), neil.bradley@mail.house.gov (neil.bradley@mail.house.gov [UNKNOWN]), abel guerra (abel guerra/who/eop@eop [WHO]), mercedes m. viana (mercedes m. viana/who/eop@eop [WHO]), bob_stevenson@frist.senate.gov @ inet (bob_stevenson@frist.senate.gov @ inet [UNKNOWN]), bill_wichterman@frist.senate.gov @ inet (bill_wichterman@frist.senate.gov @ inet [UNKNOWN]), stevenjduffield@hotmail.com @ inet (stevenjduffield@hotmail.com @ inet [UNKNOWN]), joschal@att.net @ inet (joschal@att.net @ inet [UNKNOWN]), makan_delrahim@judiciary.senate.gov @ inet (makan_delrahim@judiciary.senate.gov @ inet [UNKNOWN]), margarita_tapia@judiciary.senate.gov @ inet (margarita_tapia@judiciary.senate.gov @ inet [UNKNOWN]), alafferty@traditionalvalues.org @ inet (alafferty@traditionalvalues.org @ inet [UNKNOWN]), steven_duffield@rpc.senate.gov @ inet (steven_duffield@rpc.senate.gov @ inet [UNKNOWN]), jamie.e.brown@usdoj.gov (jamie.e.brown@usdoj.gov [UNKNOWN]), viet.dinh@usdoj.gov (viet.dinh@usdoj.gov [UNKNOWN]), mark.corallo@usdoj.gov (mark.corallo@usdoj.gov [UNKNOWN]), manuel_miranda@frist.senate.gov @ inet (manuel_miranda@frist.senate.gov @ inet [UNKNOWN])
Sent: 5/21/2003 7:33:25 AM
Subject: : Letter re Kuhl's record and issues
Attachments: P_30TLG003_WHO.TXT_1.pdf

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 21-MAY-2003 11:33:25.00

SUBJECT:: Letter re Kuhl's record and issues

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

BCC: matthew e. smith (CN=matthew e. smith/OU=who/O=eop@eop [WHO])

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THE WHITE HOUSE

WASHINGTON

May 20, 2003

Dear Senator Frist and Senator Hatch:

I write to provide you a summary of relevant information about Judge Carolyn Kuhl as the Senate prepares for debate on her nomination to the Ninth Circuit. Judge Kuhl is a woman of exceptional experience, integrity, and intellect who represents the mainstream of American law and values. Her record has been unfairly distorted and her character unfairly attacked by interest groups. They have done a disservice to this highly qualified woman and would do a disservice to the Judiciary and the American people if they were to succeed in blocking her from confirmation.

This letter first will summarize Judge Kuhl's record and support and then will respond to issues that have been raised by interest groups opposing her nomination.

I. Judge Kuhl's Record and Support

Judge Kuhl possesses superb qualifications, has strong bipartisan support, and received a "well qualified" rating from the American Bar Association, which Democrat Senators have referred to as the gold standard. Born in Missouri, she graduated with honors from Princeton University and Duke University Law School. She served as a law clerk on the Ninth Circuit to then-Judge Anthony Kennedy. She came to Washington at the beginning of President Reagan's Administration and served for five years in the Department of Justice. She began as a special assistant to the Attorney General, moved on to be Deputy Assistant Attorney General in the Civil Division, and then was named Deputy Solicitor General. She then returned to California in 1986 and became a partner at the prestigious Los Angeles firm of Munger Tolles & Olson. In 1995, Governor Wilson appointed her to the Los Angeles County Superior Court.

Judge Kuhl thus has extensive experience in federal and state government, in the Executive and Judicial Branches, and in public service and private legal practice. Since 1995, she has served on the Los Angeles Superior Court. Judge Kuhl now serves as the Supervising Judge of the Civil Department of that Court and is the first woman to hold that position. She supported Judge Richard Paez in his nomination to the Ninth Circuit, demonstrating her commitment to law and fair process without regard to politics or political gain. In short, Judge Kuhl has devoted extraordinary time and effort in her life to public service and the legal process, and she possesses a combination of intellect, experience, and character that makes her ideally suited to be an excellent circuit judge.

Given her record, it is no surprise that Judge Kuhl has garnered bipartisan support from California and national bar leaders, Republicans and Democrats, and defense lawyers and plaintiffs' lawyers. This support speaks volumes about the kind of judge she would be on the Ninth Circuit.

- **Vilma Martinez**, who is a Democrat, an accomplished and nationally respected California attorney, and a past President of the Mexican American Legal Defense and Educational Fund, wrote: “Kuhl is what I think of as an old fashioned judge. She cares about due process for everyone. In her seven years on the Superior Court bench, she has shown that she is careful to hear both sides. She does not try to influence the outcome of a case to favor one side or the other. She is serious about her oath to follow the law, whatever the result. . . . Both the plaintiff and defense bars in Los Angeles actively support Kuhl.”
- **The officers of the Litigation Section of the Los Angeles County Bar Association** (which has over 3000 members) have written in support of Judge Kuhl, both in May 2001 and April 2003. They stated that they are “life-long Democrats” who have “first-hand knowledge of Judge Kuhl’s integrity, intellect, judicial competence, fairness, and commitment to improving the administration of justice. . . . Those of us who appear before and work with Judge Kuhl know that she is a fair and caring person and an exceptional jurist.” They also stated that she has a “well-deserved reputation as being a fair minded judge who follows legal precedent. . . . On a personal level, we have come to know her as a warm, witty, and deeply caring person.”
- **A bipartisan group of nearly 100 judges who serve with Judge Kuhl on the Superior Court** have signed an extraordinary joint letter to the Senate supporting Judge Kuhl: “We have worked side by side with Judge Kuhl, have attended her judicial education presentations, talked with her about the law, and received reports from litigants who have appeared before her. We know she is a professional who administers justice without favor, without bias, and with an even hand. We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and to the Senate that confirms her. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.”
- **A bipartisan group of 23 women judges who have served with Judge Kuhl** wrote: “Judge Kuhl is seen by us and by the members of the Bar who appear before her as a fair, careful and thoughtful judge who applies the law without bias. She is respected by prosecutors, public defenders, and members of the plaintiffs’ and defense bar. . . . Judge Kuhl approaches her job with respect for the law and not a political agenda. Judge Kuhl has been a mentor to new women judges. . . . She has helped promote the careers of women, both Republican and Democrat. . . . She is also a very decent, caring, honest and patient human being who is a delight to have as a professional colleague and friend. As sitting Judges, we more than anyone appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.”
- **A bipartisan group of more than a dozen Justices of the California Court of Appeal** -- appointees of Democrat and Republican Governors who as appellate judges have worked directly with Judge Kuhl or have reviewed her work as a trial judge -- have written individual letters of support for Judge Kuhl. To take one example, Justice Paul Boland wrote: “[Judge Kuhl] has distinguished herself as a judge who is highly

intelligent, renders balanced, reasoned decisions, is intellectually honest, and is even-handed and fair.”

- **California Supreme Court Justice Carlos Moreno**, who previously was appointed to the federal district court in Los Angeles by President Clinton, wrote to express his “strong and unequivocal support” for Judge Kuhl. He wrote: “I had the pleasure of serving on the Los Angeles Superior Court with Judge Kuhl. She was widely respected among her fellow colleagues and lawyers for her dedication, scholarship, fairness, and adherence to the law. I have never discerned in her any ideological predisposition to decide a legal or factual issue in a predetermined manner. To the contrary, her reputation and practice is to decide matters with an open mind as to all issues. Judge Kuhl is a warm, intelligent, and decent person who should be fairly considered for this distinguished appointment. I can think of no one more qualified or deserving for this office.”
- **The President of the Consumer Attorneys Association of Los Angeles** wrote that “[t]hose who respect her judicial abilities, fairness, and temperament include attorneys on either side of an issue.” The Board of Governors of that Association voted to encourage individual members to support Judge Kuhl’s nomination.
- **Leo Terrell, a California civil rights lawyer**, wrote: “I am an attorney for the NAACP. . . . I am a lifelong Democrat. . . . I vigorously recommend the appointment of Judge Carolyn B. Kuhl to the United States Court of Appeals for the 9th Circuit.”

II. Responses to Issues Raised Against Judge Kuhl

Certain special-interest groups have raised questions about Judge Kuhl, but the allegations do not withstand scrutiny.

1. *Sanchez-Scott Case*. Some groups have raised questions about Judge Kuhl’s ruling as a state-court judge in the *Sanchez-Scott* case. We believe the case has been badly mischaracterized, and are disappointed that this case has unfairly become part of the brief against Judge Kuhl.

The plaintiff in the case sued four parties -- a doctor, the doctor’s employer medical partnership, a pharmaceutical company, and the pharmaceutical company’s representative -- after an incident in which the plaintiff was examined by the doctor in the presence of a pharmaceutical company representative. The company representative was present as part of an oncology mentorship program established to allow pharmaceutical company salespersons to better learn how an oncologist attends to patients and manages medications. It was common for physicians to explain the program and seek consent from the patient at the beginning of the visit, but the plaintiff alleged that this had not occurred in her case. The plaintiff knew that a third person was in the room (in other words, there was no *surreptitious* viewing or 2-way mirror) and, according to her complaint, was told that the company representative was a “person who was looking at Dr. Polonsky’s work.” But the plaintiff was not told of the third-party’s role or affiliation.

The fundamental wrong that occurred here -- as reflected in plaintiff's complaint -- was that the attending *doctor* failed to ask for the patient's consent to the presence of the third-party company representative before conducting the examination. If the doctor had asked and received consent, there could be no complaint about the third party's presence; if he had asked and not received consent, then the company representative would not have been present for the examination. *In short, the doctor was the clear wrongdoer for his failure to seek and obtain the patient's consent to the presence of the third party.*

The plaintiff did not just sue the doctor for failure to obtain consent, however, but also sued the pharmaceutical company and company representative. The plaintiff alleged two primary torts: (i) common-law "intrusion upon seclusion" against all defendants; and (ii) negligence by the doctor and medical partnership in failing to obtain the patient's consent to the presence of the company representative before conducting the examination. (The plaintiff also alleged a cause of action under the California Constitution, but ultimately did not pursue that claim.)

As often occurs in civil litigation, the plaintiff here asserted multiple causes of action arising out of a single incident. Judge Kuhl then was called upon to assess which causes of action did and did not apply to the facts as alleged by plaintiff, and thus which claims could proceed toward trial.

In this case, Judge Kuhl dismissed the common-law intrusion upon seclusion claim. *She thus allowed the other cause of action against the doctor and medical partnership for failure to obtain consent to proceed to trial.* In dismissing one cause of action and thus allowing the other to proceed to trial, she reasoned based on California precedent that (i) the plaintiff was aware that the third person was in the room so the incident was not a surreptitious taping or viewing or a trespass, which under California law were the types of cases in which intrusion upon seclusion had been recognized, (ii) the purpose for having the third party present was otherwise legitimate if consent had been requested by the doctor and provided by the patient, (iii) the fundamental problem here was the doctor's failure to seek and obtain consent from the patient, which was covered by the plaintiff's separate negligence claim against the doctor and medical partnership.

At the core, there are two critical points to keep in mind about this case. First, the negligence tort, which was based on the doctor's failure to seek and obtain consent, applied to these facts and would allow the plaintiff to obtain *full recovery*. Second, Judge Kuhl's ruling allowed this claim to move toward trial, and thus her ruling did not prevent the plaintiff from obtaining full recovery.

Justice Paul Turner was one of the three judges who heard this case on appeal. Although the three-judge panel allowed the intrusion upon seclusion claim to proceed, he wrote to the Judiciary Committee to explain that a claim for intrusion upon seclusion when there was no surreptitious viewing or taping or the like was a case of "first impression" under California law. (At oral argument in the trial court, plaintiff's counsel admitted that their theory would allow patients to sue and recover whenever *any* third party was present in an examination, including a medical student for example.) Justice Turner added that a "strong argument can be made that

[Judge Kuhl] correctly assessed the competing societal interests the California Supreme Court requires all jurists in this state to weigh in determining whether the tort of intrusion has occurred.” Justice Turner concluded: “With all respect to those who have criticized Judge Kuhl as insensitive or biased because of my opinion in *Sanchez-Scott*, they are simply incorrect.”

In sum, while one can debate the proper scope of the intrusion upon seclusion tort and whether it ordinarily should cover non-surreptitious activities (which also can be covered by other torts), we do not think this one ruling should be permitted to negate the strong record and support Judge Kuhl has amassed. Moreover, it is important to place this case in context. Judge Kuhl has handled more than 2000 civil cases during her 7-year tenure on the bench. This is the only case she ruled upon or decided as a judge that has engendered any criticism, and it was a case in which her decision allowed the plaintiff’s case to trial (contrary to the suggestion in much of the misleading commentary about it).

2. Thornburgh Case. Some groups have raised questions about the fact that Judge Kuhl, as a government lawyer in 1986 (before the Supreme Court’s 1992 decision in *Casey*), worked on a Supreme Court brief that re-stated President Reagan’s position that *Roe v. Wade* should be overruled. It bears mention that John Rogers, who was confirmed to the Sixth Circuit without controversy, also was listed as an attorney for the government on this brief. We do not know Judge Kuhl’s policy views on abortion or on *Roe v. Wade*, and we do not ask candidates their personal views on abortion or *Roe v. Wade*. But regardless of what her views may be, she was in that 1986 brief representing her client President Reagan, and we are confident based on her record that she would faithfully apply Supreme Court precedent as a judge on the Court of Appeals. She wrote to Senators Feinstein and Boxer, for example, that “[t]he constitutional right of a woman to make her own choices regarding personal medical issues, including choices regarding issues of reproductive freedom, has been established by both *Roe v. Wade* and *Planned Parenthood v. Casey* [citations omitted]. As a judge I am fully committed to following the precedent established by these cases and would do so fairly and properly.”

Many attorneys who indicated they are pro-choice have written to the Senate that they are confident, based on their personal knowledge of Judge Kuhl, that she will faithfully follow precedent as a lower-court judge. For example, Anne Egerton, former law partner of Judge Kuhl and current fellow judge, wrote:

I understand that some have raised concerns about Judge Kuhl’s commitment to gender equality and reproductive rights. I do not share those concerns. I have been active in feminist and pro-choice organizations since I first joined the nascent Arizona Women’s Political Caucus in 1971. . . . I provided legal services on a pro bono publico basis for Planned Parenthood Los Angeles, serving as their outside general counsel for about two years in the late 1980s. . . . I have been a registered Democrat for thirty years, and I have supported – financially and otherwise – [Senator Feinstein], Senator Boxer, and other Democratic legislators and candidates. I have no reservations in recommending Judge Carolyn Kuhl . . . for appointment to the Ninth Circuit Court of Appeals. I know Judge

Kuhl to be committed to the rule of law and to the application of governing precedent. In the area of reproductive freedom, that precedent of course includes *Roe v. Wade* and the many cases such as *Akron* that have applied its landmark holding.”

Gretchen Nelson, officer of the Litigation Section of the Los Angeles County Bar Association and prominent plaintiff’s attorney in Los Angeles, wrote:

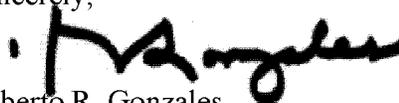
I am a life-long Democrat. I am also a plaintiff’s attorney. My political views are and have always been liberal. . . . I firmly agree with the U.S. Supreme Court’s opinion in *Roe v. Wade*, 410 U.S. 113 (1973), and I trust that the decision will remain viable. I am opposed to the appointment of any judicial nominee who is incapable of ruling based upon a considered and impartial analysis of all of the facts and legal issues presented in any matter. Judge Kuhl is not such a nominee and she is well-deserving of appointment to the Ninth Circuit.

3. Role as Special Assistant to the Attorney General in 1981. Some groups have raised questions about Judge Kuhl’s record as a 29-year-old special assistant to the Attorney General on the *Bob Jones* case. Judge Kuhl’s position at the time was that the Internal Revenue Service ruling at issue in the case was inconsistent with the governing statute, which of course is the kind of basic administrative law question that arises frequently in government litigation. In addition, as a policy matter, she was concerned about the effect a free-standing IRS power to decide “public policy” on its own and without congressional direction would have with respect to the tax-exempt status of all-girls and all-women’s schools.

As she testified at her hearing, however, she came to realize that the position taken by the Department of Justice in that case was a mistake for two reasons. First, the traditional role of the Department of Justice is to defend federal agencies if a reasonable argument can be made in support of the agency position (regardless whether the Justice Department lawyers might agree or disagree with that legal position), and a reasonable argument could have been made to defend the IRS position. Second, given the nature of the university’s policies, the position taken in the case badly undermined the Administration’s commitment to civil rights and became in her words a “disaster” for the Reagan Administration. There should be no suggestion, however, that Carolyn Kuhl was somehow sympathetic to the university’s practices at the time. Indeed, she testified that, as a Catholic, she brooked no sympathy for the university’s religious and racial discriminatory practices. Judge Kuhl made a basic analysis of administrative law principles (one which law professor Laurence Tribe subsequently stated was well-reasoned), but she ultimately came to believe that was not the right approach in that case under all of the circumstances.

Please do not hesitate to contact me with any questions about this superb nominee, and thank you for your support of her nomination.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable Bill Frist
The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

cc: The Honorable Thomas Daschle
The Honorable Patrick Leahy
The Honorable Dianne Feinstein
The Honorable Barbara Boxer

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jonathan F. Ganter/WHO/EOP@EOP [WHO] <Jonathan F. Ganter>
Sent: 5/21/2003 9:58:19 AM
Subject: : Re: Cloture Votes

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TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [WHO])
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just
Miller, Nelson, Nelson, and Breaux for Estrada
Miller and Ben Nelson for Owen

Jonathan F. Ganter
05/21/2003 01:10:20 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Cloture Votes

Brett,
Do you want data for all of the cloture votes on Owen and Estrada, or only
the most recent?

Jon

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
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TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Votes of Democrat Senators on
Brooks Smith, Shedd, Tymkovich, Estrada, Owen, Sutton, or Cook

2 Senators vote yes on all 7 nominees
Miller (absent on two; assume yes vote)
Ben Nelson

3 Senators vote yes on 4 of 7 nominees
Breaux
Lincoln
Pryor (not in Senate for 2 last year; assume yes vote with Lincoln)

1 Senator votes yes on 3 of 7 nominees
Bayh

11 Senators vote yes on 2 of 7 nominees
Biden
Byrd
Carper
Conrad
Dorgan
Feinstein
Graham
Hollings
Kohl
Landrieu
Bill Nelson

9 Senators vote yes on 1 of 7 nominees

Bingaman
Daschle
Dodd
Durbin
Edwards
Feingold
Inouye
Rockefeller
Schumer

23 Senators vote yes on 0 of 7 nominees

Akaka
Baucus
Boxer
Cantwell
Clinton
Corzine
Dayton
Harkin
Jeffords
Johnson
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Murray
Jack Reed
Harry Reid
Sarbanes
Stabenow
Wyden

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Seidel, Rebecca (Judiciary) <Rebecca_Seidel@Judiciary.senate.gov>
Sent: 5/21/2003 4:19:09 PM
Subject: : RE: FW: Class Action Fairness Act

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 21-MAY-2003 20:19:09.00
SUBJECT: : RE: FW: Class Action Fairness Act
TO: "Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> ("Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

No taxpayer dollars at issue in asbestos program, right? Anyway, hang in there!

"Seidel, Rebecca (Judiciary)" <Rebecca_Seidel@Judiciary.senate.gov>
05/21/2003 07:40:01 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: FW: Class Action Fairness Act

You have no idea how bad this is right now. My life is non-existent. I have moved offices and now have a couch. Maybe I will get a nap between 3 and 4 am tonight.....

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees.; If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited.; If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy.

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

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, May 21, 2003 7:22 PM
To: Seidel, Rebecca (Judiciary)
Subject: Re: FW: Class Action Fairness Act

You are almost home on asbestos! at least stage 1 . . .

(Embedded
image moved "Seidel, Rebecca (Judiciary)"

REV_00236610

to file: <Rebecca_Seidel@Judiciary.senate.gov>
pic01901.pcx) 05/20/2003 12:20:30 AM

Record Type: Record

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

cc:

Subject: FW: Class Action Fairness Act

Have you heard the latest on Specter? This is unbelievable. We sent them a very reasonable proposal two weeks ago, dealing with what we thought was his concern, we have heard nothing. Vogel and Abegg met with Specter staff today, were blunt with them, and the below email is the response they get. They don't even know what they want. Specter is jerking everyone around and stalling the one civil justice reform bill that has a chance of passing. This is incredibly unbelievable. You would almost think that Specter made a deal with ATLA, ?????

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

From: Vogel, Alex (Frist)
Sent: Monday, May 19, 2003 7:05 PM
To: jbeisner@omm.com; PRA 6
Cc: Seidel, Rebecca (Judiciary)
Subject: FW: Class Action Fairness Act

John Abegg and I met with Specter's folks on behalf of the Whip and the Leader today to "encourage" them too move things along -- this is the email we received this afternoon. Need to get folks to put pressure on Specter to get this done.

Alex Vogel
Chief Counsel
Office of the Majority Leader
S-230, U.S. Capitol
Washington, DC 20510
202.224.3135
alex_vogel@frist.senate.gov

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

From: Thomas Swanton [mailto:Thomas_Swanton@specter.senate.gov]
Sent: Monday, May 19, 2003 6:53 PM
To: Lari, Rita (Judiciary); Abegg, John (McConnell); Vogel, Alex (Frist)
Cc: Carey Lackman
Subject: Class Action Fairness Act

Consistent with the position agreed to at our meeting with the Chamber of Commerce, the Senator believes the "mass action" provision should be written so that the mass action provision would not apply in a state that has a class action procedure, such as the class action procedure found in Rule 23 of the Federal Rules of Civil Procedure.

Tom

REV_00236611

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/21/2003 4:30:29 PM
Subject: : President's 5/21/03 remarks on judges at President's Dinner

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 21-MAY-2003 20:30:29.00

SUBJECT: : President's 5/21/03 remarks on judges at President's Dinner

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

I appreciate the hard work of Orrin Hatch and Bill Frist to make sure that our judiciary functions properly. I have submitted superb nominations to our federal courts. The confirmation process in the United States Senate should be about justice, not about empty politics. (Applause.)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>;Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>;Wendy J. Grubbs/WHO/EOP@Exchange@EOP [WHO] <Wendy J. Grubbs>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
Sent: 5/21/2003 4:31:19 PM
Subject: : President's 5/21/03 remarks on judges at President's Dinner

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2003 20:31:19.00
SUBJECT:: President's 5/21/03 remarks on judges at President's Dinner
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I appreciate the hard work of Orrin Hatch and Bill Frist to make sure that our judiciary functions properly. I have submitted superb nominations to our federal courts. The confirmation process in the United States Senate should be about justice, not about empty politics. (Applause.)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/21/2003 4:50:24 PM
Subject: :
Attachments: P_TRJMG003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-MAY-2003 20:50:24.00
SUBJECT: :
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_TRJMG003_WHO.TXT_1>

THE WHITE HOUSE

WASHINGTON

May 20, 2003

Dear Senator Frist and Senator Hatch:

I write to provide you a summary of relevant information about Judge Carolyn Kuhl as the Senate prepares for debate on her nomination to the Ninth Circuit. Judge Kuhl is a woman of exceptional experience, integrity, and intellect who represents the mainstream of American law and values. Her record has been unfairly distorted and her character unfairly attacked by interest groups. They have done a disservice to this highly qualified woman and would do a disservice to the Judiciary and the American people if they were to succeed in blocking her from confirmation.

This letter first will summarize Judge Kuhl's record and support and then will respond to issues that have been raised by interest groups opposing her nomination.

I. Judge Kuhl's Record and Support

Judge Kuhl possesses superb qualifications, has strong bipartisan support, and received a "well qualified" rating from the American Bar Association, which Democrat Senators have referred to as the gold standard. Born in Missouri, she graduated with honors from Princeton University and Duke University Law School. She served as a law clerk on the Ninth Circuit to then-Judge Anthony Kennedy. She came to Washington at the beginning of President Reagan's Administration and served for five years in the Department of Justice. She began as a special assistant to the Attorney General, moved on to be Deputy Assistant Attorney General in the Civil Division, and then was named Deputy Solicitor General. She then returned to California in 1986 and became a partner at the prestigious Los Angeles firm of Munger Tolles & Olson. In 1995, Governor Wilson appointed her to the Los Angeles County Superior Court.

Judge Kuhl thus has extensive experience in federal and state government, in the Executive and Judicial Branches, and in public service and private legal practice. Since 1995, she has served on the Los Angeles Superior Court. Judge Kuhl now serves as the Supervising Judge of the Civil Department of that Court and is the first woman to hold that position. She supported Judge Richard Paez in his nomination to the Ninth Circuit, demonstrating her commitment to law and fair process without regard to politics or political gain. In short, Judge Kuhl has devoted extraordinary time and effort in her life to public service and the legal process, and she possesses a combination of intellect, experience, and character that makes her ideally suited to be an excellent circuit judge.

Given her record, it is no surprise that Judge Kuhl has garnered bipartisan support from California and national bar leaders, Republicans and Democrats, and defense lawyers and plaintiffs' lawyers. This support speaks volumes about the kind of judge she would be on the Ninth Circuit.

- **Vilma Martinez**, who is a Democrat, an accomplished and nationally respected California attorney, and a past President of the Mexican American Legal Defense and Educational Fund, wrote: “Kuhl is what I think of as an old fashioned judge. She cares about due process for everyone. In her seven years on the Superior Court bench, she has shown that she is careful to hear both sides. She does not try to influence the outcome of a case to favor one side or the other. She is serious about her oath to follow the law, whatever the result. . . . Both the plaintiff and defense bars in Los Angeles actively support Kuhl.”
- **The officers of the Litigation Section of the Los Angeles County Bar Association** (which has over 3000 members) have written in support of Judge Kuhl, both in May 2001 and April 2003. They stated that they are “life-long Democrats” who have “first-hand knowledge of Judge Kuhl’s integrity, intellect, judicial competence, fairness, and commitment to improving the administration of justice. . . . Those of us who appear before and work with Judge Kuhl know that she is a fair and caring person and an exceptional jurist.” They also stated that she has a “well-deserved reputation as being a fair minded judge who follows legal precedent. . . . On a personal level, we have come to know her as a warm, witty, and deeply caring person.”
- **A bipartisan group of nearly 100 judges who serve with Judge Kuhl on the Superior Court** have signed an extraordinary joint letter to the Senate supporting Judge Kuhl: “We have worked side by side with Judge Kuhl, have attended her judicial education presentations, talked with her about the law, and received reports from litigants who have appeared before her. We know she is a professional who administers justice without favor, without bias, and with an even hand. We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and to the Senate that confirms her. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.”
- **A bipartisan group of 23 women judges who have served with Judge Kuhl** wrote: “Judge Kuhl is seen by us and by the members of the Bar who appear before her as a fair, careful and thoughtful judge who applies the law without bias. She is respected by prosecutors, public defenders, and members of the plaintiffs’ and defense bar. . . . Judge Kuhl approaches her job with respect for the law and not a political agenda. Judge Kuhl has been a mentor to new women judges. . . . She has helped promote the careers of women, both Republican and Democrat. . . . She is also a very decent, caring, honest and patient human being who is a delight to have as a professional colleague and friend. As sitting Judges, we more than anyone appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.”
- **A bipartisan group of more than a dozen Justices of the California Court of Appeal** -- appointees of Democrat and Republican Governors who as appellate judges have worked directly with Judge Kuhl or have reviewed her work as a trial judge -- have written individual letters of support for Judge Kuhl. To take one example, Justice Paul Boland wrote: “[Judge Kuhl] has distinguished herself as a judge who is highly

intelligent, renders balanced, reasoned decisions, is intellectually honest, and is even-handed and fair.”

- **California Supreme Court Justice Carlos Moreno**, who previously was appointed to the federal district court in Los Angeles by President Clinton, wrote to express his “strong and unequivocal support” for Judge Kuhl. He wrote: “I had the pleasure of serving on the Los Angeles Superior Court with Judge Kuhl. She was widely respected among her fellow colleagues and lawyers for her dedication, scholarship, fairness, and adherence to the law. I have never discerned in her any ideological predisposition to decide a legal or factual issue in a predetermined manner. To the contrary, her reputation and practice is to decide matters with an open mind as to all issues. Judge Kuhl is a warm, intelligent, and decent person who should be fairly considered for this distinguished appointment. I can think of no one more qualified or deserving for this office.”
- **The President of the Consumer Attorneys Association of Los Angeles** wrote that “[t]hose who respect her judicial abilities, fairness, and temperament include attorneys on either side of an issue.” The Board of Governors of that Association voted to encourage individual members to support Judge Kuhl’s nomination.
- **Leo Terrell, a California civil rights lawyer**, wrote: “I am an attorney for the NAACP. . . . I am a lifelong Democrat. . . . I vigorously recommend the appointment of Judge Carolyn B. Kuhl to the United States Court of Appeals for the 9th Circuit.”

II. Responses to Issues Raised Against Judge Kuhl

Certain special-interest groups have raised questions about Judge Kuhl, but the allegations do not withstand scrutiny.

1. *Sanchez-Scott Case.* Some groups have raised questions about Judge Kuhl’s ruling as a state-court judge in the *Sanchez-Scott* case. We believe the case has been badly mischaracterized, and are disappointed that this case has unfairly become part of the brief against Judge Kuhl.

The plaintiff in the case sued four parties -- a doctor, the doctor’s employer medical partnership, a pharmaceutical company, and the pharmaceutical company’s representative -- after an incident in which the plaintiff was examined by the doctor in the presence of a pharmaceutical company representative. The company representative was present as part of an oncology mentorship program established to allow pharmaceutical company salespersons to better learn how an oncologist attends to patients and manages medications. It was common for physicians to explain the program and seek consent from the patient at the beginning of the visit, but the plaintiff alleged that this had not occurred in her case. The plaintiff knew that a third person was in the room (in other words, there was no *surreptitious* viewing or 2-way mirror) and, according to her complaint, was told that the company representative was a “person who was looking at Dr. Polonsky’s work.” But the plaintiff was not told of the third-party’s role or affiliation.

The fundamental wrong that occurred here -- as reflected in plaintiff's complaint -- was that the attending *doctor* failed to ask for the patient's consent to the presence of the third-party company representative before conducting the examination. If the doctor had asked and received consent, there could be no complaint about the third party's presence; if he had asked and not received consent, then the company representative would not have been present for the examination. *In short, the doctor was the clear wrongdoer for his failure to seek and obtain the patient's consent to the presence of the third party.*

The plaintiff did not just sue the doctor for failure to obtain consent, however, but also sued the pharmaceutical company and company representative. The plaintiff alleged two primary torts: (i) common-law "intrusion upon seclusion" against all defendants; and (ii) negligence by the doctor and medical partnership in failing to obtain the patient's consent to the presence of the company representative before conducting the examination. (The plaintiff also alleged a cause of action under the California Constitution, but ultimately did not pursue that claim.)

As often occurs in civil litigation, the plaintiff here asserted multiple causes of action arising out of a single incident. Judge Kuhl then was called upon to assess which causes of action did and did not apply to the facts as alleged by plaintiff, and thus which claims could proceed toward trial.

In this case, Judge Kuhl dismissed the common-law intrusion upon seclusion claim. *She thus allowed the other cause of action against the doctor and medical partnership for failure to obtain consent to proceed to trial.* In dismissing one cause of action and thus allowing the other to proceed to trial, she reasoned based on California precedent that (i) the plaintiff was aware that the third person was in the room so the incident was not a surreptitious taping or viewing or a trespass, which under California law were the types of cases in which intrusion upon seclusion had been recognized, (ii) the purpose for having the third party present was otherwise legitimate if consent had been requested by the doctor and provided by the patient, (iii) the fundamental problem here was the doctor's failure to seek and obtain consent from the patient, which was covered by the plaintiff's separate negligence claim against the doctor and medical partnership.

At the core, there are two critical points to keep in mind about this case. First, the negligence tort, which was based on the doctor's failure to seek and obtain consent, applied to these facts and would allow the plaintiff to obtain *full recovery*. Second, Judge Kuhl's ruling allowed this claim to move toward trial, and thus her ruling did not prevent the plaintiff from obtaining full recovery.

Justice Paul Turner was one of the three judges who heard this case on appeal. Although the three-judge panel allowed the intrusion upon seclusion claim to proceed, he wrote to the Judiciary Committee to explain that a claim for intrusion upon seclusion when there was no surreptitious viewing or taping or the like was a case of "first impression" under California law. (At oral argument in the trial court, plaintiff's counsel admitted that their theory would allow patients to sue and recover whenever *any* third party was present in an examination, including a medical student for example.) Justice Turner added that a "strong argument can be made that

[Judge Kuhl] correctly assessed the competing societal interests the California Supreme Court requires all jurists in this state to weigh in determining whether the tort of intrusion has occurred.” Justice Turner concluded: “With all respect to those who have criticized Judge Kuhl as insensitive or biased because of my opinion in *Sanchez-Scott*, they are simply incorrect.”

In sum, while one can debate the proper scope of the intrusion upon seclusion tort and whether it ordinarily should cover non-surreptitious activities (which also can be covered by other torts), we do not think this one ruling should be permitted to negate the strong record and support Judge Kuhl has amassed. Moreover, it is important to place this case in context. Judge Kuhl has handled more than 2000 civil cases during her 7-year tenure on the bench. This is the only case she ruled upon or decided as a judge that has engendered any criticism, and it was a case in which her decision allowed the plaintiff’s case to trial (contrary to the suggestion in much of the misleading commentary about it).

2. Thornburgh Case. Some groups have raised questions about the fact that Judge Kuhl, as a government lawyer in 1986 (before the Supreme Court’s 1992 decision in *Casey*), worked on a Supreme Court brief that re-stated President Reagan’s position that *Roe v. Wade* should be overruled. It bears mention that John Rogers, who was confirmed to the Sixth Circuit without controversy, also was listed as an attorney for the government on this brief. We do not know Judge Kuhl’s policy views on abortion or on *Roe v. Wade*, and we do not ask candidates their personal views on abortion or *Roe v. Wade*. But regardless of what her views may be, she was in that 1986 brief representing her client President Reagan, and we are confident based on her record that she would faithfully apply Supreme Court precedent as a judge on the Court of Appeals. She wrote to Senators Feinstein and Boxer, for example, that “[t]he constitutional right of a woman to make her own choices regarding personal medical issues, including choices regarding issues of reproductive freedom, has been established by both *Roe v. Wade* and *Planned Parenthood v. Casey* [citations omitted]. As a judge I am fully committed to following the precedent established by these cases and would do so fairly and properly.”

Many attorneys who indicated they are pro-choice have written to the Senate that they are confident, based on their personal knowledge of Judge Kuhl, that she will faithfully follow precedent as a lower-court judge. For example, Anne Egerton, former law partner of Judge Kuhl and current fellow judge, wrote:

I understand that some have raised concerns about Judge Kuhl’s commitment to gender equality and reproductive rights. I do not share those concerns. I have been active in feminist and pro-choice organizations since I first joined the nascent Arizona Women’s Political Caucus in 1971. . . . I provided legal services on a pro bono publico basis for Planned Parenthood Los Angeles, serving as their outside general counsel for about two years in the late 1980s. . . . I have been a registered Democrat for thirty years, and I have supported – financially and otherwise – [Senator Feinstein], Senator Boxer, and other Democratic legislators and candidates. I have no reservations in recommending Judge Carolyn Kuhl . . . for appointment to the Ninth Circuit Court of Appeals. I know Judge

Kuhl to be committed to the rule of law and to the application of governing precedent. In the area of reproductive freedom, that precedent of course includes *Roe v. Wade* and the many cases such as *Akron* that have applied its landmark holding.”

Gretchen Nelson, officer of the Litigation Section of the Los Angeles County Bar Association and prominent plaintiff’s attorney in Los Angeles, wrote:

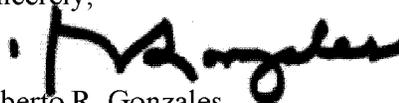
I am a life-long Democrat. I am also a plaintiff’s attorney. My political views are and have always been liberal. . . . I firmly agree with the U.S. Supreme Court’s opinion in *Roe v. Wade*, 410 U.S. 113 (1973), and I trust that the decision will remain viable. I am opposed to the appointment of any judicial nominee who is incapable of ruling based upon a considered and impartial analysis of all of the facts and legal issues presented in any matter. Judge Kuhl is not such a nominee and she is well-deserving of appointment to the Ninth Circuit.

3. Role as Special Assistant to the Attorney General in 1981. Some groups have raised questions about Judge Kuhl’s record as a 29-year-old special assistant to the Attorney General on the *Bob Jones* case. Judge Kuhl’s position at the time was that the Internal Revenue Service ruling at issue in the case was inconsistent with the governing statute, which of course is the kind of basic administrative law question that arises frequently in government litigation. In addition, as a policy matter, she was concerned about the effect a free-standing IRS power to decide “public policy” on its own and without congressional direction would have with respect to the tax-exempt status of all-girls and all-women’s schools.

As she testified at her hearing, however, she came to realize that the position taken by the Department of Justice in that case was a mistake for two reasons. First, the traditional role of the Department of Justice is to defend federal agencies if a reasonable argument can be made in support of the agency position (regardless whether the Justice Department lawyers might agree or disagree with that legal position), and a reasonable argument could have been made to defend the IRS position. Second, given the nature of the university’s policies, the position taken in the case badly undermined the Administration’s commitment to civil rights and became in her words a “disaster” for the Reagan Administration. There should be no suggestion, however, that Carolyn Kuhl was somehow sympathetic to the university’s practices at the time. Indeed, she testified that, as a Catholic, she brooked no sympathy for the university’s religious and racial discriminatory practices. Judge Kuhl made a basic analysis of administrative law principles (one which law professor Laurence Tribe subsequently stated was well-reasoned), but she ultimately came to believe that was not the right approach in that case under all of the circumstances.

Please do not hesitate to contact me with any questions about this superb nominee, and thank you for your support of her nomination.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable Bill Frist
The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

cc: The Honorable Thomas Daschle
The Honorable Patrick Leahy
The Honorable Dianne Feinstein
The Honorable Barbara Boxer

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Judge Carolyn Kuhl <CKuhl@LASuperiorCourt.org>
Sent: 5/21/2003 8:22:16 PM
Subject: : fyi -- this will receive wide circulation
Attachments: P_07LMG003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:22-MAY-2003 00:22:16.00
SUBJECT:: fyi -- this will receive wide circulation
TO:Judge Carolyn Kuhl <CKuhl@LASuperiorCourt.org> (Judge Carolyn Kuhl
<CKuhl@LASuperiorCourt.org> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_07LMG003_WHO.TXT_1>

THE WHITE HOUSE

WASHINGTON

May 20, 2003

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I. Judge Kuhl's Record and Support

Judge Kuhl possesses superb qualifications, has strong bipartisan support, and received a "well qualified" rating from the American Bar Association, which Democrat Senators have referred to as the gold standard. Born in Missouri, she graduated with honors from Princeton University and Duke University Law School. She served as a law clerk on the Ninth Circuit to then-Judge Anthony Kennedy. She came to Washington at the beginning of President Reagan's Administration and served for five years in the Department of Justice. She began as a special assistant to the Attorney General, moved on to be Deputy Assistant Attorney General in the Civil Division, and then was named Deputy Solicitor General. She then returned to California in 1986 and became a partner at the prestigious Los Angeles firm of Munger Tolles & Olson. In 1995, Governor Wilson appointed her to the Los Angeles County Superior Court.

Judge Kuhl thus has extensive experience in federal and state government, in the Executive and Judicial Branches, and in public service and private legal practice. Since 1995, she has served on the Los Angeles Superior Court. Judge Kuhl now serves as the Supervising Judge of the Civil Department of that Court and is the first woman to hold that position. She supported Judge Richard Paez in his nomination to the Ninth Circuit, demonstrating her commitment to law and fair process without regard to politics or political gain. In short, Judge Kuhl has devoted extraordinary time and effort in her life to public service and the legal process, and she possesses a combination of intellect, experience, and character that makes her ideally suited to be an excellent circuit judge.

Given her record, it is no surprise that Judge Kuhl has garnered bipartisan support from California and national bar leaders, Republicans and Democrats, and defense lawyers and plaintiffs' lawyers. This support speaks volumes about the kind of judge she would be on the Ninth Circuit.

- **Vilma Martinez**, who is a Democrat, an accomplished and nationally respected California attorney, and a past President of the Mexican American Legal Defense and Educational Fund, wrote: “Kuhl is what I think of as an old fashioned judge. She cares about due process for everyone. In her seven years on the Superior Court bench, she has shown that she is careful to hear both sides. She does not try to influence the outcome of a case to favor one side or the other. She is serious about her oath to follow the law, whatever the result. . . . Both the plaintiff and defense bars in Los Angeles actively support Kuhl.”
- **The officers of the Litigation Section of the Los Angeles County Bar Association** (which has over 3000 members) have written in support of Judge Kuhl, both in May 2001 and April 2003. They stated that they are “life-long Democrats” who have “first-hand knowledge of Judge Kuhl’s integrity, intellect, judicial competence, fairness, and commitment to improving the administration of justice. . . . Those of us who appear before and work with Judge Kuhl know that she is a fair and caring person and an exceptional jurist.” They also stated that she has a “well-deserved reputation as being a fair minded judge who follows legal precedent. . . . On a personal level, we have come to know her as a warm, witty, and deeply caring person.”
- **A bipartisan group of nearly 100 judges who serve with Judge Kuhl on the Superior Court** have signed an extraordinary joint letter to the Senate supporting Judge Kuhl: “We have worked side by side with Judge Kuhl, have attended her judicial education presentations, talked with her about the law, and received reports from litigants who have appeared before her. We know she is a professional who administers justice without favor, without bias, and with an even hand. We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and to the Senate that confirms her. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.”
- **A bipartisan group of 23 women judges who have served with Judge Kuhl** wrote: “Judge Kuhl is seen by us and by the members of the Bar who appear before her as a fair, careful and thoughtful judge who applies the law without bias. She is respected by prosecutors, public defenders, and members of the plaintiffs’ and defense bar. . . . Judge Kuhl approaches her job with respect for the law and not a political agenda. Judge Kuhl has been a mentor to new women judges. . . . She has helped promote the careers of women, both Republican and Democrat. . . . She is also a very decent, caring, honest and patient human being who is a delight to have as a professional colleague and friend. As sitting Judges, we more than anyone appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.”
- **A bipartisan group of more than a dozen Justices of the California Court of Appeal** -- appointees of Democrat and Republican Governors who as appellate judges have worked directly with Judge Kuhl or have reviewed her work as a trial judge -- have written individual letters of support for Judge Kuhl. To take one example, Justice Paul Boland wrote: “[Judge Kuhl] has distinguished herself as a judge who is highly

intelligent, renders balanced, reasoned decisions, is intellectually honest, and is even-handed and fair.”

- **California Supreme Court Justice Carlos Moreno**, who previously was appointed to the federal district court in Los Angeles by President Clinton, wrote to express his “strong and unequivocal support” for Judge Kuhl. He wrote: “I had the pleasure of serving on the Los Angeles Superior Court with Judge Kuhl. She was widely respected among her fellow colleagues and lawyers for her dedication, scholarship, fairness, and adherence to the law. I have never discerned in her any ideological predisposition to decide a legal or factual issue in a predetermined manner. To the contrary, her reputation and practice is to decide matters with an open mind as to all issues. Judge Kuhl is a warm, intelligent, and decent person who should be fairly considered for this distinguished appointment. I can think of no one more qualified or deserving for this office.”
- **The President of the Consumer Attorneys Association of Los Angeles** wrote that “[t]hose who respect her judicial abilities, fairness, and temperament include attorneys on either side of an issue.” The Board of Governors of that Association voted to encourage individual members to support Judge Kuhl’s nomination.
- **Leo Terrell, a California civil rights lawyer**, wrote: “I am an attorney for the NAACP. . . . I am a lifelong Democrat. . . . I vigorously recommend the appointment of Judge Carolyn B. Kuhl to the United States Court of Appeals for the 9th Circuit.”

II. Responses to Issues Raised Against Judge Kuhl

Certain special-interest groups have raised questions about Judge Kuhl, but the allegations do not withstand scrutiny.

1. *Sanchez-Scott Case.* Some groups have raised questions about Judge Kuhl’s ruling as a state-court judge in the *Sanchez-Scott* case. We believe the case has been badly mischaracterized, and are disappointed that this case has unfairly become part of the brief against Judge Kuhl.

The plaintiff in the case sued four parties -- a doctor, the doctor’s employer medical partnership, a pharmaceutical company, and the pharmaceutical company’s representative -- after an incident in which the plaintiff was examined by the doctor in the presence of a pharmaceutical company representative. The company representative was present as part of an oncology mentorship program established to allow pharmaceutical company salespersons to better learn how an oncologist attends to patients and manages medications. It was common for physicians to explain the program and seek consent from the patient at the beginning of the visit, but the plaintiff alleged that this had not occurred in her case. The plaintiff knew that a third person was in the room (in other words, there was no *surreptitious* viewing or 2-way mirror) and, according to her complaint, was told that the company representative was a “person who was looking at Dr. Polonsky’s work.” But the plaintiff was not told of the third-party’s role or affiliation.

The fundamental wrong that occurred here -- as reflected in plaintiff's complaint -- was that the attending *doctor* failed to ask for the patient's consent to the presence of the third-party company representative before conducting the examination. If the doctor had asked and received consent, there could be no complaint about the third party's presence; if he had asked and not received consent, then the company representative would not have been present for the examination. *In short, the doctor was the clear wrongdoer for his failure to seek and obtain the patient's consent to the presence of the third party.*

The plaintiff did not just sue the doctor for failure to obtain consent, however, but also sued the pharmaceutical company and company representative. The plaintiff alleged two primary torts: (i) common-law "intrusion upon seclusion" against all defendants; and (ii) negligence by the doctor and medical partnership in failing to obtain the patient's consent to the presence of the company representative before conducting the examination. (The plaintiff also alleged a cause of action under the California Constitution, but ultimately did not pursue that claim.)

As often occurs in civil litigation, the plaintiff here asserted multiple causes of action arising out of a single incident. Judge Kuhl then was called upon to assess which causes of action did and did not apply to the facts as alleged by plaintiff, and thus which claims could proceed toward trial.

In this case, Judge Kuhl dismissed the common-law intrusion upon seclusion claim. *She thus allowed the other cause of action against the doctor and medical partnership for failure to obtain consent to proceed to trial.* In dismissing one cause of action and thus allowing the other to proceed to trial, she reasoned based on California precedent that (i) the plaintiff was aware that the third person was in the room so the incident was not a surreptitious taping or viewing or a trespass, which under California law were the types of cases in which intrusion upon seclusion had been recognized, (ii) the purpose for having the third party present was otherwise legitimate if consent had been requested by the doctor and provided by the patient, (iii) the fundamental problem here was the doctor's failure to seek and obtain consent from the patient, which was covered by the plaintiff's separate negligence claim against the doctor and medical partnership.

At the core, there are two critical points to keep in mind about this case. First, the negligence tort, which was based on the doctor's failure to seek and obtain consent, applied to these facts and would allow the plaintiff to obtain *full recovery*. Second, Judge Kuhl's ruling allowed this claim to move toward trial, and thus her ruling did not prevent the plaintiff from obtaining full recovery.

Justice Paul Turner was one of the three judges who heard this case on appeal. Although the three-judge panel allowed the intrusion upon seclusion claim to proceed, he wrote to the Judiciary Committee to explain that a claim for intrusion upon seclusion when there was no surreptitious viewing or taping or the like was a case of "first impression" under California law. (At oral argument in the trial court, plaintiff's counsel admitted that their theory would allow patients to sue and recover whenever *any* third party was present in an examination, including a medical student for example.) Justice Turner added that a "strong argument can be made that

[Judge Kuhl] correctly assessed the competing societal interests the California Supreme Court requires all jurists in this state to weigh in determining whether the tort of intrusion has occurred.” Justice Turner concluded: “With all respect to those who have criticized Judge Kuhl as insensitive or biased because of my opinion in *Sanchez-Scott*, they are simply incorrect.”

In sum, while one can debate the proper scope of the intrusion upon seclusion tort and whether it ordinarily should cover non-surreptitious activities (which also can be covered by other torts), we do not think this one ruling should be permitted to negate the strong record and support Judge Kuhl has amassed. Moreover, it is important to place this case in context. Judge Kuhl has handled more than 2000 civil cases during her 7-year tenure on the bench. This is the only case she ruled upon or decided as a judge that has engendered any criticism, and it was a case in which her decision allowed the plaintiff’s case to trial (contrary to the suggestion in much of the misleading commentary about it).

2. Thornburgh Case. Some groups have raised questions about the fact that Judge Kuhl, as a government lawyer in 1986 (before the Supreme Court’s 1992 decision in *Casey*), worked on a Supreme Court brief that re-stated President Reagan’s position that *Roe v. Wade* should be overruled. It bears mention that John Rogers, who was confirmed to the Sixth Circuit without controversy, also was listed as an attorney for the government on this brief. We do not know Judge Kuhl’s policy views on abortion or on *Roe v. Wade*, and we do not ask candidates their personal views on abortion or *Roe v. Wade*. But regardless of what her views may be, she was in that 1986 brief representing her client President Reagan, and we are confident based on her record that she would faithfully apply Supreme Court precedent as a judge on the Court of Appeals. She wrote to Senators Feinstein and Boxer, for example, that “[t]he constitutional right of a woman to make her own choices regarding personal medical issues, including choices regarding issues of reproductive freedom, has been established by both *Roe v. Wade* and *Planned Parenthood v. Casey* [citations omitted]. As a judge I am fully committed to following the precedent established by these cases and would do so fairly and properly.”

Many attorneys who indicated they are pro-choice have written to the Senate that they are confident, based on their personal knowledge of Judge Kuhl, that she will faithfully follow precedent as a lower-court judge. For example, Anne Egerton, former law partner of Judge Kuhl and current fellow judge, wrote:

I understand that some have raised concerns about Judge Kuhl’s commitment to gender equality and reproductive rights. I do not share those concerns. I have been active in feminist and pro-choice organizations since I first joined the nascent Arizona Women’s Political Caucus in 1971. . . . I provided legal services on a pro bono publico basis for Planned Parenthood Los Angeles, serving as their outside general counsel for about two years in the late 1980s. . . . I have been a registered Democrat for thirty years, and I have supported – financially and otherwise – [Senator Feinstein], Senator Boxer, and other Democratic legislators and candidates. I have no reservations in recommending Judge Carolyn Kuhl . . . for appointment to the Ninth Circuit Court of Appeals. I know Judge

Kuhl to be committed to the rule of law and to the application of governing precedent. In the area of reproductive freedom, that precedent of course includes *Roe v. Wade* and the many cases such as *Akron* that have applied its landmark holding.”

Gretchen Nelson, officer of the Litigation Section of the Los Angeles County Bar Association and prominent plaintiff’s attorney in Los Angeles, wrote:

I am a life-long Democrat. I am also a plaintiff’s attorney. My political views are and have always been liberal. . . . I firmly agree with the U.S. Supreme Court’s opinion in *Roe v. Wade*, 410 U.S. 113 (1973), and I trust that the decision will remain viable. I am opposed to the appointment of any judicial nominee who is incapable of ruling based upon a considered and impartial analysis of all of the facts and legal issues presented in any matter. Judge Kuhl is not such a nominee and she is well-deserving of appointment to the Ninth Circuit.

3. Role as Special Assistant to the Attorney General in 1981. Some groups have raised questions about Judge Kuhl’s record as a 29-year-old special assistant to the Attorney General on the *Bob Jones* case. Judge Kuhl’s position at the time was that the Internal Revenue Service ruling at issue in the case was inconsistent with the governing statute, which of course is the kind of basic administrative law question that arises frequently in government litigation. In addition, as a policy matter, she was concerned about the effect a free-standing IRS power to decide “public policy” on its own and without congressional direction would have with respect to the tax-exempt status of all-girls and all-women’s schools.

As she testified at her hearing, however, she came to realize that the position taken by the Department of Justice in that case was a mistake for two reasons. First, the traditional role of the Department of Justice is to defend federal agencies if a reasonable argument can be made in support of the agency position (regardless whether the Justice Department lawyers might agree or disagree with that legal position), and a reasonable argument could have been made to defend the IRS position. Second, given the nature of the university’s policies, the position taken in the case badly undermined the Administration’s commitment to civil rights and became in her words a “disaster” for the Reagan Administration. There should be no suggestion, however, that Carolyn Kuhl was somehow sympathetic to the university’s practices at the time. Indeed, she testified that, as a Catholic, she brooked no sympathy for the university’s religious and racial discriminatory practices. Judge Kuhl made a basic analysis of administrative law principles (one which law professor Laurence Tribe subsequently stated was well-reasoned), but she ultimately came to believe that was not the right approach in that case under all of the circumstances.

Please do not hesitate to contact me with any questions about this superb nominee, and thank you for your support of her nomination.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable Bill Frist
The Honorable Orrin Hatch
United States Senate
Washington, DC 20510

cc: The Honorable Thomas Daschle
The Honorable Patrick Leahy
The Honorable Dianne Feinstein
The Honorable Barbara Boxer

From: Joel Pardue [PRA 6]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/22/2003 6:25:10 AM
Subject: : Kuhl Talking Points
Attachments: P_P5XMG003_WHO.TXT_1.txt

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CREATOR:Joel Pardue <[PRA 6]>

[UNKNOWN])

CREATION DATE/TIME:22-MAY-2003 10:25:10.00

SUBJECT:: Kuhl Talking Points

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

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File attachment <P_P5XMG003_WHO.TXT_1>

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To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Francisco, Noel J.>;<Kavanaugh, Brett M.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>;<Ullyot, Theodore W.>
Sent: 5/22/2003 11:04:37 AM
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The New Republic May 26, 2003

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May 26, 2003

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BYLINE: by clay risen

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BODY:

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Ultimately, though, what makes Holmes an anomaly among President Bush's district court nominees is neither his far-right provenance nor the fact that he has made it to the Senate floor. What's anomalous about Holmes is that Democrats slowed his nomination down at all, even temporarily. While Democratic senators have waged a few high-profile battles over Bush's nominees to higher courts--for instance, Miguel Estrada, Priscilla Owen, and Charles Pickering--they have put up little resistance to the administration's steady politicization of the lower federal courts. "What has been noticed at the appellate level is also happening at the district court level," says one aide to a member of the Senate Judiciary Committee. "It's just no one pays attention."

District courts are the lowest and most numerous in the federal judicial system, and as such they are often deemed politically irrelevant--concerned with, as one staffer to a member of the Judiciary Committee puts it, "making widgets." But those widgets are the building blocks of much of U.S. law. Because, in most instances, district courts are the first courts to hear a case, they set the tone for later appeals. "District courts make, in most cases, the most important decisions and the decisions that appellate courts defer to," says Peter Rubin, a lawyer and president of the American Constitution Society. "Should we verify a class action, should we grant summary judgment--and that's the end of the case for a lot of people." District courts can also provide political cover for more conservative judges at the appellate and Supreme Court level by reducing the chances that those courts will be forced to reverse decisions. "One of the problems," says Michael Gerhardt, a professor at the William and Mary School of Law, "is, if you don't take ideology into account in the lower-court nominations, then your higher judges are forced to reverse more often."

In Louisiana, for example, a recent Bush appointee to the Eastern District Court, Jay Zainey--who was unanimously confirmed by the Senate last year despite a record as an anti-abortion activist--ruled against a woman who claims she was denied access to abortion services while in prison. The woman, known to the court as Victoria W., had been sent to prison for a parole violation and soon after learned from the prison doctor that she was pregnant. She requested an abortion but was denied; by the time of her release, it was too late to obtain one. Victoria W. contacted a lawyer and filed suit in federal court, and the case came before

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Zaine in April 2002. Zaine dismissed the case in a three-page order, refusing even to hear it. The decision was unprecedented. "No federal court in the country," said Victoria W.'s lawyer, Linda Rosenthal, "has ever held constitutional a prison policy that intentionally obstructed a prisoner's right to terminate her pregnancy." Victoria W. is appealing the verdict, but that appeal will be heard by the U.S. Court of Appeals for the Fifth Circuit, which is already overwhelmingly conservative and will only grow more so if Bush succeeds in placing Owen and Pickering on it. By making a controversial ruling at the district level, Zaine gives the higher-profile appellate court room to uphold his ruling while avoiding the taint of right-wing judicial activism.

The flip side works as well. A recent ruling by Sam Haddon, a Bush appointee in Montana, in favor of an oil- and natural-gas-exploration company accused of violating the Clean Water Act (CWA) was overturned in April by the U.S. Court of Appeals for the Ninth Circuit. In doing so, the appeals court expanded the CWA's list of pollutants and opened up the possibility of further suits--which reinforces its image as an excessively liberal bench. And, paradoxically, Haddon's ruling, which experts say represents an almost unprecedentedly narrow interpretation of the CWA, will likely receive much less public scrutiny because it took place at the district level.

Another reason district court benches matter is that they serve as "farm teams" for higher courts. Because appellate nominees who come from the district courts have federal judiciary experience, district courts make excellent places to cultivate future appellate court nominees and to park potentially controversial nominees. Take William Steele. An Alabama magistrate judge, he was nominated in 2001 to the U.S. Court of Appeals for the Eleventh Circuit. But he soon came under withering fire from a bevy of civil rights groups, who charged him with "racial insensitivity" in a number of anti-discrimination suits. His nomination was withdrawn, but, in January, Bush nominated him to Alabama's Southern District Court; he was confirmed by voice vote in March. After a few years building a federal judicial record at the district level, he could be an almost unstoppable appellate court nominee.

So far, the administration has filled 100 district court seats, and, while most of the nominations have not been controversial, as a whole they have been at least as ideologically oriented as the more high-profile names at the appellate level. On the list is Paul Cassell, confirmed to the Utah District Court in May 2002, who previously led a campaign to overturn the Supreme Court's landmark Miranda ruling; Michael Mills, a Mississippi nominee known for his anti-abortion views while on the state supreme court; and Nebraska's Laurie Smith Camp, who has been an outspoken abortion-rights opponent. Another frequently cited appointment is that of Ron Clark, who recently began his judgeship on Texas's Eastern District Court. As a member of the Texas House of Representatives, Clark put forward a series of bills to limit access to reproductive-health services, including placing zoning restrictions on clinics and instituting mandatory 24-hour waiting periods. Despite his record on abortion and his lack of judicial experience, he was approved by a voice vote in October 2002. However, Clark was also running for reelection to the narrowly divided Texas House, and, if he had immediately accepted the administration's appointment, he would have likely ceded the closely contested race to a Democrat. So, with Bush's blessing, Clark refused the appointment until after the election--winning and then promptly resigning, an unheard-of step that blurs the line between the White House's political interests and its duty to promote an independent judiciary.

There is no formal requirement for how the president nominates district court nominees; nevertheless, there are traditional checks and balances that have evolved over the last 50 years, practices that are being either rewritten or discarded by the administration. These include ignoring state judicial nominating committees, rejecting American Bar Association ratings, placing Justice Department political appointees in positions related to judicial selection, and refusing to cooperate with home-state senators. Says one former Justice staffer, "They have systematically ignored bipartisan commissions \$(and\$) ignored traditions of consultation that were in place when we got there and have been in place for years in order to make these ideological appointments and political rewards for jobs well done."

Bush has come under especially heavy fire for ignoring home-state senators when making his judicial picks, reversing a tradition that had held since the Eisenhower administration. In the past, administrations have either allowed senators from a district's state to make nominations or have given them broad sway in the selection, even when the senators are both from the opposing party. Several states have even organized bipartisan nominating committees in an attempt to institutionalize this coordination. But, in a number of instances--in Washington, Hawaii, Wisconsin, and Florida among others--the administration has ignored both the senators and, in many cases, the commissions. In the case of Florida's Southern District Court, the White House not only overlooked nominees put forward by the state's Judicial Nominating Commission, it also rebuffed concerns about the process from Democratic Senators Bob Graham and Bill Nelson. Both senators criticized the administration publicly for going ahead with its own nominee, Cecilia Altonaga (though, neither voted against her when she was confirmed on May 6). "It's a stunning lack of consultation with the home-state senators," says one former Justice staffer. "For years, there was fabulous cooperation between the senators in Florida no matter what the party. ... We had no trouble filling Florida judgeships with very qualified, nonpolitical people, and \$(Bush\$) just ripped it up."

Democrats, for their part, say they are so busy fighting at the appellate level that a number of controversial nominees have slipped through virtually unopposed. "The groups on the progressive side of the House are battling this furiously, but there just aren't enough resources," says a former Justice Department official. Even many nominees who should have been controversial slipped through. As an example, several Democratic staffers cite John Bates, whom Bush appointed to the D.C. District Court. A former independent counsel's office lawyer under Kenneth Starr, Bates was nominated to the court in June 2001 and received unanimous Senate approval in December of that year. Soon after coming to the bench, he was assigned to hear Walker v. Cheney, in which the General Accounting Office (GAO) sued the vice president for access to documents detailing meetings with energy-industry

officials. In December, Bates ruled against the GAO. That ruling, in addition to effectively closing off public inquiry into the energy task force, could have a disastrous long-term impact on congressional oversight of the executive branch. And it proves definitively that a district court judge can have a powerful impact on the nation's political and legal battles--something the Bush administration understands all too well.

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/22/2003 7:06:15 AM
Subject: : New Republic Article on District Court Nominees

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CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])

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SUBJECT:: New Republic Article on District Court Nominees

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TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

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TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])

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TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

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READ:UNKNOWN

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READ:UNKNOWN

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The New Republic May 26, 2003

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Ultimately, though, what makes Holmes an anomaly among President Bush's district court nominees is neither his far-right provenance nor the fact that he has made it to the Senate floor. What's anomalous about Holmes is that Democrats slowed his nomination down at all, even temporarily. While Democratic senators have waged a few high-profile battles over Bush's nominees to higher courts--for instance, Miguel Estrada, Priscilla Owen, and Charles Pickering--they have put up little resistance to the administration's steady politicization of the lower federal courts. "What has been noticed at the appellate level is also happening at the district court level," says one aide to a member of the Senate Judiciary Committee. "It's just no one pays attention."

District courts are the lowest and most numerous in the federal judicial system, and as such they are often deemed politically irrelevant--concerned with, as one staffer to a member of the Judiciary Committee puts it, "making widgets." But those widgets are the building blocks of much of U.S. law. Because, in most instances, district courts are the first courts to hear a case, they set the tone for later appeals. "District courts make, in most cases, the most important decisions and the decisions that appellate courts defer to," says Peter Rubin, a lawyer and president of the American Constitution Society. "Should we verify a class action, should we grant summary judgment--and that's the end of the case for a lot of people." District courts can also provide political cover for more conservative judges at the appellate and Supreme Court level by reducing the chances that those courts will be forced to reverse decisions. "One of the problems," says Michael Gerhardt, a professor at the William and Mary School of Law, "is, if you don't take ideology into account in the lower-court nominations, then your higher judges are forced to reverse more often."

In Louisiana, for example, a recent Bush appointee to the Eastern District Court, Jay Zainey--who was unanimously confirmed by the Senate last year despite a record as an anti-abortion activist--ruled against a woman who claims she was denied access to abortion services while in prison. The woman, known to the court as Victoria W., had been sent to prison for a parole violation and soon after learned from the prison doctor that she was pregnant. She requested an abortion but was denied; by the time of her release, it was too late to obtain one. Victoria W. contacted a lawyer and filed suit in federal court, and the case came before Zainey in April 2002. Zainey dismissed the case in a three-page order, refusing even to hear it. The decision was unprecedented. "No federal court in the country," said Victoria W.'s lawyer, Linda Rosenthal, "has ever held constitutional a prison policy that intentionally obstructed a prisoner's right to terminate her pregnancy." Victoria W. is appealing the verdict, but that appeal will be heard by the U.S. Court of Appeals for the Fifth Circuit, which is already overwhelmingly conservative and will only grow more so if Bush succeeds in placing Owen and Pickering on it. By making a controversial ruling at the district level, Zainey gives the higher-profile appellate court room to uphold his ruling while avoiding the taint of right-wing judicial activism.

The flip side works as well. A recent ruling by Sam Haddon, a Bush appointee in Montana, in favor of an oil- and natural-gas-exploration company accused of violating the Clean Water Act (CWA) was overturned in April by the U.S. Court of Appeals for the Ninth Circuit. In doing so, the appeals court expanded the CWA's list of pollutants and opened up the possibility of further suits--which reinforces its image as an excessively liberal bench. And, paradoxically, Haddon's ruling, which experts say represents an almost unprecedentedly narrow interpretation of the CWA, will likely receive much less public scrutiny because it took place at the district level.

Another reason district court benches matter is that they serve as "farm teams" for higher courts. Because appellate nominees who come from the district courts have federal judiciary experience, district courts make excellent places to cultivate future appellate court nominees and to park

potentially controversial nominees. Take William Steele. An Alabama magistrate judge, he was nominated in 2001 to the U.S. Court of Appeals for the Eleventh Circuit. But he soon came under withering fire from a bevy of civil rights groups, who charged him with "racial insensitivity" in a number of anti-discrimination suits. His nomination was withdrawn, but, in January, Bush nominated him to Alabama's Southern District Court; he was confirmed by voice vote in March. After a few years building a federal judicial record at the district level, he could be an almost unstoppable appellate court nominee.

So far, the administration has filled 100 district court seats, and, while most of the nominations have not been controversial, as a whole they have been at least as ideologically oriented as the more high-profile names at the appellate level. On the list is Paul Cassell, confirmed to the Utah District Court in May 2002, who previously led a campaign to overturn the Supreme Court's landmark Miranda ruling; Michael Mills, a Mississippi nominee known for his anti-abortion views while on the state supreme court; and Nebraska's Laurie Smith Camp, who has been an outspoken abortion-rights opponent. Another frequently cited appointment is that of Ron Clark, who recently began his judgeship on Texas's Eastern District Court. As a member of the Texas House of Representatives, Clark put forward a series of bills to limit access to reproductive-health services, including placing zoning restrictions on clinics and instituting mandatory 24-hour waiting periods. Despite his record on abortion and his lack of judicial experience, he was approved by a voice vote in October 2002. However, Clark was also running for reelection to the narrowly divided Texas House, and, if he had immediately accepted the administration's appointment, he would have likely ceded the closely contested race to a Democrat. So, with Bush's blessing, Clark refused the appointment until after the election--winning and then promptly resigning, an unheard of step that blurs the line between the White House's political interests and its duty to promote an independent judiciary.

There is no formal requirement for how the president nominates district court nominees; nevertheless, there are traditional checks and balances that have evolved over the last 50 years, practices that are being either rewritten or discarded by the administration. These include ignoring state judicial nominating committees, rejecting American Bar Association ratings, placing Justice Department political appointees in positions related to judicial selection, and refusing to cooperate with home-state senators. Says one former Justice staffer, "They have systematically ignored bipartisan commissions \$(and\$) ignored traditions of consultation that were in place when we got there and have been in place for years in order to make these ideological appointments and political rewards for jobs well done."

Bush has come under especially heavy fire for ignoring home-state senators when making his judicial picks, reversing a tradition that had held since the Eisenhower administration. In the past, administrations have either allowed senators from a district's state to make nominations or have given them broad sway in the selection, even when the senators are both from the opposing party. Several states have even organized bipartisan nominating committees in an attempt to institutionalize this coordination. But, in a number of instances--in Washington, Hawaii, Wisconsin, and Florida among others--the administration has ignored both the senators and, in many cases, the commissions. In the case of Florida's Southern District Court, the White House not only overlooked nominees put forward by the state's Judicial Nominating Commission, it also rebuffed concerns about the process from Democratic Senators Bob Graham and Bill Nelson. Both senators criticized the administration publicly for going ahead with its own nominee, Cecilia Altonaga (though, neither voted against her when she was confirmed on May 6). "It's a stunning lack of consultation with the home-state senators," says one former Justice staffer. "For years, there was fabulous cooperation between the senators in Florida no matter what the party. ... We had no trouble filling Florida judgeships with very qualified, nonpolitical people, and \$(Bush \$) just ripped it up."

Democrats, for their part, say they are so busy fighting at the appellate

level that a number of controversial nominees have slipped through virtually unopposed. "The groups on the progressive side of the House are battling this furiously, but there just aren't enough resources," says a former Justice Department official. Even many nominees who should have been controversial slipped through. As an example, several Democratic staffers cite John Bates, whom Bush appointed to the D.C. District Court. A former independent counsel's office lawyer under Kenneth Starr, Bates was nominated to the court in June 2001 and received unanimous Senate approval in December of that year. Soon after coming to the bench, he was assigned to hear Walker v. Cheney, in which the General Accounting Office (GAO) sued the vice president for access to documents detailing meetings with energy-industry officials. In December, Bates ruled against the GAO. That ruling, in addition to effectively closing off public inquiry into the energy task force, could have a disastrous long-term impact on congressional oversight of the executive branch. And it proves definitively that a district court judge can have a powerful impact on the nation's political and legal battles--something the Bush administration understands all too well.

From: Parell, Christie
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>;<Oca - Office Of Cabinet Affairs>
Sent: 5/22/2003 4:44:30 PM
Subject: Agency FOIA Requests
Attachments: FOIA 05-22-03.doc

<>

AGENCY FOIA REQUESTS***DOC***

Received 05/09/03, from **Sharon M. Glenn, Byrnes & Keller LLP**, requesting records relating to Report No. GAO-03-159, "Individual Fishing Quotas: Better Information Could Improve Fisheries Management," issued by the United States General Accounting Office, 2002.

Received 5/12/02, from **Matt McDermott** requesting information on all artworks either owned by DOC, or otherwise used by DOC to decorate its domestic and international facilities.

Received 05/12/03, from **Paul K. Freeborn, William, Harrold, Allen & Dixon**, requesting documents pertaining to any investigations, assessments, inspections, remedial activities, and/or projects conducted by any Federal or State agency at the Norit Americas Plant.

Received 5/12/03, from **Jim Wolf, Reuters**, requesting documents related to any State Department efforts in 2001 on behalf of Enron Corp. to settle a dispute with the Government of India (request was addressed to State, which forwarded an ITA document here for review and determination on release).

Received 5/13/03 from **Randy R. Herschaft of Associated Press**, requesting contracts, statements of work, proposals, transactions, and communications from January 1, 2002, to the present concerning Acxiom Corporation.

Received 5/13/03 from **Hernando Otero of Appleton & Associates**, requesting all records exchanged between DOC and the Government of Romania since January 1, 1997, relating to the privatization and operation of Combinatul Siderurgic Resita (CSR) Steel Works in Resita, Romania.

Received 5/13/03 from **Pinkus Jakobowitz**, requesting a listing of all Economic Development Administration programs or grants in which the Village of Kiryas Joel, New York has participated.

Received 05/14/03, from **Mary Boggs, Gulf Mist, Inc.**, requesting notes taken by Observer and Vessel Survey on the Fishing Vessel (F/V) Alaska Mist during August - September 2000.

Received 5/15/03 from **Jeffrey S. Silva of RCR Wireless News/Crain Communications, Inc.**, requesting all e-mail, phone records, memoranda, calendar notations, talking points, strategy papers, briefing materials, and any other documents relating to communication between DOC and non-government entities regarding the reorganization plan outlined in the February 13, 2003 press release titled "Commerce Department Announces Plan for Modernization of Technology Agencies."

Received 5/16/03 from **Randy R. Herschaft of Associated Press** requesting all documents relating to any contact between ChoicePoint, Inc. and the Advocacy Center since January 1, 1999; any contact between ChoicePoint, Inc. and U.S. and Foreign Commercial Service offices in the United States, Argentina, Brazil, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Venezuela since January 1, 1999; any documents listing ChoicePoint, Inc. as a trade mission participant since January 1, 2001; the records schedule for the International Trade Ad.

EPA

During the week of May 12-May 16, 2003, the Agency received 263 FOIA requests. Of the total, 52 were received in Headquarters. Year-to-date totals are 1,516 for Headquarters and 8,063 agency-wide. Significant FOIA requests received this week include:

- (1) **Lauren Sacks of Environmental Defense** is requesting pesticide registration information, and any human health and environmental assessments on the pesticide, 2,4-D;
- (2) **James Pew of EarthJustice** is requesting communications and records regarding revising the definition of solid waste and the calendar for Assistant Administrator Marianne Horinko from April 15, 2003 to present;
- (3) **Mike Soraghan of *The Denver Post*** is requesting responses to congressional requests for the Agency's position on whether to regulate hydraulic fracturing under the Safe Drinking Water Act and any documents pertaining to the decision to revise the Study of Potential Impacts of Hydraulic Fracturing of Coalbed Methane Wells on Underground Sources of Drinking Water regarding benzene levels;
- (4) **David Danelski of *The Press-Enterprise*** is requesting correspondence concerning perchlorate;
- (5) **Rochelle Brenner of *The Palm Beach Post*** is requesting information regarding Florida airports on EPA's Comprehensive Environmental Response, Compensation, and Liability Information System database list;
- (6) **Mark Lennox of the U.S. Army** is requesting RCRA and CERCLA information relating to Ft. Leonard Wood and/or Army Training Center and/or Maneuver Support Center;
- (7) **Tim Searchinger of Environmental Defense** is requesting EPA's analysis discussing the stage elevation levels in the St. Johns Bayou and New Madrid floodway basins;

HHS

5/19/03 (*Tentative*)

Information requested on Roland Foster or Representative Mark Souder - *The New York Times* has requested all internal correspondence and/or documents regarding Roland Foster,

professional staff member for the Congressional Subcommittee on Criminal Justice, Drug Policy, and Human Resources of the Committee on Government Reform, or Representative Mark Souder (R-Indiana), the chairman of that subcommittee, from January 2000 to the present. Also requested is all correspondence from Mr. Foster or Mr. Souder to or from any agency staff member in the same time frame.

5/28/03

News Media FOIA Request - *The Los Angeles Times* requested copies of FOIA requests made by Johnson & Johnson, or any of its units, including Ortho Biotech, about Amgen Inc., Aranesp, also called darbepoetin alfa, and Epogen, also called epoetin, and a list of documents made available under the requests for the period January 2001 to April 2003.

DHS

Greenpeace: records relating to chemical industry and chemical security

1. Judicial Watch Inc.: info about Alina Fernandez (PA);
2. Electronic Privacy Information Center: records relating to Sec Ridge and UK home secretary;
3. Russ Kick: FOIA case logs, list of DHS forms, list of DHS pubs/reports;
4. Landmark Legal Foundation: DHS award of all grants, contracts, blanket purchase agreements (bpa)'s;
5. Stephen Witt: info about self (PA);
6. Michael O'Connor: info about parents.

DOJ

Jason Maloney, of New York Times Television, has requested all records pertaining to Kamal Derwish, who was killed by a U.S. missile attack in Yemen on November 3, 2002.

Todd Krueckeberg, an individual, has requested copies of all correspondence between Congressman Richard Gephardt and the Office of the Attorney General from January 1, 1977 to the present.

DOL

Todd Krueckeberg, Washington, D.C., is seeking:

All correspondence records available under the Freedom of Information Act between Representative Richard "Dick" Gephardt and the U.S. Department of Labor from January 1, 1977 to the present.

Max Kennedy, International Representative, United Mine Workers of America,

Castlewood, Virginia, is seeking:

a complete hard copy of all citations, safeguards, orders and any other enforcement action taken for Island Creek Coal Company (Oakwood, Virginia), VP #8 Mine, ID # 4403795 from January 1, 2002 through December 31, 2003.

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/22/2003 2:00:36 PM
Subject: : Today's SJC markup

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 22-MAY-2003 18:00:36.00
SUBJECT: : Today's SJC markup
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

The following were reported favorably:

Robert McCallum, to be Associate Attorney General, by a vote of 19-0;
Peter Keisler, to be Assistant Attorney General for the Civil Division by voice vote;
and Mike Chertoff, to be a U.S. Circuit Judge for the Third Circuit, by a vote of 13-0 with 6 passes.

Those votes took place after lengthy debate about the Chertoff nomination.

The Committee agreed to vote on the nomination of David Campbell, to be a U.S. District Judge for the District of Arizona, on June 12 and held over the nominations of R. Hewitt Pate, to be Assistant Attorney General for the Antitrust Division, and David Rivkin, to be a member of the Foreign Claims Settlement Commission.

From: Johnson, Collister W.
To: kmehlman@georgewbush.com <Hernandez, Israel>;kmehlman@georgewbush.com <Martin, Catherine J.>;kmehlman@georgewbush.com <Kavanaugh, Brett M.>
CC: <Opa - Political Affairs>;kmehlman@georgewbush.com <kmehlman@georgewbush.com>
Sent: 5/22/2003 7:05:10 PM
Subject: OPA checklist and Political Event Guidelines
Attachments: OPA Check List of POTUS political events.doc; Political Event Guidelines.doc

<> <>

Cathie/lz/Brett -

Per Ken's request, please find attached two documents:

- OPA Check List:

A list of all duties currently undertaken by OPA ADs when doing political events for the President. It is written as though the President were doing a fundraiser for another candidate, and it may therefore need to change - both logistically and perhaps legally - for Presidential campaign events.

- Political Event Guidelines:

This document is a joint OPA-Advance product and is sent to campaigns to guide them in building the logistics of the event.

c

Office of Presidential Advance: Summary of Political Event Guidelines

The following items should be helpful when planning a political event in which the President will be in attendance. If you have any general questions regarding these items, please direct them to the Advance Team, which typically arrives five to seven days prior to the President's visit or contact the Office of Presidential Advance at **202/456-5309** or Office of Political Affairs at **202/456-6257**.

Photo-Opportunity:

- **Two Rooms** – Whenever possible, two rooms (each at least 30' x 35') should be utilized when conducting a photo opportunity with the President. The participants should gather in one room and be directed (using rope and stanchion) into the room where the President will be positioned for the photo. This room should be kept clear of all people directly involved in the event (limited to the photographer, his/her assistant, and those responsible for "pushing" and "pulling"). **NOTE:** If two rooms are not available, a sturdy divider or pipe and drape partitions should be used to create the same effect.
- **Backdrop** – The backdrop should be made of plush "Presidential Blue" drape (8' to 10' high x 10' to 12' wide) and one U.S. flag and one Presidential flag (provided by Advance Team).
- **75 "Clicks" (Up to two people per click)** – Photo-Ops should be limited to 75 "clicks" or 140 people (keeping in mind that in some cases only one person may participate in photo). In addition to the tickets provided by the host committee, the Advance Team will provide additional tickets to ensure we do not exceed the designated number of photos. **NOTE:** All attendees must provide SS# and DOB 72 hours in advance.
- **Information Cards** – Information cards should be filled out prior to entering the room. This prevents any bottlenecks after the photo has been taken.
- **Photo Participants** – Most guests prefer to have their photo with only the President. As such, we strongly encourage the candidate to greet participants after they have had their photo with the President (preferably 12'-15' from the photo area).

Main Event:

- **Backdrop (Flags)** – The backdrop for the event should be interspersing U.S. and State flags (whichever state we are visiting). Pipe and drape (presidential blue) should be behind the flags. The host group or candidate may have banners in the cut-shot (provided they are professionally produced).
- **One (1) Speaker prior to The President** – Under **no** circumstances should there be more than one speaker prior to the President's remarks. The person who will perform the introduction will be announced out (off-stage announce) with the President. The introduction should be no more than two (2) minutes. Any other speakers are welcome to speak during the pre-program or following the President's departure.
- **Rope Line (length)** – Because of the size of many of these ballrooms the rope line often spans anywhere from 100-200 feet. Be mindful when setting up the rope line that the portion the President "works" extends no more than 50-60 feet.
- **No-Honors** – Honors **will not** be played during political events.
- **Tickets (Security)** – The host committee is responsible for printing tickets and vetting all ticket holders. For small dollar fundraiser, the host committee must be extra diligent when vetting the ticket holders. This applies to the Photo-Op as well. Host committees should also be very suspicious of unsolicited calls regarding tickets (almost 100-percent of attendees receive formal invitations). Additionally, "walk-up" attendees presenting checks the day of the event are not permitted.
- **Technical Contractors** – Due to technical requirements regarding media coverage at presidential events, we would request that no specific details regarding sound and lighting be finalized until the Advance Team arrives.
- **Meal Program** - Please make sure that only salads are served prior to the President's remarks (so that attendees will not be eating their entrée while the President speaks).

Updated May 2002

CHECKLIST FOR PRESIDENTIAL POLITICAL EVENTS

Initial Scheduling (6 weeks out)

- OPA-AD submits Scheduling Proposal through WH Political Director to Senior Staff. Scheduling Proposal includes length and time of participation and tiers that may be required.
- Senior Staff accepts request and signals appropriate date and length of time for participation by POTUS.
- Appropriate Associate Director of Political Affairs (OPA-AD) is notified by WH Political Director.
- OPA-AD submits speechwriting proposal.

Notification of Campaign (5 weeks out)

- OPA-AD contacts campaign and notifies them of the possible participation of POTUS.
- OPA-AD stresses that the event is not public, not to be confirmed by the campaign to anyone, and that information is not to be shared outside immediate campaign senior staff.
- OPA-AD asks for copy of the draft of invitation which the campaign proposes to send to donors.
- OPA-AD vets venue and major participants (if applicable) with Scheduling background check process. (Note: Country Clubs and Private Homes are actively discouraged as venues).

Invitations (5 weeks out)

- OPA-AD submits invitation for written approval by: 1) WH Counsel, 2) WH Political Director, and 3) POTUS senior staff.
- OPA-AD also submits invitation to Advance and Scheduling for their review of times, “doors open, doors close” language, etc.
- OPA-AD receives approval in writing from all three above, and verbal approval from Advance and Scheduling.
- OPA-ED also ensures that invitation response device includes necessary ARP information (name, date of birth, sex, race, place of birth) for any tiers which bring participants within an arms-reach of the President.
- OPA-AD requires campaign to send in \$25,000 deposit check to RNC.
- After check is sent, OPA-AD notifies campaign of approval of invite. (If edits to the invitation are necessary, OPA-AD asks the campaign to make them and then resend for final approval).
- OPA-AD stresses to campaign that they are still *not allowed to confirm the President’s participation in any way*, and that any questions which arise from the media should be directed to the White House Office of Media Affairs.
- Campaign sends out invitations to their lists via fax and mail.
- If the campaign requests email distribution of the invitation, the approval process above is repeated, including a well-documented understanding of names on the email distribution list.
- OPA-AD sends the campaign the “Event Guidelines” document (attached), which details the requirements

Working Groups (2 weeks out)

- OPA-AD attends daily PET meetings at 10am in room 180.
- OPA-AD convenes at least two separate, event-specific working groups at 3pm in room 180 with Advance, Press, Scheduling, Media Affairs, Intergovernmental Affairs, Public Liaison, Legislative Affairs and Speechwriting.
- OPA-AD reports to WH Political Director on any concerns raised in working groups.
- WH Political Director addresses concerns with Senior Staff.
- OPA-AD gives Advance the working contact for the campaign, and gives the campaign the name of the Advance lead for the event.

Press Confirmation (1 week out)

- OPA-AD coordinates with Media Affairs on when and how WH will publicly confirm the President's participation (usually via Press Gaggle).
- The campaign may request to make their own press release as well. If so, OPA-AD gets a draft of the release from the campaign and works with Media Affairs and WH Counsel to get written approval on the draft.

Advance Team (5 days out)

- OPA-AD ensures Advance Lead and campaign contact are in touch.
- OPA-AD continues working groups in 180.
- OPA-AD vets proposed greeters with Advance and Scheduling background check process.
- OPA-AD also facilitates in making sure all necessary ARP information is given to Advance for use by Secret Service.

Briefings (due at least 48 hours out)

- OPA-AD hosts final working group *via conference call* including campaign contact and Advance lead, where the entire event is reviewed.
- OPA-AD incorporates any changes into the following briefs and sends through WH Political Director for approval by Karl:
 - State Political Briefing
 - Event Briefing
 - List of Roundtable Attendees and/or Photo Op Attendees
 - List of VIP attendees
 - Biographies on VIP Attendees
- OPA-AD secures a copy of proposed introductory remarks (no longer than 150 words).
- OPA-AD confirms with speechwriters the ACKNOWLEDGMENTS section of Speech.

Schedule (due at least 24 hours out)

- OPA-AD works with Advance to confirm schedule, including:
 - AF1 guests
 - Arrival Greeters (no more than 8).
 - Motorcade Guests
 - Times, Movements and Rooms.

From: Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>
To: Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>; Jamie.E.Brown@usdoj.gov <Jamie.E.Brown@usdoj.gov>; viet.dinh@usdoj.gov <viet.dinh@usdoj.gov>; brian.a.benczkowski@usdoj.gov <brian.a.benczkowski@usdoj.gov>; brian.a.benczkowski@usdoj.gov <Grubbs, Wendy J.>; adam.charnes@usdoj.gov <adam.charnes@usdoj.gov>; adam.charnes@usdoj.gov <Kavanaugh, Brett M.>; adam.charnes@usdoj.gov <Snee, Ashley>; Monica.goodling@usdoj.gov <Monica.goodling@usdoj.gov>; Galyean, James \(\L. Graham\) <James_Galyean@lgraham.senate.gov>; Vogel, Alex \(\Frist\) <Alex_Vogel@frist.senate.gov>; Abegg, John \(\McConnell\) <John_Abegg@mccconnell.senate.gov>; Smith, William \(\Judiciary\) <William_Smith@Judiciary.senate.gov>; Ho, James \(\Judiciary\) <James_Ho@Judiciary.senate.gov>; Duffield, Steven \(\RPC\) <Steven_Duffield@rpc.senate.gov>; Gumerson, Katie \(\RPC\) <Katie_Gumerson@rpc.senate.gov>; Miranda, Manuel \(\Frist\) <Manuel_Miranda@frist.senate.gov>; Ledeen, Barbara \(\Republican-Conf\) <Barbara_Ledeen@src.senate.gov>; Comisac, RenaJohnson \(\Judiciary\) <Rena_Johnson_Comisac@Judiciary.senate.gov>; Delrahim, Makan \(\Judiciary\) <Makan_Delrahim@Judiciary.senate.gov>; Dahl, Alex \(\Judiciary\) <Alex_Dahl@Judiciary.senate.gov>
Sent: 5/22/2003 7:46:18 PM
Subject: RE: Meeting Friday at 10:30 a.m.

Just a reminder of the Friday meeting in Makan's office (SD-145) to discuss judicial nominations. Hope you can make it.

CONFIDENTIALITY NOTE:

The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees. If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited. If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy.

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Paul Perkins/WHO/EOP@EOP [WHO] <Paul Perkins>
Sent: 5/23/2003 3:19:29 AM
Subject: : Daily Update - May 22, 2003

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-MAY-2003 07:19:29.00
SUBJECT:: Daily Update - May 22, 2003
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Paul Perkins (CN=Paul Perkins/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

P

Please print 2 and 5.

B

Please see item 5 below.

Cheers

tsg

----- Forwarded by Tim Goeglein/WHO/EOP on 05/23/2003
07:18 AM -----

Citizen Link <citizenlink@FAMILY.ORG>
05/22/2003 07:33:47 PM
Please respond to Citizen Link <citizenlink@FAMILY.ORG>
Record Type: Record

To: LinkMembers@LISTSERV.FAMILY.ORG
cc:
Subject: Daily Update - May 22, 2003

CITIZENLINK
May 22, 2003

POLL: MORE THINK ASSISTED SUICIDE WRONG
Physician-assisted suicide is falling in acceptance among
Americans.
<http://www.family.org/cforum/fnif/news/A0026159.html>

COLO. VOUCHER PLAN CHALLENGED IN COURT:
The first voucher plan since the Supreme Court ruled in
favor of the Cleveland program, is challenged.
<http://www.family.org/cforum/fnif/news/A0026157.html>

STATES BET ON GAMBLING REVENUES:
Gambling losses are growing. The problem is, more states
are looking to gaming to bolster budgets.
<http://www.family.org/cforum/fnif/news/A0026155.html>

CHILD MENTOR GRANTS OFFERED:

REV_00236676

The administration wants to train adults to mentor children of inmates.
<http://www.family.org/cforum/fnif/news/A0026153.html>

LANDRIEU'S SUPPORT NEEDED FOR ESTRADA VOTE:
The president's judicial nominations are being held up.
(A Call to Action for Louisiana Residents)
<http://www.family.org/cforum/fnif/statenews/A0026164.html>

NEWS BRIEFS:
A bad day for those wanting abortions at military bases -- and more.
(Please See "News Briefs" Section Below)

Encourage a friend to sign up for this e-mail:
<http://www.family.org/cforum/clinksignup.cfm>

To visit our Web site:
<http://www.citizenlink.org>

To contact your congressman or senators:
<http://www.family.org/citizenaction>

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EDITOR'S PICKS: Tools for Engaging (and Living in) Your World

"Raising a Modern-Day Knight: A Father's Rules on Guiding His Son to Authentic Manhood"
By Robert Lewis
<http://www.family.org/resources/itempg.cfm?itemid=32&refcd=CE03ECZL&tvar=no>

A boy's progress into manhood is to be celebrated. But how do you help your son stay on the right road? "Raising a Modern-Day Knight" uses Scripture verses, illustrations and real-life stories to give dads the insight they need to equip sons for the journey ahead.
Item Code: BT062
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FAMILY NEWS IN FOCUS STORIES

Poll: More Think Assisted Suicide Wrong
By David Brody, Washington, D.C., correspondent

SUMMARY: Physician-assisted suicide is falling in acceptance among Americans.

A new Gallup Poll shows more Americans believe physician-assisted suicide is morally wrong. That's quite a switch from previous surveys.

It seems like Americans are finally starting to understand the dangers of assisted suicide. In the past, the Gallup Poll showed that 44 percent of people thought it was morally wrong. But that figure is rising -- now up to 49 percent.

The Hemlock Society, a group dedicated to the cause of assisted suicide, isn't troubled by the poll results, according to spokesman David Goldberg

"It's all about choice and if people have that choice . . . however they choose to use it would be up to them," Goldberg said.

But Rita Marker, of the International Task Force on Euthanasia and Assisted Suicide, countered that assisted suicide is never just a personal decision and people are recognizing that fact.

"This is dangerous; this is not a personal rights, personal choice sort of thing," Marker said. "As people become more aware of what assisted suicide really means, they recognize that it's very dangerous."

What the issue comes down to, is: Should doctors be able to write a prescription so people can take a deadly overdose? Marker said such an action wouldn't just affect the elderly.

"It would affect everyone, whether it was someone who was devastated by a terminal illness or someone who was devastated by not getting into the grad school of their choice," Marker said.

The larger issue is about the value of God-given human life, according to Carrie Gordon Earll, bioethics analyst for Focus on the Family.

"It is important for us to remember that the end of life is just as crucial as the beginning of life, when it comes to a sanctity message," Earll said.

That message seems to be catching on.

Oregon became the first state in the U.S. -- and the world -- to legalize assisted suicide. The law was passed six years ago. Internationally, the Netherlands had unofficially allowed doctors to kill their patients for several years until 2001, when it became the first country to legalize euthanasia -- the actual killing of individuals by physicians and others -- under certain medical guidelines. Belgium followed suit the next year.

FOR MORE INFORMATION: We suggest "Prescribing Death: Euthanasia Exposed," by Carrie Gordon Earll, for a look at the truth about euthanasia:

<http://www.family.org/resources/itempg.cfm?itemid=489&refcd=CE03ECZL&tvar=n>
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Colo. Voucher Plan Challenged in Court
By Terry Phillips, correspondent

SUMMARY: The nation's first school voucher plan enacted since the Supreme Court ruled in favor of a Cleveland program, is being challenged in court.

From the moment Colorado passed its voucher proposal for low-income students, the educational establishment was sure to take the program to court. Now, it has.

"This is what they have vowed," said Robert Freedman, an attorney with the Institute for Justice. "They'll use any technicality, any argument they can find to prevent children and parents from having a choice in their education."

Freedman said the voucher program provides choices -- and a religious education can't be excluded.

"The state can't say you have all sorts of choices, but

not religious (ones). That's a violation of our right to practice our religion," Freedman said.

Randy Dehoff, the chairman of the Colorado State Board of Education, said the suit is an attempt to continue a system as is.

"Certainly among the teachers' unions it is a question of control, and they think they know better than parents," Dehoff said.

He strongly condemns the system that has taken all educational control away from parents and left them with no affordable alternative.

"The public schools are already failing these kids; they are not teaching them, and they can't teach 'em. So we owe it to them to give them some options," Dehoff said.

Freedman thinks the voucher controversy demonstrates a difference in priorities.

"Colorado has promised each child an education," Freedman said. "The opponents look at this as money that's promised to a system."

School choice proponents expect the battle over vouchers to be repeated in state after state.

FOR MORE INFORMATION: The Institute for Justice Web site has information about the legal situation surrounding school choice and state voucher amendments:

<http://www.ij.org>

(NOTE: Referral to Web sites not produced by Focus on the Family is for informational purposes only and does not necessarily constitute an endorsement of the sites' content.)

States Bet on Gambling Revenues
By Stuart Shepard, correspondent

SUMMARY: Losses to gambling are growing. The problem is, more and more states are looking to gambling expansion to bolster slumping budgets.

Gambling draws more money from American pockets than movies, videos, music and books combined, according to the latest figures from Christiansen Capital Advisors, a group that tracks gambling statistics. In fact, Americans now lose \$68 billion a year to gambling.

Tom Grey, with the National Coalition Against Gambling Expansion, however, said the statistics don't reflect the hidden human cost in addiction, bankruptcy, crime and corruption.

"The growth of this enterprise has been at the expense of people that cannot handle gambling, and subsequently those people become a cost to society," Grey said.

Meantime, many states continue to discuss gambling expansion as a solution to budget woes.

"The states become dependent on gambling revenues," said Focus on the Family Gambling Analyst Chad Hills. "They

become as addicted as the pathological gamblers."

Hills said gambling is an unstable source of state income.

"Gambling tends to peak and then it drops and it levels out, Hills said. "The states plan their budgets on the peaks, and then when it drops and levels out, they're in a deficit."

Betty Jean Wolfe, with the Philadelphia-based Urban Family Council, thinks states engage in magical thinking when it comes to gambling money.

"They think that this money, this pot of gold at the end of the rainbow, is going to dig them out of a deep deficit that comes from a lack of fiscal discipline," Wolfe said.

She said a better solution would be cutbacks across the board in state budgets.

If you divide the \$68 billion in gambling losses by the current population, it amounts to more than \$230 for every person in the U.S. Experts are quick to point out, however, gambling hits some families harder than others. For example, 5 percent of the population buys half the lottery tickets in the country.

FOR MORE INFORMATION: To learn more about the pitfalls of gambling, we suggest the following broadcast tape: "Gambling Your Life Away," by John Eades:

<http://www.family.org/resources/itempg.cfm?itemid=2801&refcd=CE03ECZL&tvar=no>

Child Mentor Grants Offered
By David Brody, Washington, D.C., correspondent

SUMMARY: The administration wants to train adults to mentor children of inmates.

The Bush administration has announced that it is making \$10 million available to organizations to train adults to mentor children whose parents are in jail. The move is a part of the president's agenda of compassionate conservatism.

Dr. Wade Horn, assistant secretary for children and families at the U.S. Department of Health and Human Services, said he has seen all too often that kids whose parents are in jail, end up there themselves.

"Children who have a parent who is incarcerated are at great risk for poorer outcomes," Horn said. "What we're trying to do with this initiative is to support children as they grow into adulthood with a positive experience with an adult mentor, in order to combat those negative consequences."

Adult volunteers who qualify will be matched up with these children and they'll meet at least once a week.

Pat Nolan, president of Justice Fellowship ministries, said the idea is good, but government can only go so far by itself.

"Government programs can't love somebody. It takes a person to love them," Nolan said.

Justice Fellowship, which is part of Prison Fellowship International, has its own mentoring program that works with churches to accomplish its mission. Under the government's plan, those churches will be eligible for the grant money.

"Church is the logical place for that to come from, so it's wonderful that we have a president that's willing to recognize that and reach out and involve churches in that process, rather than just having a sterile government program do it," Nolan said.

In the meantime, there is more potential good news on the way: The president has requested a \$40 million increase for these types of programs next year. Congress will have to sign off on that.

FOR MORE INFORMATION: Focus on the Family offers several resources on mentoring. May we suggest the following broadcast cassette: "The Impact of Mentoring I-II," by Stu and Nancy Epperson:

<http://www.family.org/resources/itempg.cfm?itemid=3489&REFCD=CE03ECZL&tvar=no>

For more information about Prison Fellowship or Justice Fellowship, see the group's Web sites:

<http://www.pfm.org>

<http://www.justicefellowship.org>

(NOTE: Referrals to Web sites not produced by Focus on the Family are for informational purposes and do not necessarily imply an endorsement of their contents by Focus on the Family.)

CITIZENLINK EXTRA

Landrieu's Support Needed for Estrada Vote
By Terry Phillips, state issues producer

Presidential authority to appoint federal judges has been hijacked by Senate Democrats -- including Louisiana Democratic Sen. Mary Landrieu.

Nominees are supposed to be voted up or down by at least 51 senators. When it comes to the nomination of Miguel Estrada, however, that is not happening, and Landrieu bears part of the blame.

Estrada has been nominated to a seat on the U.S. Circuit Court of Appeals for the District of Columbia Circuit -- considered by many to be the second-highest court in the country.

The situation is particularly vexing to those who remember Landrieu campaign spots promising support for Hispanic nominees. One such person is Julio Melara, a Baton Rouge businessman who, like Estrada, is of Honduran heritage.

"She has since changed her mind, and even publicly said that it was a mistake on the part of the people who were handling her campaign," Melara said. "(That) makes no sense."

Melara sees parallels between Estrada and Supreme Court Justice Clarence Thomas -- besides minority status.

"Both started from meager backgrounds, they've worked real hard and risen to the top of their field," Melara said.

It's Estrada's credentials that impress Fernando Gutierrez, a pastor in Gonzales, La.

"I think his qualifications justify his confirmation," Gutierrez said. "He has argued 15 cases before the Supreme Court and he has an excellent, outstanding record."

Still, Sen. Landrieu will not side with Miguel Estrada, even to let him get a vote. Gene Mills, a spokesman for the Louisiana Family Forum, held out hope for a change of heart. He remembers that Landrieu co-sponsored the important anti-cloning bill.

"Many of these elected officials, even ones who differ politically with many of our perspectives, can and will do the right thing," Mills said. "So, I would encourage Senator Landrieu to do it again."

Sen. John Breaux, D-La., Landrieu's Louisiana compatriot in the Senate, has voted to end the filibuster. If Landrieu joins him, the blockade might end.

TAKE ACTION: Call Senator Landrieu's Washington office (202) 224-5824. Ask her to allow a vote on Miguel Estrada. If you want to send an e-mail, please see our Legislative Action Center:

<http://capwiz.com/fof/bio/?id=273&submit.x=11&submit.y=10>

NEWS BRIEFS

Sanchez, Murray Amendments Falter

It was a good day for pro-lifers -- and a bad day for those attempting to legalize military abortions.

On a 48-51 vote, the Senate killed an amendment (to the Defense Authorization bill) sponsored by Sen. Patty Murray, D-Wash., that would have permitted taxpayer funds to go to abortions at military facilities. Last year, when the Senate was in Democratic hands, the pro-abortion lobby managed to get the amendment passed on a 52-40 vote, only to have it removed later.

Also today, the House defeated a military abortion amendment sponsored by Rep. Loretta Sanchez, D-Calif., by a vote of 201-227. That is 12 more votes against the amendment than last year.

Young Creationist Published

Look for a new author in this month's Journal of Creation. His name is Chase Nelson and he's 14. Nelson's article explains a property of DNA that supports the historical accuracy of the Genesis account of the flood. According to the DNA, we all have a common ancestor that lived only 6,000 years ago.

"I can just envision some evolutionary people who are criticizing the journal, (saying) 'Oh, Answers in Genesis

has . . . to publicize 14-year olds,' " Nelson said.

But he's not intimidated.

"The Bible predicts that this evidence will be present, while evolution is forced to explain it," Nelson said.

Answers in Genesis was quick to point out that the paper was not published because Nelson is 14, but because it is quality research that passed a review board of highly qualified scientists.

Wash. Enacts Video Game Law

The governor of Washington state has signed what is believed to be a first-ever law that levies a fine of \$500 against retailers who sell certain video games to children.

Targeted are video games that depict violence against police officers, and sales to kids under seventeen. The bill's author, state Rep. Mary Lou Dickerson, said retailers had promised not to sell violent videos to children, but a local "sting" operation showed almost no compliance.

"We've had other organizations, including (NBC-TV's) 'Dateline,' that did a sting, and that was done on the East Coast," Dickerson said. "And compliance was terrible there as well."

Video game makers are promising legal action, but Dickerson said she's confident the bill will stand the challenge, largely because it centers on protection of police.

Texas Passes Abortion Waiting Period

The Texas Senate on Wednesday voted 21-10 to pass a bill that creates a 24-hour waiting period before a woman can have an abortion. The state House passed a nearly identical bill last month on a 96-41 vote.

The new waiting-period rules mandate that a woman must receive information from the Texas Department of Health, including information on the abortion-breast cancer link. The information can be delivered in person, via phone or through the Internet. Violators could be fined up to \$10,000 per incident.

Other amendments include a funding cut for Planned Parenthood and requiring that abortions for women who are more than 16 weeks pregnant to take place at an ambulatory surgical center or hospital.

The bill now returns to the House for concurrence on a minor change. It is expected to be signed into law by Gov. Rick Perry.

-- Written by Pete Winn, Steve Jordahl, Terry Phillips and Trish Amason

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From: Abegg, John (McConnell) <John_Abegg@mccconnell.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/23/2003 5:13:30 AM
Subject: : RE: D. Nev.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> ("Abegg, John (McConnell)" <John_Abegg@mccconnell.senate.gov> [UNKNOWN])
CREATION DATE/TIME:23-MAY-2003 09:13:30.00
SUBJECT:: RE: D. Nev.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Thanks for the update; I'll pass the info along to the boss.

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

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M_Kavanaugh@who.eop.gov]
Sent: Friday, May 23, 2003 9:05 AM
To: Abegg, John (McConnell)
Subject: D. Nev.

FEDERAL JUDGESHIP: Jurist Jones possible nominee

White House declines to confirm whether Nevadan is Bush's choice for post

By JANE ANN MORRISON
REVIEW-JOURNAL

The White House, after working with U.S. Sen. John Ensign, is poised to nominate U.S. Bankruptcy Judge Robert Clive Jones to a federal District Court judgeship.

Ensign, a Republican, originally proposed the son of Democratic U.S. Sen. Harry Reid, as well as others, but the Bush administration sought to expand that list.

Republicans had criticized Ensign for proposing Leif Reid, a 35-year-old Democrat with seven years of experience.

Jones is 56, has been on the bankruptcy court for 20 years and has experience both as a certified public accountant and an attorney prior to that.

Jones' name had not been made public until Thursday, when Ensign's spokesman Jack Finn said, "We can confirm he is the White House selection. The senator is very proud of not only Judge Jones, but of all the people we submitted to the White House. They are carefully reviewed and we think the world of all of the

REV_00236685

others in terms of experience, integrity and abilities."

Finn declined to say how many Nevadans had been considered by the White House, but legal sources said at least seven were submitted.

Along with Leif Reid, the other contenders included former U.S. Attorney Rick Pocker, District Judge Ron Parraguirre, U.S. Magistrate Robert McQuaid of Reno, Las Vegas attorney Sandy Smagac and at least one other person.

"Senator Ensign is extremely pleased and extremely proud of this choice," Finn said. "Judge Jones will absolutely uphold the integrity of the federal judiciary."

Each state's senior senator of the party in power at the White House recommends judicial candidates to the president. After background investigations are complete, the administration nominates its choice. The U.S. Senate must confirm the administration's choice.

White House spokesman Ken Lisaius declined to confirm whether Jones is President Bush's choice. "We don't speculate on personnel. The White House makes announcements when we have announcements to make."

Jones has a good reputation within the Las Vegas legal community.

Defense attorney Richard Wright said Jones was a good choice because of his "maturity, experience and seasoning in federal litigation. He's a gentleman, courteous and polite."

Jones is one of those judges who is enjoyable to practice before, Wright said. "He's had wide-ranging litigation on the federal bench in bankruptcy court. He's well-respected and well-qualified."

In the 1980s, he decided the buyer of the bankrupt Aladdin. He was in the same position earlier this year, choosing Planet Hollywood as the best offer for the rebuilt Las Vegas Strip property.

Jones was born and raised in Las Vegas and graduated from Brigham Young University in 1971 with a degree in accounting and English. He obtained his law degree from UCLA in 1975, graduating in the top 10 percent of his class.

After working as a certified public accountant, he started practicing law in

1976. His practice focused on taxation, real estate, commercial law and bankruptcy. In February 1983, he was appointed the the bankruptcy court, where he now serves. He was appointed to the 14-year-term after Lloyd George was elevated from the bankruptcy court to U.S. District Court, a lifetime position.

A registered Republican, he served in the California Air National Guard and the Nevada Army Guard.

He is a former board member of Opportunity Village of Clark County and the Las Vegas Chapter of the American Cancer Society.

The judgeship is becoming available because U.S. District Judge David Hagen is taking senior status.

From: CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Patrick J. Bumatay/WHO/EOP@EOP [WHO] <Patrick J. Bumatay>
Sent: 5/23/2003 7:38:46 AM
Subject: : Re: 2 Judges Confirmed -5/22/03

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-MAY-2003 11:38:46.00
SUBJECT:: Re: 2 Judges Confirmed -5/22/03
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Yes

.

----- Original Message -----
From: Patrick J. Bumatay/WHO/EOP@Exchange
To: Benjamin A. Powell/WHO/EOP@EOP,
Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/23/2003 11:34:26 AM
Subject: FW: 2 Judges Confirmed -5/22/03

Okay to appoint?
-----Original Message-----
From: McCathran, William W.
Sent: Friday, May 23, 2003 11:30 AM
To: Bumatay, Patrick J.
Cc: Saunders, G. Timo; Kalbaugh, David E.
Subject: 2 Judges Confirmed -5/22/03

USCJ, 9TH Cir. - CMC Callahan and USDJ, No. Alabama - LSCoogler were confirmed by the Senate last night. OK to appoint?

tk,
Bill
Clerk's

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Noel J. Francisco/WHO/EOP@EOP [WHO] <Noel J. Francisco>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 5/23/2003 4:17:23 AM
Subject: : Confirmed late last night by UC

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:23-MAY-2003 08:17:23.00
SUBJECT:: Confirmed late last night by UC
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Noel J. Francisco (CN=Noel J. Francisco/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Ricardo Hinojosa, U.S. Sentencing Commission
Michael Horowitz, U.S. Sentencing Commission
Mark Hanohano, U.S. Marshal for D. Haw.
Scott Coogler, U.S. District Judge for the N.D. Ala.

From: Kirk Blalock <kblalock@fierce-isakowitz.com>
To: Wayne.Abernathy@do.treas.gov <Schacht, Diana L.>; Wayne.Abernathy@do.treas.gov <Warsh, Kevin>; Wayne.Abernathy@do.treas.gov <Kavanaugh, Brett M.>
CC: MMeece@doc.gov <MMeece@doc.gov>; MMeece@doc.gov <Kirk, Matthew>; Wayne.Abernathy@do.treas.gov <Wayne.Abernathy@do.treas.gov>
Sent: 5/23/2003 8:31:56 AM
Subject: Congress Daily AM - Hatch Introduction

HEALTH

Beginning Precarious Process, Hatch Introduces Asbestos Bill

Senate Judiciary Chairman Hatch late Thursday introduced long-awaited asbestos litigation reform legislation, with Democratic Sens. **Ben Nelson** of Nebraska and **Zell Miller** of Georgia signing on, but without further support from key Democrats.

The backlash against the bill, which Hatch decided to introduce despite the urging of Democrats to keep working on it, may propel parties back to the negotiating table, Democrats hope.

"They tried the bum's rush, and it didn't work," one aide said.

The bill Nelson and Miller backed includes some modest modifications to the draft that Hatch proposed earlier this week, including provisions that would allow en banc review of decisions by a newly created federal asbestos court. Unlike in the earlier draft, the legislation also allows cases to randomly be assigned to judges and subjects suspected "bad actors" to review by the attorney general's office.

Introducing the measure on the Senate floor, Hatch agreed to continue tweaking the bill, particularly saying he may address one of the Democrats' biggest concerns -- that awards to asbestos victims may exceed the \$108 billion trust fund. But the lack of broad support from the Democratic Caucus and whispers of objections from some Republicans spells trouble for the bill as written, observers said.

Senate Judiciary ranking member **Patrick Leahy**, D-Vt., said that he ultimately may throw his support behind the Hatch bill, but indicated he will hold out his support until substantive changes are made.

"For a bill to pass, we both have to be on it, and we both know that," Leahy said.

Democrats, echoing concerns by labor unions and some others, are worried that the legislation does not contain a "backstop" to ensure that the fund does not run dry. They also worry that medical criteria sets too high a bar for victims to get compensation.

Compensation levels for victims -- with a maximum award of \$750,000- also are too low, some Democrats say.

Hatch warned that anyone who would not negotiate in good faith would be "somebody who destroys -- or tries to destroy -- the only game in town."

He said the legislation was needed to rein in a litigation system that has spun out of control, with more than 70 companies in bankruptcy as a result of asbestos payouts and more than two-thirds of plaintiffs who were not even ill.

The legislation is partly the product of months of private sector negotiations involving insurers, unions, defendant companies and others, who have supported litigation reform in order to prevent bankruptcies and to target compensation to those plaintiffs who have been harmed by asbestos exposure.

Senate Finance ranking member **Max Baucus**, D-Mont., complained in a letter to Hatch that the planned bill would exclude many victims of a notorious asbestos-exposure case in the mining town of Libby, Mont., where employees of W.R. Grace & Co. were exposed to asbestos.

Many townspeople in Libby have become ill or died of asbestos-related illnesses, Baucus noted, but many of the victims would not be eligible for compensation under the proposed federal system.

The children of W.R. Grace employees would not be eligible because, unlike their fathers, they did not have "occupational" exposure or work for five years in an asbestos industry. They inhaled fibers carried on their fathers' clothes, Baucus said. Among other criticisms, Baucus also said he was concerned about the amount that

companies would pay into the trust.

"If I read your draft legislation correctly, W.R. Grace will be required to pay into the trust fund created by your bill only 1.45333 percent of their 2002 revenues for years one through five, with that amount declining over the next 20 years out to year 25," he wrote. "This is a paltry amount."

Further complicating progress on the bill, labor unions have halted talks on the legislation, saying that the provisions in the Hatch draft leave workers worse off than they are under current law. Negotiations will not continue until Hatch demonstrates that unions' concerns will be addressed, they said.

"If Sen. Hatch does introduce the bill -- if he continues to insist any negotiations go on in that framework -- then I don't think anything is going to happen," said AFL-CIO General Counsel Jon Hiatt.

Meanwhile, Sen. **Patty Murray**, D-Wash., reintroduced legislation from last year that would ban the use of asbestos. Asbestos, which can cause illnesses including cancer, is illegal in more than 30 other countries, Murray noted. The bill would complement the goals of the Hatch proposal, Murray said, although she had not taken a position on the bill.

"Our legislation is necessary on top of that legislation -- otherwise, we will need funds far into the future," Murray said. *By Emily Heil*

[\(Back to Contents\)](#)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>
Sent: 5/23/2003 9:24:04 AM
Subject: : FW: Whip Alert 05/23/03
Attachments: P_KBDOG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-MAY-2003 13:24:04.00
SUBJECT: : FW: Whip Alert 05/23/03
TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

judgeships bill went through!!

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
05/23/2003 01:23 PM -----

"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov>
05/23/2003 01:19:23 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: FW: Whip Alert 05/23/03

FYI

The judgeships bill, the Sentencing Commissioners, and the Coogler nomination were all passed in wrap-up last night. Hurrah!

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

From: Swonger, Amy (McConnell)
Sent: Thursday, May 22, 2003 11:34 PM
To: Ware, Mike (E-mail); Calderwood, Jane (E-mail); Hershey, Mike (Santorum); Lackman, Carey (E-mail); Salter, Mark (E-mail); Stiefel, Justin (Murkowski); Yost, Chip (Bennett); Abbott, Steve (Collins); Bell, Steve (Domenici); Bensing, Scott (Ensign); Bernhardt, Bret (Nickles); Brooke, Will (Burns); Calderwood, Jane; Carey Lackman; Christopoulos, Vasiliki (Gregg); Collins, Paul (Sununu); Conway, Sean (Allard); Cottrell, Jackie (Roberts); Cunningham, Ken (Grassley); Cymber, Ruth (Hutchison); Dammann, Julie (Bond); Davis, Meredith (Frist); DeKeyser, Armand (Sessions); Deuser, Jon (Bunning); Easton, John (Gordon Smith); Fischer, Peter (Crapo); Glazewski, Tim (Kyl); Gottshall, William (Lott); Griswold, David (Chafee); Gross, Greg (Fitzgerald); Hill, Frank (Dole); Holladay, Krister (Chambliss); Hollingsworth, Ted (Voinovich); Ingram, Tom (Alexander); Jahn, Chris (Thomas); Keenum, Mark (Cochran); Kensinger, David (Brownback); Knight, Patricia (Hatch); Kontnik, Ginnie (Campbell); Linehan, Louann (Hagel); Magill, Susan (Warner); Mason, Tom (Coleman); McConnaughey, Flip (Enzi); Morris, Marty (Lugar); Olson, Peter (Cornyn); Perry, Richard (L. Graham); Piper, Billy (McConnell); Powell, Glenn (Inhofe); Pressler, Laurel (DeWine); Rivers, Phil

REV_00236698

(Shelby); Russell, David; Strand, Mark (TALENT); Thomas, Mike (Allen);
Timmons, Jay
Subject: Whip Alert 05/23/03

DAILY WHIP ALERT
Friday, May 23, 2003
Vote at 9:30 a.m.

By unanimous consent, the Senate will convene at 8:30 a.m. and resume consideration of the Conference Report to H.R. 2, the Jobs and Economic Growth Bill, with one hour of debate.

At 9:30 a.m., the Senate will vote on the Conference Report to H.R. 2, the Jobs and Economic Growth Bill.

Following disposition of H.R. 2, the Senate will consider the Debt Limit Extension Legislation. By UC, 12 amendments per side are in order with no restriction on relevant 2nd degrees.

The Majority Leader plans to complete action on the Debt Limit Legislation during Friday's session and expects roll call votes throughout the day.

During Thursday's session:

Murray Amendment (# 691) on abortion failed by a vote of 48-51.

Warner Amendment (# 826) on DoD contracting as modified passed by a vote of 99-0.

Vote on final passage on S. 1050, the DoD Authorization Bill, was 98-1

Nomination of Consuelo Maria Callahan, of California, to be U.S. Circuit Judge for the Ninth Circuit was confirmed by a vote of 99-0.

The following amendments were adopted by voice vote to S. 1050:

804 - Smith Amendment on land conveyance

805 - Sarbanes Amendment on land conveyance

707 - Inhofe Amendment as modified on human tissue engineering

791 - Daschle Amendment as modified on the B-1B bomber fleet

787 - Santorum Amendment as modified on non-thermal imaging systems

806 - Biden Amendment on ANG Endstrength

788 - Santorum Amendment as modified on Land Forces
Readiness-Information Operation Sustainment

807 - Bingaman Amendment on high speed test track

808 - Santorum Amendment as modified on emergency broadband

743 - Graham (SC) Amendment as modified on Collaborative Information
Warfare Network

723 - Lott Amendment as modified on Navy RDT&E funding

809 - Santorum Amendment on Portable Mobile Emergency Broadband Systems

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790 - Bingaman Amendment as modified on R&D on low-yield nuclear weapons

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812 - McCain Amendment on Phone Home initiative

813 - Hutchison Amendment on air fare for Armed Forces

814 - Chambliss Amendment on short range air defense radar program

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818 - Boxer Amendment on family separation allowance

819 - Warner Amendment on network centric operations for historically Black colleges

789 - Bunning Amendment as modified on chemical agent monitoring systems

820 - Sessions Amendment on military death gratuity

821 - Landrieu Amendment on National Guard Challenge Program

727 - Bunning Amendment on Phalanx Close in Weapon System

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823 - Landrieu Amendment on Louisiana Army Ammunition Plant

824 - Feinstein Amendment on perchlorate contamination

785 - Dodd Amendment on emergency response capabilities

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829 - Voinovich Amendment on Air Force Institute of Technology

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S. Res. 133, condemning bigotry and violence against Arab Americans

S. Res. 92, regarding Constitution Day (Cal. #109)
S. Res. 145, regarding National Safety Month (Cal. #111)

Executive Nominations: #s 90, 91, 178 - 198

- att1.htm

Message Sent

To: _____

David G. Leitch/WHO/EOP@EOP

Brett M. Kavanaugh/WHO/EOP@EOP

Kyle Sampson/WHO/EOP@EOP

Wendy J. Grubbs/WHO/EOP@EOP

Ziad S. Ojakli/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_KBDOG003_WHO.TXT_1>

REV_00236701

FYI

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Sent: Thursday, May 22, 2003 11:34 PM

To: Ware, Mike (E-mail); Calderwood, Jane (E-mail); Hershey, Mike (Santorum); Lackman, Carey (E-mail); Salter, Mark (E-mail); Stiefel, Justin (Murkowski); Yost, Chip (Bennett); Abbott, Steve (Collins); Bell, Steve (Domenici); Bensing, Scott (Ensign); Bernhardt, Bret (Nickles); Brooke, Will (Burns); Calderwood, Jane; Carey Lackman; Christopoulos, Vasiliki (Gregg); Collins, Paul (Sununu); Conway, Sean (Allard); Cottrell, Jackie (Roberts); Cunningham, Ken (Grassley); Cymber, Ruth (Hutchison); Dammann, Julie (Bond); Davis, Meredith (Frist); DeKeyser, Armand (Sessions); Deuser, Jon (Bunning); Easton, John (Gordon Smith); Fischer, Peter (Crapo); Glazewski, Tim (Kyl); Gottshall, William (Lott); Griswold, David (Chafee); Gross, Greg (Fitzgerald); Hill, Frank (Dole); Holladay, Krister (Chambliss); Hollingsworth, Ted (Voinovich); Ingram, Tom (Alexander); Jahn, Chris (Thomas); Keenum, Mark (Cochran); Kensing, David (Brownback); Knight, Patricia (Hatch); Kontnik, Ginnie (Campbell); Linehan, Louann (Hagel); Magill, Susan (Warner); Mason, Tom (Coleman); McConnaughey, Flip (Enzi); Morris, Marty (Lugar); Olson, Peter (Cornyn); Perry, Richard (L. Graham); Piper, Billy (McConnell); Powell, Glenn (Inhofe); Pressler, Laurel (DeWine); Rivers, Phil (Shelby); Russell, David; Strand, Mark (TALENT); Thomas, Mike (Allen); Timmons, Jay

Subject: Whip Alert 05/23/03

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- S. Con. Res. 7, regarding the escalation of anti-Semitic violence (Cal. #105)
- S. Res. 133, condemning bigotry and violence against Arab Americans
- S. Res. 92, regarding Constitution Day (Cal. #109)
- S. Res. 145, regarding National Safety Month (Cal. #111)

Executive Nominations: #s 90, 91, 178 – 198

From: CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/23/2003 9:32:18 AM
Subject: : compliment

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP [OPD])
CREATION DATE/TIME:23-MAY-2003 13:32:18.00
SUBJECT:: compliment
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Hi Brett! Thought you should know that Julie Taubman recently met Karl Rove and when she brought up your name Karl said you were one of the smartest people he knew!! Well deserved!

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Duffield, Steven (RPC) <Steven_Duffield@rpc.senate.gov>
Sent: 5/23/2003 7:27:58 AM
Subject: : Re: Focus group

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-MAY-2003 11:27:58.00
SUBJECT:: Re: Focus group
TO: "Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov> ("Duffield, Steven (RPC)"
<Steven_Duffield@rpc.senate.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Can he take it from video off web site. If so, here is link.
<http://www.whitehouse.gov/news/releases/2003/05/20030509-4.html>

If not, let me know.

"Duffield, Steven (RPC)" <Steven_Duffield@rpc.senate.gov>
05/23/2003 11:23:36 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Focus group

I left you this same message by voice mail. Frank very much wants to use
the May 9 tape. Can somebody contact Frank at PRA 6 and let him
know how to get a copy ASAP? Press office? -- Steven

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO]
To: Eric W. Terrell/WHO/EOP@EOP [WHO] <Eric W. Terrell>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/26/2003 8:45:52 AM
Subject: : RE: travel office issue I asked you about last week...

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:26-MAY-2003 12:45:52.00
SUBJECT:: RE: travel office issue I asked you about last week....
TO:Eric W. Terrell (CN=Eric W. Terrell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Is this issue closed?

-----Original Message-----
From: Litkenhaus, Colleen
Sent: Friday, May 02, 2003 2:43 PM
To: Kavanaugh, Brett M.
Subject: RE: travel office issue I asked you about last week....

Thanks!

-----Original Message-----
From: Kavanaugh, Brett M.
Sent: Friday, May 02, 2003 2:41 PM
To: Litkenhaus, Colleen
Subject: Re: travel office issue I asked you about last week....

I think we affirmatively decided not to contact the IRS. Let me loop back to Adam and Eric.

From: Colleen Litkenhaus/WHO/EOP@Exchange on 05/02/2003 02:38:49 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: travel office issue I asked you about last week....

Note from Eric Terrell, Director, WH Travel Office:

2. I would only consider the fet issue resolved when the IRS is fully aware that w.h. is no longer paying fet, but that our broker air partner is. Brett & Adam may be up to speed and all agree on how it should work (i.e. the way it is now) but I don't believe anyone's contacted the IRS.

Does someone need to contact the IRS? If yes, who would be the appropriate person?

Message

From: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]) [Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])]
Sent: 5/26/2003 11:31:09 PM
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO]); Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
Subject: : Re: Can you help me answer these two questions?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 26-MAY-2003 23:31:09.00
SUBJECT: : Re: Can you help me answer these two questions?
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Sure. I just got back. will talk tuesday am.

.

----- Original Message -----
From: Colleen Litkenhaus/WHO/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP
Cc:
Date: 05/26/2003 12:26:43 PM
Subject: FW: Can you help me answer these two questions?

I need to speak with you on the phone regarding these two questions when you have a second. Thanks!

-----Original Message-----
From: [REDACTED] PRA 6
Sent: Monday, May 12, 2003 3:26 PM
To: Litkenhaus, Colleen
Subject: Re: Can you help me answer these two questions?

Colleen,

The names that are submitted are run through several databases. The WAVES system automatically queries NCIC (National Criminal Information Center), WALES (Washington Area Law Enforcement System), MCI (Master Central Index USSS database) and IAQ (Illegal Alien Queries).

There is also what is referred to as the ARP (Arms reach Program). This check includes the above as well as CIA and FBI checks for suitability.

> "Litkenhaus, Colleen" wrote:
>
> How do you want to answer 141?
>
> My understanding is that the answer to question 142 is "no."
> Correct?
>
> Question 141: Does the USSS do a background check on all
> individuals attending events and meetings at the White House
> Complex before access can be granted?
>
> Question 142: During this administration, have White House
aides
> ever overruled a building-access recommendation made by the
> USSS?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: viet.dinh@usdoj.gov @ inet [UNKNOWN] <viet.dinh@usdoj.gov @
inet>;kristi.l.remington@usdoj.gov @ inet [UNKNOWN] <kristi.l.remington@usdoj.gov @ inet>
Sent: 5/27/2003 1:16:48 PM
Subject: : per Viet's request
Attachments: P_BVAQG003_WHO.TXT_1.pdf

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:27-MAY-2003 17:16:48.00

SUBJECT:: per Viet's request

TO:viet.dinh@usdoj.gov @ inet (viet.dinh@usdoj.gov @ inet [UNKNOWN])

READ:UNKNOWN

TO:kristi.l.remington@usdoj.gov @ inet (kristi.l.remington@usdoj.gov @ inet [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_BVAQG003_WHO.TXT_1>

THE WHITE HOUSE

WASHINGTON

April 23, 2003

Dear Senators Allen, Dole, Edwards, Mikulski, Sarbanes, and Warner:

I write about the status of the four vacancies on the U.S. Court of Appeals for the Fourth Circuit.

There are 15 authorized seats on the Court of Appeals. Federal law imposes only one requirement for allocation of seats within a circuit -- that each State have at least one judge. Each State in a circuit often has a number of judges sitting in that State that corresponds at least roughly to the State's percentage of the overall population in the circuit or to the percentage of the circuit's caseload that arises from that State. To be sure, such geographic balance is not established in law or binding on the President or Senate. And there often are deviations in some circuits for a variety of historical and other reasons. (I would note, in addition, that judges can move from one State to another State in the circuit after their appointment, as has happened on some occasions in the past.) But this measure is generally a rough baseline for assessing the geographic allocation of seats within a circuit.

Based on this measure, of the 15 authorized seats, it appears that the allocation would roughly resemble the following: North Carolina: 4 or 5, Virginia: 4 or 5, South Carolina: 2 or 3, Maryland: 2 or 3, and West Virginia: 1 or 2. As of now, taking into account that Judge Widener recently notified the President of his intended retirement, the Fourth Circuit is significantly out of geographic balance:

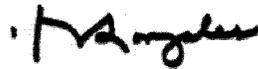
	Baseline Allocation	Current Number of Judges
North Carolina:	4 or 5	0
Virginia:	4 or 5	3
South Carolina	2 or 3	4
Maryland:	2 or 3	2
West Virginia:	1 or 2	2

There are four current vacancies on the Court. The four judges who previously occupied these seats maintained their chambers in North Carolina, Virginia, and Maryland (which is why I have sent this letter to you as the Senators from those States). Judge Terry Boyle of North Carolina was nominated for one vacancy in May 2001. For the three additional vacancies, the President intends to nominate well-qualified and well-respected individuals in a manner that will bring the circuit closer to geographic balance, recognizing that it would take several years and additional vacancies for the circuit to achieve balance and recognizing further that absolute geographic balance is neither legally nor historically required. In particular, the President intends to nominate two such individuals on Monday, April 28 -- one who currently lives in Virginia and has strong roots in and ties to both Virginia and North Carolina and one who currently lives in North Carolina and has served on the state judiciary in North Carolina. Both

are African-American, and their confirmations by the Senate will further dismantle an historic barrier. For the last remaining vacancy, the President would intend to submit a nomination no later than September 2003, consistent with the President's commitment to submit nominations within 180 days of receiving notice of an intended retirement or vacancy.

I remain disappointed that Judge Boyle's nomination has been pending for two years. But I am pleased that we otherwise have been able to consult extensively and work cooperatively on other circuit and district nominees in Virginia, North Carolina, and Maryland. Please feel free to contact me at any time with your thoughts regarding the Fourth Circuit or other issues of concern to you.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable George Allen
The Honorable Elizabeth Dole
The Honorable John R. Edwards
The Honorable Barbara A. Mikulski
The Honorable Paul S. Sarbanes
The Honorable John W. Warner
United States Senate
Washington, D.C. 20510

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>
Sent: 5/27/2003 2:00:32 PM
Subject: : Re: compliment

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 27-MAY-2003 18:00:32.00
SUBJECT: : Re: compliment
TO: Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ: UNKNOWN
End Original ARMS Header

wow, he must have been thinking of someone else.

Elizabeth S. Dougherty
05/23/2003 01:31:34 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: compliment

Hi Brett! Thought you should know that Julie Taubman recently met Karl Rove and when she brought up your name Karl said you were one of the smartest people he knew!! Well deserved!

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/27/2003 1:15:25 PM
Subject: : 4th circuit letter
Attachments: P_FSAQG003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
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CREATION DATE/TIME:27-MAY-2003 17:15:25.00
SUBJECT:: 4th circuit letter
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_FSAQG003_WHO.TXT_1>

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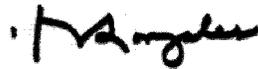
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Maryland:	2 or 3	2
West Virginia:	1 or 2	2

There are four current vacancies on the Court. The four judges who previously occupied these seats maintained their chambers in North Carolina, Virginia, and Maryland (which is why I have sent this letter to you as the Senators from those States). Judge Terry Boyle of North Carolina was nominated for one vacancy in May 2001. For the three additional vacancies, the President intends to nominate well-qualified and well-respected individuals in a manner that will bring the circuit closer to geographic balance, recognizing that it would take several years and additional vacancies for the circuit to achieve balance and recognizing further that absolute geographic balance is neither legally nor historically required. In particular, the President intends to nominate two such individuals on Monday, April 28 -- one who currently lives in Virginia and has strong roots in and ties to both Virginia and North Carolina and one who currently lives in North Carolina and has served on the state judiciary in North Carolina. Both

are African-American, and their confirmations by the Senate will further dismantle an historic barrier. For the last remaining vacancy, the President would intend to submit a nomination no later than September 2003, consistent with the President's commitment to submit nominations within 180 days of receiving notice of an intended retirement or vacancy.

I remain disappointed that Judge Boyle's nomination has been pending for two years. But I am pleased that we otherwise have been able to consult extensively and work cooperatively on other circuit and district nominees in Virginia, North Carolina, and Maryland. Please feel free to contact me at any time with your thoughts regarding the Fourth Circuit or other issues of concern to you.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable George Allen
The Honorable Elizabeth Dole
The Honorable John R. Edwards
The Honorable Barbara A. Mikulski
The Honorable Paul S. Sarbanes
The Honorable John W. Warner
United States Senate
Washington, D.C. 20510

From: Nelson, Carolyn
To: wendy keefer <wendy.j.keefer@usdoj.gov>; adam ciongoli <adam.ciongoli@usdoj.gov>; albert brewster <albert.brewster@usdoj.gov>; amy bass <amy.bass@usdoj.gov>; andrew beach <andrew.beach@usdoj.gov>; <Bartolomucci, H. Christopher>; <Bennett, Melissa S.>; <Brilliant, Hana F.>; <Brosnahan, Jennifer R.>; <Bumatay, Patrick J.>; <Ellison, Kimberly>; evelyn long <evelyn.v.long@usdoj.gov>; <Francisco, Noel J.>; <Gray, Ann>; <Grubbs, Wendy J.>; Heather McNaught <Heather.McNaught@usdoj.gov>; <Jones, Alison>; <Kavanaugh, Brett M.>; Kristi Remington <Kristi.I.Remington@usdoj.gov>; <Kyle, Ross M.>; <Leitch, David G.>; Lockart, Sarah K. <Sarah_K_Lockart@who.eop.gov>; <McMaster, David>; <Montiel, Charlotte L.>; <Newstead, Jennifer G.>; <Powell, Benjamin A.>; <Ralston, Susan B.>; <Sampson, Kyle>; tracy washington <tracy.t.washington@usdoj.gov>; <Ulyot, Theodore W.>; viet dinh <viet.dinh@usdoj.gov>
Sent: 5/27/2003 5:51:09 PM
Subject: WHJSC meeting CANCELLED for 5/28/03

Thanks!

From: Leitch, David G.
To: <Kavanaugh, Brett M.>; Walker, Helgi <HWalker@wrf.com>
Sent: 5/27/2003 6:02:03 PM
Subject: Note the absence of the term "beautifully credentialed"

Senators give nod to nominee

Dole and Edwards signal support for judgeship hopeful

GARY L. WRIGHT

Staff Writer

Charlottean Brent McKnight, a federal magistrate since 1993, has passed a major hurdle in his bid for a federal judgeship.

North Carolina's two U.S. senators -- Republican Elizabeth Dole and Democrat John Edwards -- have returned "blue slips" to the Senate Judiciary Committee, paving the way for confirmation hearings for McKnight.

Senators from home states of judicial nominees can hold up confirmation hearings indefinitely if they don't send the blue slips back to the judiciary committee.

The return of blue slips often is a signal that the senators have no serious reservations about the nominees' qualifications for the judgeships.

"Judge McKnight is enormously well respected in the North Carolina legal community and Sen. Edwards will support his nomination," Michael Briggs, Edwards' press secretary, said.

McKnight said he was encouraged that the blue slip had been returned.

"I look forward to the hearing," he said, "and hope it can be held quickly."

President Bush last month nominated McKnight and U.S. Attorney Bob Conrad for two newly created federal judgeships in the Western District of North Carolina.

Dole has also sent a blue slip on Conrad to the judiciary committee. Edwards has not done so.

Briggs said Edwards is trying to learn more about Conrad.

"The senator is still looking at him, talking to people in North Carolina, trying to get some more information," Briggs said.

Conrad declined comment.

Both McKnight, 51, and Conrad, 45, had undergone FBI background checks before their nominations to the judgeships.

Conrad, a veteran federal prosecutor, has been through the Senate confirmation process before. He was confirmed by the Senate in 2001 as the U.S. Attorney for the Western District of North Carolina. He underwent a similar FBI background check before his nomination by the president for the district's top federal prosecutor's post.

Earlier this month, President Bush, Dole and GOP Senate leaders expressed frustration at what they perceive as Democrats' blocking of votes on key conservative judicial nominations.

One of their targets was Edwards, who has been standing in the way of Senate consideration of North Carolina's Terrence Boyle, a federal judge in North Carolina who has been nominated for a judgeship on the 4th U.S. Circuit Court of Appeals in Richmond, Va.

Boyle, a onetime legislative assistant to former U.S. Sen. Jesse Helms, R-N.C., and now a U.S. District judge in Elizabeth City, was first nominated in 1991.

When Democrats blocked his path, Helms retaliated throughout the 1990s by vetoing four of President Clinton's N.C. nominations to the federal appeals court.

Bush re-nominated Boyle in May 2001.

Dole this week urged Edwards to return the remaining blue slips on the judicial nominees.

"I am pleased to see that Senator Edwards has sent forth some of the blue slips," Dole said. "The fact still remains that there are other nominees waiting such as Judge Terrance Boyle, James Dever, and Robert Conrad who deserve a fair

hearing. I again call on my colleague to return the remaining blue slips he is holding and allow these qualified men their hearings."

Briggs said the criticism by Republicans that Democrats are holding up judicial nominations is unfounded. "It's like being called ugly by a frog," he said. "The Republicans have done exactly what they're accusing us of doing."

Briggs pointed out that only two of Bush's judicial nominees have been rejected while more than 120 have been confirmed.

Dole has returned blue slips for Boyle and three other N.C. judicial nominees -- Allyson Duncan, Dever and Louise Flanagan. Edwards has returned blue slips for Duncan and Flanagan but not for Dever or Boyle.

Edwards told The Observer he would support the nominations of Duncan and Flanagan.

Duncan, a former judge on the N.C. Court of Appeals, has been nominated for the 4th U.S. Circuit Court of Appeals. She would be the first black woman to serve on the appeals court, which has jurisdiction over the Carolinas, Virginia, Maryland and West Virginia.

Dever, a Raleigh lawyer, has been nominated for a district court judgeship in the Eastern District of North Carolina. Bush nominated Dever in May 2002.

Briggs said Edwards is still looking at Dever's record. Edwards, Briggs said, is unlikely to return the blue slip for Boyle.

Brian Nick, Dole's press secretary, said that Dole's return of the blue slips signals the senator's support for all six judicial nominees.

"Sen. Dole intends to support them," Nick said. "If she didn't want to support their nominations, she wouldn't have returned the blue slips."

-- STAFF WRITER TIM FUNK CONTRIBUTED TO THIS ARTICLE.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Walker, Helgi <HWalker@wrf.com>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/27/2003 2:04:59 PM
Subject: : Note the absence of the term "beautifully credentialed"

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:27-MAY-2003 18:04:59.00
SUBJECT:: Note the absence of the term "beautifully credentialed"
TO:"Walker, Helgi" <HWalker@wrf.com>@SMTP@Exchange ("Walker, Helgi"
<HWalker@wrf.com>@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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-- STAFF WRITER TIM FUNK CONTRIBUTED TO THIS ARTICLE.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Connie.Callahan@jud.ca.gov [UNKNOWN] <Connie.Callahan@jud.ca.gov>
Sent: 5/27/2003 5:09:56 PM
Subject: : Re: Congratulations!!

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:27-MAY-2003 21:09:56.00
SUBJECT:: Re: Congratulations!!
TO:Connie.Callahan@jud.ca.gov (Connie.Callahan@jud.ca.gov [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

am checking.

Connie.Callahan@jud.ca.gov
05/27/2003 08:32:43 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Congratulations!!

Brett,

I have a question about the signing of the commission. I was told that once the commission is signed by the President I can take the oath--that I do not have to have the commission in hand.

Tomorrow I am having an office going-away party (9:30 a.m.-10:30 a.m.). If my commission has been signed, I want my PJ to give me the oath at my party. I will have a formal investiture later. I have not gotten any word yet that the commission has been signed. If you hear anything, can you let me know so I can go ahead with the oath. My parents are coming to my party and I would really like to have them present for the oath.

PRA 6

Work 916.654.0234

Thanks.

Connie Callahan

_____ Reply Separator

Subject: Congratulations!!
Author: Brett M. Kavanaugh@who.eop.gov at Internet
Date: 5/22/2003 6:42 PM

You are being voted on now and you will be formally confirmed within a few minutes. Congratulations! I will be out there for the investiture whenever that is.

REV_00236806

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>
Sent: 5/28/2003 4:17:21 AM
Subject: : RE: revised political activity memo

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 28-MAY-2003 08:17:21.00
SUBJECT: : RE: revised political activity memo
TO: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

yes

From: Carolyn Nelson/WHO/EOP@Exchange on 05/28/2003 08:03:46 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: revised political activity memo

Is this different than the version you sent last night?

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

From: Kavanaugh, Brett M.
Sent: Wednesday, May 28, 2003 7:51 AM
To: Gonzales, Alberto R.; Leitch, David G.; Addington, David S.
Cc: Nelson, Carolyn
Subject: revised political activity memo

This reflects input from all three of you regarding last draft.

<< File: political activity who memo 5 28 03 #2.doc >>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
CC: Carolyn Nelson/WHO/EOP@Exchange@EOP [WHO] <Carolyn Nelson>
Sent: 5/28/2003 4:01:38 AM
Subject: : revised political activity memo
Attachments: P_35MQG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 28-MAY-2003 08:01:38.00
SUBJECT: : revised political activity memo
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
CC: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

This reflects input from all three of you regarding last draft.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_35MQG003_WHO.TXT_1>

May 28, 2003

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: ALBERTO R. GONZALES
 COUNSEL TO THE PRESIDENT

SUBJECT: POLITICAL ACTIVITY

This memorandum summarizes rules and policies with respect to political activity for a candidate, campaign, political group, or political party. We will renew and supplement this guidance as appropriate before the 2004 elections. At all times, you should contact the Counsel's Office if you have any questions about appropriate political activity. You also should keep in mind, as always, that appearance and propriety issues can occasionally arise even with respect to perfectly lawful activity. Finally, the Chief of Staff has asked me to remind you that the decision whether to engage in political activity or make contributions to political entities or campaigns, including with respect to the re-election campaign of the President and Vice President, is a personal matter for each employee and that no one is under any obligation to engage in such activity.

Basic Rules and Policies

The basic rules and policies you should follow with respect to your political activity are straightforward. You are permitted to engage in a variety of political activity, as detailed more fully below, subject to certain important restrictions:

- First, you may not use your official authority for the purpose of interfering with or affecting the result of an election. That means, for example, that you may not knowingly permit your official title to be used on invitations to political fundraisers. (If your title is used by others inadvertently and without your knowledge, you should contact the Counsel's Office promptly about appropriate steps to take.) You also may not use your official authority to coerce any person to engage in or refrain from political activity.
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It is important to note that certain White House employees may be required in the performance of their official duties to assist or accompany the President, the Vice President, the First Lady, Mrs. Cheney, or others with respect to political activity. This may entail, for example, duties related to security, scheduling, advance, or communications, among other duties. Such assistance is permissible and appropriate.

Travel and Costs

When a government officer or employee engages in political activity, the government should not pay (or must be reimbursed) for non-incident costs that it would not have incurred but for the political activity.

The issue arises primarily with respect to travel costs. The appropriate political entity ordinarily pays the relevant travel costs associated with political activity (or the costs for the political portion of mixed official-political travel). The government is not reimbursed, however, for: (i) the costs that result from security needs; or (ii) the compensation or expenses of persons required to accompany or assist the official engaging in political activity. Also, White House cars ordinarily should not be used for transportation to political events except as necessary for security purposes or to accompany the President, Vice President, First Lady, or Mrs. Cheney.

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- manage or organize political fundraisers hosted and sponsored by others (you may not host or sponsor fundraisers or otherwise personally solicit contributions);
- speak as a featured guest at political fundraisers so long as you do not solicit contributions and so long as the event otherwise complies with the legal requirements of the Bipartisan Campaign Reform Act;
- be listed as a guest speaker on the invitation for a fundraiser so long as the invitation does not list your official title; and
- solicit, accept, or receive uncompensated volunteer services for a campaign from any individual (however, a superior may not ask his or her subordinate employee

to provide such services, nor may he or she target a company or entity with official matters pending before the agency for provision of such services).

Employees of the Vice President

Employees of the Vice President (and especially those whose salary is disbursed by the Secretary of the Senate) should consult the Counsel to the Vice President regarding political activity or contributions.

Conclusion

Above all, please remember that we are all employees of the President or Vice President and that our performance reflects upon them. All of us must comply with applicable laws and regulations, and must also comply with the high ethical standards they have set for us.

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
Sent: 5/28/2003 8:06:17 AM
Subject: RE: revised political activity memo

yes

From: Carolyn Nelson/WHO/EOP@Exchange on 05/28/2003 08:03:46 AM

Record Type: Record

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

cc:

Subject: RE: revised political activity memo

Is this different than the version you sent last night?

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

From: Kavanaugh, Brett M.

Sent: Wednesday, May 28, 2003 7:51 AM

To: Gonzales, Alberto R.; Leitch, David G.; Addington, David S.

Cc: Nelson, Carolyn

Subject: revised political activity memo

This reflects input from all three of you regarding last draft.

<< File: political activity who memo 5 28 03 #2.doc >>

REV_00236819

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>;Scott McClellan/WHO/EOP@Exchange@EOP [WHO] <Scott McClellan>
Sent: 5/28/2003 4:17:21 AM
Subject: : DRAFT political memo; please review asap and identify to me any issues you see; thanks
Attachments: P_PFMQG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 28-MAY-2003 08:17:21.00
SUBJECT: : DRAFT political memo; please review asap and identify to me any issues you see;
thanks
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header #####

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_PFMQG003_WHO.TXT_1>

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- attend political fundraisers;
- manage or organize political fundraisers hosted and sponsored by others (you may not host or sponsor fundraisers or otherwise personally solicit contributions);
- speak as a featured guest at political fundraisers so long as you do not solicit contributions and so long as the event otherwise complies with the legal requirements of the Bipartisan Campaign Reform Act;
- be listed as a guest speaker on the invitation for a fundraiser so long as the invitation does not list your official title; and
- solicit, accept, or receive uncompensated volunteer services for a campaign from any individual (however, a superior may not ask his or her subordinate employee

to provide such services, nor may he or she target a company or entity with official matters pending before the agency for provision of such services).

Employees of the Vice President

Employees of the Vice President (and especially those whose salary is disbursed by the Secretary of the Senate) should consult the Counsel to the Vice President regarding political activity or contributions.

Conclusion

Above all, please remember that we are all employees of the President or Vice President and that our performance reflects upon them. All of us must comply with applicable laws and regulations, and must also comply with the high ethical standards they have set for us.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 5/28/2003 8:58:50 AM
Subject: RE: DRAFT political memo; please review asap and identify to me any issues you see; thanks

When is this going out?

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

From: Kavanaugh, Brett M.
Sent: Wednesday, May 28, 2003 8:01 AM
To: McClellan, Scott ; Snee, Ashley
Subject: DRAFT political memo; please review asap and identify to me any issues you see; thanks

<< File: political activity who memo 5 28 03 #2.doc >>

REV_00236828

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Connie.Callahan@jud.ca.gov [UNKNOWN] <Connie.Callahan@jud.ca.gov>
Sent: 5/28/2003 5:27:23 AM
Subject: : Re: Re[2]: Congratulations!!

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 28-MAY-2003 09:27:23.00
SUBJECT: : Re: Re[2]: Congratulations!!
TO: Connie.Callahan@jud.ca.gov (Connie.Callahan@jud.ca.gov [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

President has not yet signed it as of this moment.

Connie.Callahan@jud.ca.gov
05/27/2003 09:13:30 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re[2]: Congratulations!!

Thanks. Please call me if you get any confirmation that the commission has been signed.

CMC

----- Reply Separator

Subject: Re: Congratulations!!
Author: Brett_M._Kavanaugh@who.eop.gov at Internet
Date: 5/27/2003 9:09 PM

am checking.

(Embedded image moved Connie.Callahan@jud.ca.gov to file:
05/27/2003 08:32:43 PM pic27731.pcx)

Record Type: Record

REV_00236831

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

cc:

Subject: Re: Congratulations!!

Brett,

I have a question about the signing of the commission. I was told that once the commission is signed by the President I can take the oath--that I do not have to have the commission in hand.

Redacted

Redacted

Redacted

WORK 916.634.0234

Thanks.

Connie Callahan

_____ Reply Separator

Subject: Congratulations!!

Author: Brett_M._Kavanaugh@who.eop.gov at Internet

Date: 5/22/2003 6:42 PM

You are being voted on now and you will be formally confirmed within a few minutes. Congratulations! I will be out there for the investiture whenever that is.

REV_00236832

From: CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 5/28/2003 10:47:40 AM
Subject: : FW: Bonuses

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:28-MAY-2003 14:47:40.00
SUBJECT:: FW: Bonuses
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

;
-----Original Message-----
From: Litkenhaus, Colleen
Sent: Wednesday, May 28, 2003 2:43 PM
To: Gill, Faisal M.
Cc: Ulliyot, Theodore W.
Subject: FW: Bonuses

I was told that the Clinton administration continued this practice as well, but the article below indicates that this practiced was abandoned in 1994.

;
Listi,

This article came from GovExec and explains a little about the reinstatement of the bonuses.; Maybe this will help.

-Emily

;
December 4, 2002

White House restores bonuses for appointees

By Shane Harris
sharris@govexec.com <mailto:sharris@govexec.com>

Political appointees throughout the federal government may receive cash bonuses to reward them for outstanding work, the White House said Wednesday.

The move reinstates a practice abandoned in 1994 after senior political officials in the first Bush administration were given monetary awards before leaving office, prompting criticism that the practice had devolved into recognition of loyalty more than job performance.

The new rules of the bonus plan were outlined in a March memo from White House Chief of Staff Andrew Card that wasn't released publicly until Wednesday.

&All awards must be based on substantial work achievements that go well beyond the performance of routine duties,8 Card wrote. He asked Cabinet members and agency heads to judge and reward political appointees in the same manner as career employees, and to personally review any awards proposed.

&Federal workers deserve to be rewarded for good work, and there should not be a distinction between career and political workers, White House spokesman Ari Fleischer said Wednesday. He said that previous administrations have used the bonus system and that the practice had received bipartisan support.

The policy fits the administration's focus of rewarding performance throughout government and of adopting private sector practices of accountability and reward.

News of the plan comes amid a series of recent administration actions that have hurt morale throughout the federal workforce, said Carol Bonosaro, president of the Senior Executives Association. &It comes at a time when career executives certainly have no relief in sight for pay compression; they have an administration [that] has taken serious and substantive efforts to ensure their performance is managed so that it will result clearly in fewer outstanding ratings (when you add all that up it doesn't come at a good time.

Last week, President Bush announced he would limit the pay raise of federal civilian workers <<http://207.27.3.28/dailyfed/1102/113002ts1.htm>> to 3.1 percent next year, 1 percent less than the increase Congress is seeking.

National Treasury Employees Union President Colleen Kelley blasted the administration's bonus plan, calling it &just another example of the mistaken message being sent to federal workers that they are less and less important to the nation and to getting done the work of the American people.

Critics of political bonuses said it could pit career and noncareer employees against each other in competition for the pool of award funds. They also said it could foster a rewards system based on favoritism.

&I think it's a dangerous precedent to establish, former White House Chief of Staff Leon Panetta told The New York Times Tuesday. &If you start giving cash awards to political appointees, it can be abused by handing out cash because someone's doing a good job politically or just knows the right people.

Panetta banned bonuses to senior political appointees when he served under President Clinton.

Some worry that the bonuses also could hurt efforts to increase the base pay of career and political executives, said Paul Light, director of the governmental studies program at the Brookings Institution in Washington.

&I really believe you can justify a significant increase in base pay of political and career executives, Light said, but he added that the bonuses wouldn't do much to further that goal &because the American public is going to be appropriately dubious about why senior political appointees would need bonuses.

But supporters said giving bonuses helps lessen pay gaps that have existed for years, since top career executives routinely receive performance bonuses. &Over the last 20 years the disparity in compensation between career officials and political appointees has grown to be huge, said George Nesterzuk, an associate director of the Office of Personnel Management during the Reagan administration. &This is a reasonable first step in trying to realign that.

The bonus policy applies to schedule C employees and noncareer Senior Executive Service personnel. Schedule C employees are eligible for:

ú;;;;;;;;; Cash awards, based on a performance rating of at least &fully successful.

ú;;;;;;;;; Cash, time off or nonmonetary items &to recognize contributions

to government economy, efficiency or effectiveness.⁸

Noncareer SES personnel are also eligible for awards that recognize those contributions, but may not receive SES performance bonuses. Under federal law, career members of the SES are allowed to receive performance bonuses. About 92 percent of the government's 6,626 executives are career employees. The other 8 percent serve in noncareer, limited-term or limited emergency appointments.

From June 1 during a presidential election year to Inauguration Day, Jan. 20, Schedule C and noncareer SES employees still aren't eligible for cash or time-off awards.

Political employees can also receive bonus compensation through quality step increases (QSIs), which raise base pay. Those increases are more akin to a raise in salary than a bonus.

The Justice and Health and Human Services departments reportedly have begun giving bonuses since the practice was reinstated in late March.

A Justice official said that the department only gave 10 bonuses in fiscal year 2002, from an eligible pool of 121 political appointees. They all were based on merit and were awarded to employees that had served at least one year. No award exceeded \$5,000.

The official also said that any Justice office can give bonuses during the year, but that the money must come from the organization's budget and the decision must be reviewed by management.

Officials from HHS didn't respond to requests for comment about the awards they've made.

Fleischer said the bonuses wouldn't draw money away from career employees because the new plan only applies to about 2,000 political appointees, & very few of which will receive bonuses.⁸ There are more than 1.8 million federal civilian employees.

Senate-confirmed appointees and White House personnel aren't eligible for the bonuses, Fleischer said.

;

From: Elwood, Courtney S.
To: <Kavanaugh, Brett M.>
Sent: 5/28/2003 2:50:48 PM
Subject: RE:

Ah, yes, I remember David mentioning it to me. It is a very good memo. I'm curious, though, why there is no express mention of the prohibition on contributing to employer or employing authority?

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

From: Kavanaugh, Brett M.
Sent: Wednesday, May 28, 2003 2:41 PM
To: Elwood, Courtney S.
Subject:

fyi: David A. has seen and approved.

<< File: political activity who memo 5 28 03 #2.doc >>

From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
Sent: 5/29/2003 7:22:32 AM
Subject:
Attachments: minHtmlTop.jpg

 The Christian Science Monitor - [csmonitor.com](http://www.csmonitor.com)

from the May 29, 2003 edition - <http://www.csmonitor.com/2003/0529/p01s01-usju.html>

A court of civility and controversial conservatism

The Fourth Circuit's rulings cast a wide influence

By **Seth Stern** | Staff writer of The Christian Science Monitor

RICHMOND, VA. - The federal court that sits on a gentle slope down here from the former capitol of the Confederacy is nothing if not genteel. The judges who sit on the court are so rooted in civility, in fact, that they step down from the bench after every oral argument and shake hands with attorneys.

It's an atmosphere where southern manners are as common as lengthy legal briefs.

Yet the friendliness in the courtroom perhaps belies the gravity of its decisions: The Fourth Circuit Court of Appeals is at once one of the most influential - and controversial - courts in the country.

For a decade, nominations to this court have spurred some of the most bitter Senate confirmation battles - and are doing so again. The Fourth Circuit rulings, and the conservative law clerks who help write them, often wind up at the Supreme Court, shaping the most sensitive legal issues of the day.

Perhaps most important, should, as expected, a vacancy open with the retirement of a Supreme Court justice at the end of the court's term next month, one of the 4th Circuit's judges might end up making the journey north to Washington.

Two of its 12 sitting judges - J. Michael Luttig and J. Harvie Wilkinson - may be on Bush's short list of Supreme Court nominees.

Messrs. Luttig and Wilkinson are just two of the judicial heavyweights on this conservative-dominated court that hears federal trial court appeals from a five-state region extending from Maryland to South Carolina.

"While you know you are dealing with judges with a conservative ideology, you also know you're dealing with judges who are extremely conscientious and open to quality arguments," says Rod Smolla, dean of the University of Richmond's law school.

That conservatism is evident in rulings scaling back everything from employment-discrimination claims to criminal procedural protections such as the Miranda warning. Death-row inmates here have one of the lowest success rates in getting their appeals heard of any of the 12 federal circuits.

Such novel positions often invite Supreme Court review, says Dave Douglas, a law professor at William & Mary law school in Williamsburg, Va. They also make the court a favorite for conservative lawyers. Observers say the court's stances on law and order help explain why the Justice Department chose to hold prominent post-Sept. 11 terrorist suspects within the Fourth Circuit's

territory.

Both alleged 20th hijacker Zacarias Moussaoui and American Taliban John Walker Lindh were indicted in a federal court in eastern Virginia, while Yaser Esam Hamdi and alleged dirty bomber Jose Padilla are both in military brigs within its jurisdiction. Any appeals about the detentions land in the Fourth Circuit's dockets, which has so far shown little sympathy to legal challenges on the issue.

"That court has shown a unique willingness to be very activist," says a law professor who once clerked for a Fourth Circuit judge.

President Bush may now turn to the Fourth circuit for Supreme Court nominees. Professor Smolla suggests he may consider either Luttig, a conservative in the tradition of Clarence Thomas and Antonin Scalia, or Wilkinson, a more moderate jurist.

Yet a study of judicial decisions by potential Bush Supreme Court nominees published by the American Judicature Society found Wilkinson exhibited a record of "exceptional conservatism," particularly in the areas of criminal justice and economics.

In a phone interview, Wilkinson rejected such labels. "I've never asked if something is conservative or liberal," he says. "I think the judge's perspective on the bench is focused very precisely on the individual parties and the individual questions in a single case."

Even if Luttig is not tapped for the Supreme Court, his influence on the court is extensive. His clerks, who help judges write draft opinions after graduating from law school, often end up later clerking for Supreme Court justices. Luttig himself clerked for Justice Scalia before ushering Clarence Thomas' nomination through the Senate as a Justice Department attorney.

The Fourth Circuit's current posture somewhat belies its past. In the 1960s and '70s, the tribunal earned a reputation as a leader in civil rights. But many judges of that era ended up retiring during the Reagan years, allowing the former president to restock the court with more conservative jurists.

President Bush, for his part, has already shown a desire to continue the Fourth Circuit's tilt to the right but also to increase the number of minorities on the bench.

The court's jurisdiction has the highest minority population of any in the country.

Yet it didn't get its first African-American until 2001, when Mr. Bush nominated Roger Gregory. Judge Gregory was something of an anomalous appointment for Bush: He was tapped for the bench by President Clinton, during a Senate recess, after strong opposition from Republicans. Bush later reaffirmed the appointment, which was temporary.

The court's three current vacancies have been the subject of far more acrimony, again going back to the Clinton era. Republican senators led by Jesse Helms of North Carolina blocked the nomination of four Clinton nominees to the court. Senate Democrats have since returned the favor, blocking the nomination of Terrence Boyle, a former aide to Sen. Helms. President Bush's two most recent nominations - two conservative African-Americans, including Allyson Duncan, who would be the court's first black woman - stand a better chance of getting confirmed.

Still, lawyers who argue before the court say a conservative majority doesn't mean its decisions are a forgone conclusion.

Similarly, members of the court's Democratic minority say they feel comfortable serving here. "There's a long tradition of judges on the court getting along well with one another and having respect for each other on a personal level," says Judge M. Blane Michael of West Virginia, a Clinton appointee.

Unlike other circuits, all the Fourth Circuit's judges meet during the same week each month. The handshakes also help maintain a cordial atmosphere. "It's really important to treat litigants with respect," says Wilkinson. "I'd rather go down from the bench than simply disappear behind a curtain."

[Full HTML version of this story which may include photos, graphics, and related links](#)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Monique L. Dilworth/OA/EOP [OA] <Monique L. Dilworth>
Sent: 5/29/2003 2:08:12 PM
Subject: RECEIVED: QFR Coordination - 2nd Round

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 29-MAY-2003 18:08:12.00
SUBJECT: RECEIVED: QFR Coordination - 2nd Round
TO: Monique L. Dilworth (CN=Monique L. Dilworth/OU=OA/O=EOP [OA])
READ: UNKNOWN
End Original ARMS Header

RETURN RECEIPT

Your Document:
QFR Coordination - 2nd Round
was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
05/29/2003 06:06:36 PM

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
Sent: 5/30/2003 8:26:03 AM
Subject: : Re: Meet on Monday
Attachments: P_BGLTG003_WHO.TXT_1.html

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 30-MAY-2003 12:26:03.00

SUBJECT: : Re: Meet on Monday

TO: "Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ: UNKNOWN

End Original ARMS Header

Thanks for this and sorry I have been out of pocket last 48 hours. Will get back to you.

"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov>

05/30/2003 12:13:24 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Wendy J. Grubbs/WHO/EOP@EOP

cc:

Subject: Meet on Monday

Lee would like to have a meeting on Monday afternoon with you to discuss infrastructure and timeline in the event there were a Supreme Court nomination that might superimpose itself on plans for this summer. Let me know if you can do this. My original thought was to invite Adam Charnes and Jamie Brown for DOJ. But I leave that call to you. Lee will be handling who will be invited Senate side. Please advise on availability and times.

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_BGLTG003_WHO.TXT_1>

Lee would like to have a meeting on Monday afternoon with you to discuss infrastructure and timeline in the event there were a Supreme Court nomination that might superimpose itself on plans for this summer. Let me know if you can do this. My original thought was to invite Adam Charnes and Jamie Brown for DOJ. But I leave that call to you. Lee will be handling who will be invited Senate side. Please advise on availability and times.

From: CN=Paul B. Dyck/OU=WHO/O=EOP [WHO]
To: A. Merrill Hughes/OVP/EOP@EOP [OVP] <A. Merrill Hughes>;Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Catherine J. Martin/OVP/EOP@EOP [OVP] <Catherine J. Martin>
Sent: 5/30/2003 7:30:55 AM
Subject: : Haley Barbour Program
Attachments: P_OIITG003_WHO.TXT_1.htm; P_OIITG003_WHO.TXT_2.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Paul B. Dyck (CN=Paul B. Dyck/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:30-MAY-2003 11:30:55.00
SUBJECT:: Haley Barbour Program
TO:A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

Merrill - the program below is very simple, but I asked that they send for approval. Merrill had mentioned that there had been discussion when you all approved the invite that there may need to be some sort of disclaimer on the program. Do they need to add anything?

----- Forwarded by Paul B. Dyck/WHO/EOP on 05/30/2003 11:27 AM -----

Melissa Hederman <melissa@haleybarbour.com>
05/29/2003 02:37:58 PM
Record Type: Record

To: Paul B. Dyck/WHO/EOP@EOP
cc: 'Craig Ray' <[REDACTED] PRA 6 >
Subject: Program 2

Here's a revised program front--no Mississippi flag!

We'd still like to have approval on this by COB tomorrow if we can.
Thanks!

Melissa Hederman

- att1.htm
- Program2.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OIITG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_OIITG003_WHO.TXT_2>

Here' s a revised program front--no Mississippi flag!

We'd still like to have approval on this by COB tomorrow if we can. Thanks!

Melissa Hederman

*A luncheon
with
Haley Barbour
and honored guest
Vice President Dick Cheney*

Monday, June 9, 2003

Welcome

Presentation of Colors

Pledge of Allegiance

Star Spangled Banner

Invocation

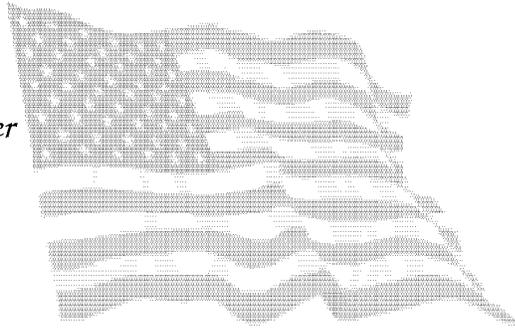
Music

Introduction of Vice President Dick Cheney

Haley Barbour

Remarks

Vice President Dick Cheney



From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Fannie Zollicoffer <zollicoffe@washpost.com>
Sent: 6/1/2003 6:03:21 PM
Subject: : Re: Alberto Gonzales's op-ed

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-JUN-2003 22:03:21.00
SUBJECT:: Re: Alberto Gonzales's op-ed
TO: Fannie Zollicoffer <zollicoffe@washpost.com> (Fannie Zollicoffer
<zollicoffe@washpost.com> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

The 38 should be changed to 39 in the first paragraph. I talked to Chris Stanford on the copy desk who said the change would be made.

Fannie Zollicoffer <zollicoffe@washpost.com>
06/01/2003 04:50:08 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Alberto Gonzales's op-ed

Dear Brett Kavanaugh,

Below is the edited version of Mr. Gonzales's piece. Please let me know if you need to make changes.

Thanks,

Fannie Zollicoffer
zollicoffe@washpost.com
(202) 334-7486

Today John Roberts will take the oath of office to become a judge on the U.S. Court of Appeals for the D.C. Circuit. He is an excellent example of the kind of person President Bush has nominated to the federal appeals courts. Roberts has been a well-respected lawyer in Washington, principal deputy solicitor general of the United States, associate counsel to President Reagan and law clerk to then-Justice William Rehnquist. He has argued 38 cases before the Supreme Court and is widely recognized as one of the best appellate lawyers in America. He is a person of great integrity with wide bipartisan support, and the American Bar Association unanimously rated him well qualified. Roberts will be a distinguished judge on the D.C. Circuit.

The Senate voted unanimously on May 8 to confirm Roberts to the D.C.

REV_00236940

Circuit. That vote is noteworthy for two reasons, however, both of which demonstrate the serious breakdown in the Senate confirmation process for federal appeals court nominees.

First, the long road from Roberts's nomination to his confirmation vote is impossible to defend. Roberts was first nominated to the D.C. Circuit more than 11 years ago, in January 1992, but did not receive a hearing before the end of President George H.W. Bush's term. President George W. Bush then nominated Roberts on May 9, 2001, shortly after taking office. But the Senate Judiciary Committee did not hold a hearing on the nomination during the last Congress, even though no serious objections were lodged against Roberts. President Bush then re-nominated him on Jan. 7, 2003. Finally, after two hearings this year, Roberts received his Senate vote, on May 8. It was unanimous, which makes the many years of delay all the more difficult to explain and justify.

The Senate's delays and denials of votes on appeals court nominees--which

have been far too common in recent administrations--flout the intention of the Constitution and the tradition of the Senate. No judicial nominee should ever have to wait years for a vote in the Senate. These delays leave judicial vacancies unfilled and thus prevent the federal courts from doing their jobs for the American people. The delays and uncertainty also threaten to deter the best and brightest from seeking judicial service.

The Senate should fulfill its constitutional responsibility and ensure that every judicial nominee receives an up-or-down vote within a reasonable time after nomination.

Second, the confirmation of John Roberts also dramatically exposes the double standard being applied by Senate Democrats to the president's other

D.C. Circuit nominee, Miguel Estrada. The career records of Roberts and Estrada are strikingly similar. Both were unanimously rated well-qualified by the American Bar Association. Both have argued numerous cases before the Supreme Court, including as attorneys in the solicitor general's office. Both have devoted large portions of their legal careers to public service and also been partners at major Washington law firms. Both have clerked for Supreme Court justices. Both have the strong support of prominent Democratic attorneys who served in high-ranking positions in the Clinton administration. Neither has served previously as a judge or a professor, and therefore neither has written widely about his personal views on legal issues. Both have served instead as superb, well-respected and fair-minded lawyers for public and private clients throughout their careers.

Despite the great similarities between Roberts and Estrada, 45 Senate Democrats have treated them very differently. Senate Democrats never requested confidential case memoranda written by Roberts from his time in the solicitor general's office. Yet they are insisting on reviewing memoranda written by Estrada in the solicitor general's office, as a condition of ending a four-month filibuster of his nomination. Consistent with judicial independence and the traditional practice of judicial nominees, Senate Democrats also did not demand that Roberts answer questions about his personal views on legal and policy issues before they voted on him. Yet these senators are apparently demanding that Estrada answer such questions as a condition of ending the filibuster.

The 45 Senate Democrats who are filibustering Estrada's nomination are applying a double standard. There is no rational or legitimate justification for the disparate treatment of Roberts and Estrada--particularly for the use of an extreme and unprecedented filibuster against Estrada, who would be the first Hispanic to serve on the D.C. Circuit and has the clear support of a majority of senators. The president has asked that the Senate Democrats halt the filibuster, stop the delays and allow an up-or-down vote on Estrada. As the president has said, let each senator vote as he or she thinks best, but end the double standard and give the man a vote.

The writer is counsel to the president.

From: Sean Rushton <SRushton@CommitteeforJustice.org>
To: SRushton@CommitteeforJustice.org [UNKNOWN] <SRushton@CommitteeforJustice.org>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/2/2003 7:22:41 AM
Subject: : Filibuster.
Attachments: P_75ZUG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sean Rushton <SRushton@CommitteeforJustice.org> (Sean Rushton
<SRushton@CommitteeforJustice.org> [UNKNOWN])
CREATION DATE/TIME: 2-JUN-2003 11:22:41.00
SUBJECT:: Filibuster.
TO:SRushton@CommitteeforJustice.org (SRushton@CommitteeforJustice.org [UNKNOWN])
READ:UNKNOWN
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

washingtonpost.com

Double Standard Filibuster

By Alberto R. Gonzales
June 2, 2003

Today John Roberts will take the oath of office to become a judge on the U.S. Court of Appeals for the D.C. Circuit. He is an excellent example of the kind of person President Bush has nominated to the federal appeals courts. Roberts has been a well-respected lawyer in Washington, principal deputy solicitor general of the United States, associate counsel to President Reagan and law clerk to then-Justice William Rehnquist. He has argued 39 cases before the Supreme Court and is widely recognized as one of the best appellate lawyers in America. He is a person of great integrity with wide bipartisan support, and the American Bar Association unanimously rated him well qualified. Roberts will be a distinguished judge on the D.C. Circuit.

The Senate voted unanimously on May 8 to confirm Roberts to the D.C. Circuit. That vote is noteworthy for two reasons, however, both of which demonstrate the serious breakdown in the Senate confirmation process for federal appeals court nominees.

First, the long road from Roberts's nomination to his confirmation vote is impossible to defend. Roberts was first nominated to the D.C. Circuit more than 11 years ago, in January 1992, but did not receive a hearing before the end of President George H.W. Bush's term. President George W. Bush then nominated Roberts on May 9, 2001, shortly after taking office. But the Senate Judiciary Committee did not hold a hearing on the nomination during the last Congress, even though no serious objections were lodged against Roberts. President Bush then re-nominated him on Jan. 7, 2003. Finally, after two hearings this year, Roberts received his Senate vote, on May 8. It was unanimous, which makes the many years of delay all the more difficult to explain and justify.

The Senate's delays and denials of votes on appeals court nominees -- which have been far too common in recent administrations -- flout the intention of the Constitution and the tradition of the Senate. No judicial nominee should ever have to wait years for a vote in the Senate. These delays leave judicial vacancies unfilled and thus prevent the federal courts from doing their jobs for the American people. The delays and uncertainty also threaten to deter the best and brightest from seeking judicial service. The Senate should fulfill its constitutional responsibility and ensure that every judicial nominee receives an up-or-down vote within a reasonable time after nomination.

REV_00236944

Second, the confirmation of John Roberts also dramatically exposes the double standard being applied by Senate Democrats to the president's other D.C. Circuit nominee, Miguel Estrada. The career records of Roberts and Estrada are strikingly similar. Both were unanimously rated well-qualified by the American Bar Association. Both have argued numerous cases before the Supreme Court, including as attorneys in the solicitor general's office. Both have devoted large portions of their legal careers to public service and also been partners at major Washington law firms. Both have clerked for Supreme Court justices. Both have the strong support of prominent Democratic attorneys who served in high-ranking positions in the Clinton administration. Neither has served previously as a judge or a professor, and therefore neither has written widely about his personal views on legal issues. Both have served instead as superb, well-respected and fair-minded lawyers for public and private clients throughout their careers.

Despite the great similarities between Roberts and Estrada, 45 Senate Democrats have treated them very differently. Senate Democrats never requested confidential case memoranda written by Roberts from his time in the solicitor general's office. Yet they are insisting on reviewing memoranda written by Estrada in the solicitor general's office, as a condition of ending a four-month filibuster of his nomination. Consistent with judicial independence and the traditional practice of judicial nominees, Senate Democrats also did not demand that Roberts answer questions about his personal views on legal and policy issues before they voted on him. Yet these senators are apparently demanding that Estrada answer such questions as a condition of ending the filibuster.

The 45 Senate Democrats who are filibustering Estrada's nomination are applying a double standard. There is no rational or legitimate justification for the disparate treatment of Roberts and Estrada -- particularly for the use of an extreme and unprecedented filibuster against Estrada, who would be the first Hispanic to serve on the D.C. Circuit and has the clear support of a majority of senators. The president has asked that the Senate Democrats halt the filibuster, stop the delays and allow an up-or-down vote on Estrada. As the president has said, let each senator vote as he or she thinks best, but end the double standard and give the man a vote.

The writer is counsel to the president.

Sean Rushton

Executive Director

Committee for Justice

1275 Pennsylvania Avenue, NW

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- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_75ZUG003_WHO.TXT_1>

REV_00236945

Double Standard Filibuster

By Alberto R. Gonzales

June 2, 2003

Today John Roberts will take the oath of office to become a judge on the U.S. Court of Appeals for the D.C. Circuit. He is an excellent example of the kind of person President Bush has nominated to the federal appeals courts. Roberts has been a well-respected lawyer in Washington, principal deputy solicitor general of the United States, associate counsel to President Reagan and law clerk to then-Justice William Rehnquist. He has argued 39 cases before the Supreme Court and is widely recognized as one of the best appellate lawyers in America. He is a person of great integrity with wide bipartisan support, and the American Bar Association unanimously rated him well qualified. Roberts will be a distinguished judge on the D.C. Circuit.

The Senate voted unanimously on May 8 to confirm Roberts to the D.C. Circuit. That vote is noteworthy for two reasons, however, both of which demonstrate the serious breakdown in the Senate confirmation process for federal appeals court nominees.

First, the long road from Roberts's nomination to his confirmation vote is impossible to defend. Roberts was first nominated to the D.C. Circuit more than 11 years ago, in January 1992, but did not receive a hearing before the end of President George H.W. Bush's term. President George W. Bush then nominated Roberts on May 9, 2001, shortly after taking office. But the Senate Judiciary Committee did not hold a hearing on the nomination during the last Congress, even though no serious objections were lodged against Roberts. President Bush then re-nominated him on Jan. 7, 2003. Finally, after two hearings this year, Roberts received his Senate vote, on May 8. It was unanimous, which makes the many years of delay all the more difficult to explain and justify.

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Second, the confirmation of John Roberts also dramatically exposes the double standard being applied by Senate Democrats to the president's other D.C. Circuit nominee, Miguel Estrada. The career records of Roberts and Estrada are strikingly similar. Both were unanimously rated well-qualified by the American Bar Association. Both have argued numerous cases before the Supreme Court, including as attorneys in the solicitor general's office. Both have devoted large portions of their legal careers to public service and also been partners at major Washington law firms. Both have clerked for Supreme Court justices. Both have the strong support of prominent Democratic attorneys who served in high-ranking positions in the Clinton administration. Neither has served previously as a judge or a professor, and therefore neither has written widely about his personal views on legal issues. Both have served instead as superb, well-respected and fair-minded lawyers for public and private clients throughout their careers.

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his personal views on legal and policy issues before they voted on him. Yet these senators are apparently demanding that Estrada answer such questions as a condition of ending the filibuster.

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The writer is counsel to the president.

Sean Rushton
Executive Director
Committee for Justice
1275 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC< font size=2 face=Arial> 20004
202-481-6850 phone
202-487-6439 mobile
www.committeeforjustice.org

From: Ulyot, Theodore W.
To: <Kavanaugh, Brett M.>;<Sampson, Kyle>
CC: <Nelson, Carolyn>
Sent: 6/2/2003 8:45:58 AM
Subject: Meeting with Judge re CA6 -- propose 10:30 am

Can you guys make it at 10:30 this morning? If so, let's do 10:30 (Carrie can you confirm whether Leitch can make it at 10:30).

From: Nelson, Carolyn
To: <Ulyot, Theodore W.>;<Kavanaugh, Brett M.>;<Sampson, Kyle>
Sent: 6/2/2003 8:48:27 AM
Subject: RE: Meeting with Judge re CA6 -- propose 10:30 am

Works for the Judge and David.

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

From: Ulyot, Theodore W.
Sent: Monday, June 02, 2003 8:46 AM
To: Kavanaugh, Brett M.; Sampson, Kyle
Cc: Nelson, Carolyn
Subject: Meeting with Judge re CA6 -- propose 10:30 am

Can you guys make it at 10:30 this morning? If so, let's do 10:30 (Carrie can you confirm whether Leitch can make it at 10:30).

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/2/2003 5:45:35 AM
Subject: : interview today

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 2-JUN-2003 09:45:35.00
SUBJECT:: interview today
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Judge's 11:00 interview with ABC radio is re: current state of Judicial crisis. Do you have talking points or think there is anything in particular he should address?

From: CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
Sent: 6/2/2003 11:06:01 AM
Subject: : Campbell v. State Farm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 2-JUN-2003 15:06:01.00
SUBJECT:: Campbell v. State Farm
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Do you agree with Scalia and Thomas that the Constitution;does not
constrain the size of punitive damages awards?

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Brosnahan, Jennifer R.>; <Newstead, Jennifer G.>; <Bartolomucci, H. Christopher>; <Sampson, Kyle>; <Francisco, Noel J.>; <Powell, Benjamin A.>; <Ullyot, Theodore W.>; <Brown, Reginald J.>
Sent: 6/2/2003 12:00:44 PM
Subject: status of circuit noms

June 2, 2003

COURT OF APPEALS NOMINEES IN 108TH CONGRESS (25)

Confirmed (7)

Ed Prado (5th Texas)

Jeff Sutton (6th Ohio)

Jay Bybee (9th Nevada)

Tim Tymkovich (10th Colorado)

Deborah Cook (6th Ohio)

John Roberts (DC)

Consuelo Callahan (9th California)

On Executive Calendar (4)

Miguel Estrada (DC)

Priscilla Owen (5th Texas)

Michael Chertoff (3rd New Jersey)

Carolyn Kuhl (9th California)

In Judiciary Committee (14)

Richard Wesley (2nd New York)

Michael Fisher (3rd Pennsylvania)

Terry Boyle (4th North Carolina)

Claude Allen (4th Virginia)

Allyson Duncan (4th North Carolina)

Charles Pickering (5th Mississippi)

David McKeague (6th Michigan)

Susan Neilson (6th Michigan)

Richard Griffin (6th Michigan)

Henry Saad (6th Michigan)

Steve Colloton (8th Iowa)

Carlos Bea (9th California)

Bill Myers (9th Idaho)

Bill Pryor (11th Alabama)

ANNOUNCED FUTURE RETIREMENTS OR CURRENT VACANCIES WITHOUT NOMINEES (7)

CADC, CADC, CA3, CA4, CA7, CA8, and CA8

CIRCUIT NOMINEES CONFIRMED IN 107TH CONGRESS (17)

Jeffrey Howard (1st NH)

Barrington Parker (2nd NY)

Reena Raggi (2nd NY)

Brooks Smith (3rd PA)

Roger Gregory (4th VA)

Dennis Shedd (4th SC)

Edith Brown Clement (5th LA)

Julia Gibbons (6th TN)

John Rogers (6th KY)

Michael Melloy (8th IA)

William Riley (8th NE)

Lavenski Smith (8th ARK)

Richard Clifton (9th HI)

Harris Hartz (10th NM)

Michael McConnell (10th UT)

Terrence O'Brien (10th WY)

Sharon Prost (Fed)

From: Gumerson, Katie \RPC\ <Katie_Gumerson@RPC.Senate.Gov>
To: Alex Dahl \E-mail\ <IMCEACCMail-Alex+20Dahl+20at+20Judiciary@routing.senate.gov>; Barbara Ledeen \E-mail\ <barbara_ledeen@src.senate.gov>; Brett Kavanaugh \E-mail\ <brett_kavanaugh@who.eop.gov>; Brown, Jamie E \E-mail\ <jamie.e.brown@usdoj.gov>; Delrahim, Makan \Judiciary\ <Makan_Delrahim@Judiciary.senate.gov>; Duffield, Steven \RPC\ <Steven_Duffield@RPC.Senate.Gov>; Gary Andres \E-mail\ <gary.andres@dutkogroup.com>; John Abegg \E-mail\ <IMCEACCMail-John+20Abegg+20at+20McConnell-DC@routing.senate.gov>; Kirk, Matthew>; Matt Letourneau <matthew_letourneau@Judiciary.senate.gov>; Miranda, Manuel \Frist\ <Manuel_Miranda@frist.senate.gov>; Rena Johnson Comisac \E-mail\ <IMCEACCMail-Rena+20Johnson+20at+20Judiciary@routing.senate.gov>; Stephen Higgins \E-mail\ <IMCEACCMail-Stephen+20Higgins+20at+20Judiciary@routing.senate.gov>; Grubbs, Wendy J.>; Zomer, Bini \Nickles\ <Bini_Zomer@Nickles.senate.gov>
Sent: 6/2/2003 12:49:58 PM
Subject: FYI: Supreme Ct. Nominees
Attachments: Supreme.wpd

I dug this chart up regarding Senate action on Supreme Court nominees, you all may already have this information, but I thought I would send it along just in case! Katie

<>

Katie Gumerson
Deputy Staff Director
Republican Policy Committee
United States Senate
347 Russell
Washington, D.C. 20510
202.224.2946

Supreme Court Nominee Senate Confirmation Chart

Nominee	Retirement Announcement	Time elapsed btwn. Actions (days)	Nominee Announcement	Time elapsed btwn. Actions (days)	Received in Senate	Time elapsed btwn. Actions (days)	Senate Hearing	Time elapsed btwn. Actions (days)	Senate Confirmation	Time elapsed btwn. Nominee Announcement & Confirmation (days)
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William H. Rehnquist	6/17/86 Chief Justice Burger	0	6/17/86 <i>Reagan</i>	4	6/20/86	42	7/30 - 8/1/86	48	9/17/86	95
Antonin Scalia	6/17/86 Justice Rehnquist	0	6/17/86 <i>Reagan</i>	8	6/24/86	44	8/5 - 6/86	43	9/17/86	95
Robert H. Bork	6/26/87 Justice Powell	6	7/1/87 <i>Reagan</i>	7	7/7/87	71	9/15 - 30/87	24	10/ 23/87 REJECTED	116
Anthony M. Kennedy	6/26/87 Justice Powell	n/a	11/11/87 <i>Reagan</i>	20	11/30/87	16	12/14 - 16/87	50	2/3/88	87
David H. Souter	7/20/90 Justice Brennan	4	7/23/90 <i>Bush</i>	3	7/25/90	51	9/13 - 19/90	14	10/2/90	73
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Ruth Bader Ginsburg	3/19/93 Justice White	88	6/14/93 <i>Clinton</i>	9	6/22/93	29	7/20 - 23/93	12	8/3/93	52
Stephen J. Breyer	4/6/94 Justice Blackmun	38	5/13/94 <i>Clinton</i>	5	5/17/94	57	7/12 - 14/94	16	7/29/94	79

From: Gumerson, Katie (RPC) <Katie_Gumerson@RPC.Senate.Gov>
To: Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>;Rena Johnson Comisac (E-mail) <IMCEACCMail-Rena+20Johnson+20at+20Judiciary"@routing.senate.gov>;Matt Letourneau <matthew_letourneau@Judiciary.senate.gov>;John Abegg (E-mail) <IMCEACCMail-John+20Abegg+20at+20McConnell-DC"@routing.senate.gov>;Duffield, Steven (RPC) <Steven_Duffield@RPC.Senate.Gov>;Brown, Jamie E (E-mail) <jamie.e.brown@usdoj.gov>;Barbara Ledeen (E-mail) <barbara_ledeen@src.senate.gov>;Zomer, Bini (Nickles) <Bini_Zomer@Nickles.senate.gov>;Stephen Higgins (E-mail) <IMCEACCMail-Stephen+20Higgins+20at+20Judiciary"@routing.senate.gov>;Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Gary Andres (E-mail) <gary.andres@dutkogroup.com>;Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alex Dahl (E-mail) <IMCEACCMail-Alex+20Dahl+20at+20Judiciary"@routing.senate.gov>
Sent: 6/2/2003 8:51:55 AM
Subject: : FYI: Supreme Ct. Nominees
Attachments: P_KE4VG003_WHO.TXT_1.wpd

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Gumerson, Katie (RPC)" <Katie_Gumerson@RPC.Senate.Gov> ("Gumerson, Katie (RPC)" <Katie_Gumerson@RPC.Senate.Gov> [UNKNOWN])

CREATION DATE/TIME: 2-JUN-2003 12:51:55.00

SUBJECT:: FYI: Supreme Ct. Nominees

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Rena Johnson Comisac (E-mail)" <"IMCEACCMail-Rena+20Johnson+20at+20Judiciary"@routing.senate.gov> ("Rena Johnson Comisac (E-mail)" <"IMCEACCMail-Rena+20Johnson+20at+20Judiciary"@routing.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Matt Letourneau <matthew_letourneau@Judiciary.senate.gov> (Matt Letourneau <matthew_letourneau@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"John Abegg (E-mail)" <"IMCEACCMail-John+20Abegg+20at+20McConnell-DC"@routing.senate.gov> ("John Abegg (E-mail)" <"IMCEACCMail-John+20Abegg+20at+20McConnell-DC"@routing.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Duffield, Steven (RPC)" <Steven_Duffield@RPC.Senate.Gov> ("Duffield, Steven (RPC)" <Steven_Duffield@RPC.Senate.Gov> [UNKNOWN])

READ:UNKNOWN

TO:"Brown, Jamie E (E-mail)" <jamie.e.brown@usdoj.gov> ("Brown, Jamie E (E-mail)" <jamie.e.brown@usdoj.gov> [UNKNOWN])

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TO:"Barbara Ledeen (E-mail)" <barbara_ledeen@src.senate.gov> ("Barbara Ledeen (E-mail)" <barbara_ledeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Zomer, Bini (Nickles)" <Bini_Zomer@Nickles.senate.gov> ("Zomer, Bini (Nickles)" <Bini_Zomer@Nickles.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Stephen Higgins (E-mail)" <"IMCEACCMail-Stephen+20Higgins+20at+20Judiciary"@routing.senate.gov> ("Stephen Higgins (E-mail)" <"IMCEACCMail-Stephen+20Higgins+20at+20Judiciary"@routing.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Gary Andres (E-mail)" <gary.andres@dutkogroup.com> ("Gary Andres (E-mail)" <gary.andres@dutkogroup.com> [UNKNOWN])

READ:UNKNOWN

TO:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])

REV_00236986

READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Alex Dahl (E-mail)" <"IMCEACCMail-Alex+20Dahl+20at+20Judiciary"@routing.senate.gov> (
"Alex Dahl (E-mail)" <"IMCEACCMail-Alex+20Dahl+20at+20Judiciary"@routing.senate.gov> [
UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

I dug this chart up regarding Senate action on Supreme Court nominees, you
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just in case! Katie

<<Supreme.wpd>>

Katie Gumerson
Deputy Staff Director
Republican Policy Committee
United States Senate
347 Russell
Washington, D.C. 20510
202.224.2946

- Supreme.wpd
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_KE4VG003_WHO.TXT_1>

Supreme Court Nominee Senate Confirmation Chart

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Stephen J. Breyer	4/6/94 Justice Blackmun	38	5/13/94 <i>Clinton</i>	5	5/17/94	57	7/12 - 14/94	16	7/29/94	79

From: Kavanaugh, Brett M.
To: <Snee, Ashley>;<McClellan, Scott>
Sent: 6/2/2003 1:51:17 PM
Subject: Milbank

It is traditional and appropriate for Presidents and their aides to explain the President's agenda and proposals to members of the public and to seek support for that agenda in Congress. The Department of Justice under Presidents of both parties has consistently interpreted so-called "anti-lobbying" riders and prohibitions not to apply to efforts by Presidents and their close aides to explain the President's agenda to the Congress and the public and to seek the public's support with Congress. The Department concluded in an April 14, 1995, legal memorandum, for example, that restrictions on Executive Branch lobbying activity do not apply to activities "personally undertaken by the President, his aides and assistants within the Executive Office of the President, the Vice President, cabinet members within their areas of responsibility, and other Senate-confirmed officials appointed by the President within their areas of responsibility."

From: Nelson, Carolyn
To: <Goergen, Barbara J.>; viet dinh <viet.dinh@usdoj.gov>; Adam Charnes <adam.charnes@usdoj.gov>; adam ciongoli <adam.ciongoli@usdoj.gov>; amy bass <amy.bass@usdoj.gov>; andrew beach <andrew.beach@usdoj.gov>; <Bartolomucci, H. Christopher>; <Bennett, Melissa S.>; Brian Benczkowski <brian.a.benczkowski@usdoj.gov>; <Brilliant, Hana F.>; <Brosnahan, Jennifer R.>; <Bumatay, Patrick J.>; <Ellison, Kimberly>; evelyn long <evelyn.v.long@usdoj.gov>; <Farrell, J. Elizabeth>; <Francisco, Noel J.>; <Ganter, Jonathan F.>; <Gray, Ann>; <Grubbs, Wendy J.>; Heather McNaught <Heather.McNaught@usdoj.gov>; <Jones, Alison>; <Jucas, Tracy>; <Kavanaugh, Brett M.>; Kristi Remington <Kristi.I.Remington@usdoj.gov>; <Kyle, Ross M.>; <Leitch, David G.>; Lockart, Sarah K. <Sarah_K_Lockart@who.eop.gov>; <Montiel, Charlotte L.>; <Newstead, Jennifer G.>; <Powell, Benjamin A.>; <Ralston, Susan B.>; <Sampson, Kyle>; tracy washington <tracy.t.washington@usdoj.gov>; <Ulyot, Theodore W.>
Sent: 6/2/2003 3:13:22 PM
Subject: WHJSC - Wednesday June 4- please note slight time change

WHJSC will meet on Wednesday, June 4, at 2:00pm in the Roosevelt Room.

Thanks!

From: Nelson, Carolyn
To: <Goergen, Barbara J.>; viet dinh <viet.dinh@usdoj.gov>; Adam Charnes <adam.charnes@usdoj.gov>; adam ciongoli <adam.ciongoli@usdoj.gov>; amy bass <amy.bass@usdoj.gov>; andrew beach <andrew.beach@usdoj.gov>; <Bartolomucci, H. Christopher>; <Bennett, Melissa S.>; Brian Benczkowski <brian.a.benczkowski@usdoj.gov>; <Brilliant, Hana F.>; <Brosnahan, Jennifer R.>; <Bumatay, Patrick J.>; <Ellison, Kimberly>; evelyn long <evelyn.v.long@usdoj.gov>; <Farrell, J. Elizabeth>; <Francisco, Noel J.>; <Ganter, Jonathan F.>; <Gray, Ann>; <Grubbs, Wendy J.>; Heather McNaught <Heather.McNaught@usdoj.gov>; <Jones, Alison>; <Jucas, Tracy>; <Kavanaugh, Brett M.>; Kristi Remington <Kristi.I.Remington@usdoj.gov>; <Kyle, Ross M.>; <Leitch, David G.>; Lockart, Sarah K. <Sarah_K_Lockart@who.eop.gov>; <Montiel, Charlotte L.>; <Newstead, Jennifer G.>; <Powell, Benjamin A.>; <Ralston, Susan B.>; <Sampson, Kyle>; tracy washington <tracy.t.washington@usdoj.gov>; <Ulyot, Theodore W.>
Sent: 6/2/2003 3:13:22 PM
Subject: WHJSC - Wednesday June 4- please note slight time change

WHJSC will meet on Wednesday, June 4, at 2:00pm in the Roosevelt Room.

Thanks!

From: CN=Robert L. Whisler/OU=OA/O=EOP@Exchange [OA]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Renee C. Riley/OA/EOP@Exchange [OA] <Renee C. Riley>
Sent: 6/2/2003 12:33:51 PM
Subject: : Please reboot your PC

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES MAIL)
CREATOR:Robert L. Whisler (CN=Robert L. Whisler/OU=OA/O=EOP@Exchange [OA])
CREATION DATE/TIME: 2-JUN-2003 16:33:51.00
SUBJECT:: Please reboot your PC
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Renee C. Riley (CN=Renee C. Riley/OU=OA/O=EOP@Exchange [OA])
READ:UNKNOWN
End Original ARMS Header

Anti-virus updates were recently pushed to your PC, but it needs to be rebooted in order for them to take effect.; Would you mind doing this at your earliest convenience? Thank you.

;
Robert Whisler
Information Technology Specialist
Office of Administration / Information Assurance
Executive Offices of the President
202-456-2738
;

From: Kavanaugh, Brett M.
To: <McClellan, Scott>;<Snee, Ashley>
Sent: 6/2/2003 4:42:36 PM
Subject: slightly revised

I think the American people recognize one of the most important responsibilities of a President has always been to reach out to the American people to explain and build public support for his agenda and priorities.

The Department of Justice under Presidents of both parties has concluded that any prohibitions on outreach activities do not apply to efforts by Presidents and presidential aides to explain and build public support for his congressional agenda.

The Justice Department concluded in an April 14, 1995, legal memorandum, for example, that general restrictions on Executive Branch public outreach activity do not apply to activities "personally undertaken by the President, his aides and assistants within the Executive Office of the President, the Vice President, cabinet members within their areas of responsibility, and other Senate-confirmed officials appointed by the President within their areas of responsibility."

From: Berenson, Bradford <bberenson@sidley.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/3/2003 5:19:47 AM
Subject: : RE: "Serious" Poker Game
Attachments: P_AUYVG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Berenson, Bradford" <bberenson@sidley.com> ("Berenson, Bradford"
<bberenson@sidley.com> [UNKNOWN])
CREATION DATE/TIME: 3-JUN-2003 09:19:47.00
SUBJECT:: RE: "Serious" Poker Game
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

No -- it's a set of bound volumes called "The Supreme Court of the United States Nominations, 1916-1994" edited by Roy Mersky, et al. There are about two volumes per nomination. It contains a short history of each nomination, the full text of the nominees' questionnaires, confirmation hearings, floor debates, and member statements, all of the nominees' writings that were at issue during the hearings, all related executive branch and presidential statements, correspondence with the committee, and a compendium of editorial comment and other significant media material. In short, absolute one-stop shopping for any question relating to the precedents governing confirmations, including how nominees answered questions in the past, how disputes were resolved over what materials the executive branch would disgorge etc. Also great for giving an nominee the feel of the back and forth to be expected during hearings. If the OEOB Library doesn't have this, they should get it.

-----Original Message-----
From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett M. Kavanaugh@who.eop.gov]
Sent: Tuesday, June 03, 2003 8:56 AM
To: Berenson, Bradford
Subject: RE: "Serious" Poker Game

In for poker. Is the resource the "Supreme Court Compendium"?

"<mail.sidley.com>" made the following annotations on 06/03/2003 08:18:12 AM

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_AUYVG003_WHO.TXT_1>

No -- it's a set of bound volumes called "The Supreme Court of the United States Nominations, 1916-1994" edited by Roy Mersky, et al. There are about two volumes per nomination. It contains a short history of each nomination, the full text of the nominees' questionnaires, confirmation hearings, floor debates, and member statements, all of the nominees' writings that were at issue during the hearings, all related executive branch and presidential statements, correspondence with the committee, and a compendium of editorial comment and other significant media material. In short, absolute one-stop shopping for any question relating to the precedents governing confirmations, including how nominees answered questions in the past, how disputes were resolved over what materials the executive branch would disgorge etc. ; Also great for giving an nominee the feel of the back and forth to be expected during hearings. If the OEOB Library doesn't have this, they should get it.

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

From: Brett M. Kavanaugh@who.eop.gov
[mailto:Brett_M_Kavanaugh@who.eop.gov]
Sent: Tuesday, June 03, 2003 8:56 AM
To: Berenson, Bradford
Subject: RE: "Serious" Poker Game

In for poker. Is the resource the "Supreme Court Compendium"?

"<mail.sidley.com>" made the following annotations on 06/03/2003 08:18:12 AM

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

From: CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>
Sent: 6/3/2003 4:18:07 AM
Subject: : RE: draft disclaimer for program at events for state and local candidates where limits are above federal limits

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Courtney S. Elwood (CN=Courtney S. Elwood/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME: 3-JUN-2003 08:18:07.00
SUBJECT:: RE: draft disclaimer for program at events for state and local candidates where limits are above federal limits
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
End Original ARMS Header

I had envisioned the disclaimer to be printed on the event's program, rather than on the invitation and reply card. That way, it would be "at" the event. Brett, did you have a different thought? If it were on the program, I think it would satisfy the standard articulated in the FEC Adv. Op., particularly since the printed disclaimer is intended to serve as a safety precaution, since it is my understanding that neither the President nor the Vice President makes a practice of soliciting donations at these events. But I'd like to hear Brett's view and also whether Charlie Spies concurs.

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

From: Addington, David S.
Sent: Monday, June 02, 2003 5:11 PM
To: Kavanaugh, Brett M.
Subject: Re: draft disclaimer for program at events for state and local candidates where limits are above federal limits

Brett:

I wonder whether this clear and conspicuous notice would be a legally acceptable (FEC Adv. Op. 2003-3), but politically friendlier, and useable with respect to all Federal candidates without any need to change text, alternative:

"Any solicitation by a Federal officeholder at this event seeks only federally permissible funds, that is, up to \$2000 per candidate per election from an individual's own funds, and no funds from a corporation, labor organization or minor."

Also, is it our view that this disclaimer on the invitation-and-reply-device is satisfactory under FEC Adv. Op. 2003-3 -- or is it necessary to have this disclaimer on a display-board-and-easel at the event -- given that FEC Adv. Op. 2003-3 speaks of a written notice "displayed" at a state candidate fundraising event.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Wendy J. Grubbs/WHO/EOP@Exchange@EOP [WHO] <Wendy J. Grubbs>
Sent: 6/3/2003 6:17:28 AM
Subject: : FW: Feinstein Letter to Bush on Nominations
Attachments: P_9Y2WG003_WHO.TXT_1.wpd

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2003 10:17:28.00
SUBJECT: : FW: Feinstein Letter to Bush on Nominations
TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
06/03/2003 10:12 AM -----

From: Wendy J. Grubbs/WHO/EOP@Exchange on 05/05/2003 01:12:29 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Feinstein Letter to Bush on Nominations

;
-----Original Message-----
From: Hantman, David (Judiciary)
[mailto:David_Hantman@Judiciary.senate.gov]
Sent: Monday, May 05, 2003 1:09 PM
To: Grubbs, Wendy J.; Jamie.E.Brown@usdoj.gov
Subject: Feinstein Letter to Bush on Nominations

Mailed, faxed, and now e-mailed for your reading pleasure.

;

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_9Y2WG003_WHO.TXT_1>

May 5, 2003

The Honorable George Bush
President of the United States of America
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

I believe the process for judicial nominations is going in the wrong direction. The debate between the Senate and the Executive Branch over judicial candidates has become polarized and increasingly bitter.

Clearly, each side must be willing to compromise. Accordingly, I would like to make some recommendations for your consideration. I believe a model of bipartisan cooperation on judges already exists in the State of California.

At the beginning of your Administration, to resolve several years of acrimony over nominees in California, we jointly agreed to establish bipartisan committees to select district court judges. As you know, we created four committees in the State, one for each judicial district. Each committee has six members evenly divided between Republicans and Democrats. A nominee only can get approved with the support of the majority of the committee. For each vacancy, the committee forwards three to five candidates to the White House, and you, of course, have the final decision over which of these candidates is chosen.

Since the judicial selection committees took effect in the Spring 2001, they have filled these vacancies with high quality judges. As of today, eight California judges nominated by the committees have obtained swift Senate confirmation. On average, the nominees have obtained confirmation within 114 days of being nominated. In contrast, California district court nominees in the 106th Congress took an average of 223 days to get confirmed (three of the nominees never even managed to get a hearing).

The California system yields good results quickly. On Thursday, May 1st, you announced nominees for five district judgeships in the Southern District of California and one for the Central District of California. Congress created all six of these judgeships on November 2, 2002. Now, just six months later, we have six nominees before the Senate that earned unanimous approval before their respective state selection committees. The Committees accomplished these selections so quickly that candidates are being appointed to positions that will not even officially exist until July 15, 2003.

I propose extending this successful California model nationally.

- Each State would have an evenly divided Bipartisan Committee to recommend District and Circuit Court judges to the President
- The White House would choose nominees from this list of recommended names, but could request as many candidates as desired. In California, for example, the Selection Committee provides three to five names for each district court vacancy.
- The Senate would have six months from the President's announcement of a nomination to hold a hearing on the nominee. Subsequent to the hearing, the Senate would have to hold an up-or-down vote in Committee or on the Floor within three months.
- Concurrent with these changes, the Senate would agree to allow nominees to go forward without secret holds or public filibusters.

We have a limited window of opportunity before the current impasse over judges spirals out of control. I urge you to consider this proposal and help us find common ground. California's experience has shown how bipartisan cooperation can lead to the efficient selection of the highest caliber nominees. Thank you for your consideration.

Sincerely,

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/3/2003 1:58:58 PM
Subject: : MATERIALS RECEIVED
Attachments: P_2DUWG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2003 17:58:58.00
SUBJECT:: MATERIALS RECEIVED
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

----- Forwarded by H. Christopher Bartolomucci/WHO/EOP on
06/03/2003 05:58 PM -----

"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
06/03/2003 05:53:43 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: MATERIALS RECEIVED

MATERIALS RECEIVED: Monday, June 02, 2003 and Tuesday, June 03, 2003

Nominations

Karen P. Tandy, of Virginia, to be Administrator of Drug Enforcement

Blue Slips Returned For:

Ronald A. White, of Oklahoma, to be United States District Judge for the Eastern District of Oklahoma

* Senator Inhofe
* Senator Nickles

REV_00237037

Swen Prior

Nominations Clerk

Senate Judiciary Committee

(202) 224-5225

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- att1.htm

Message Sent

To: "Hardman, Isaac (Judiciary)" <Isaac_Hardman@Judiciary.senate.gov>
Christopher <nathan.sales@usdoj.gov>
"Wikner, Brian (Judiciary)" <Brian_Wikner@Judiciary.senate.gov>
"Arfa, Rachel (Judiciary)" <Rachel_Arfa@Judiciary.senate.gov>
"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov>
"Carroll, Kurt (Judiciary)" <Kurt_Carroll@Judiciary.senate.gov>
"Cohen, Bruce (Judiciary)" <Bruce_Cohen@Judiciary.senate.gov>
"Comisac, RenaJohnson (Judiciary)"
<Rena_Johnson_Comisac@Judiciary.senate.gov>
"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov>
"Codevilla, David (Judiciary)" <David_Codevilla@Judiciary.senate.gov>
"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov>
"DeOreo, Mary (Judiciary)" <Mary_DeOreo@Judiciary.senate.gov>
"Klepper, Leesa (Judiciary)" <Leesa_Klepper@Judiciary.senate.gov>
"Graves, Lisa (Judiciary)" <Lisa_Graves@Judiciary.senate.gov>
"Greenfeld, Helaine (Judiciary)" <Helaine_Greenfeld@Judiciary.senate.gov>
"Haywood, Amy (Judiciary)" <Amy_Haywood@Judiciary.senate.gov>
"Lucius, Kristine (Judiciary)" <Kristine_Lucius@Judiciary.senate.gov>
"Lundell, Jason (Judiciary)" <Jason_Lundell@Judiciary.senate.gov>
nancy.scott-finan <nancy.scottfinan@usdoj.gov>
"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
"Snell, BethAnn (Judiciary)" <BethAnn_Snell@Judiciary.senate.gov>
"Stahl, Katie (Judiciary)" <Katie_Stahl@Judiciary.senate.gov>
"Tapia, Margarita (Judiciary)" <Margarita_Tapia@Judiciary.senate.gov>
"Toomajian, Phil (Judiciary)" <Phil_Toomajian@Judiciary.senate.gov>
H. Christopher Bartolomucci/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2DUWG003_WHO.TXT_1>

REV_00237038

MATERIAL S RECEIVED: Monday, June 02, 2003 and Tuesday, June 03, 2003

Nominati ons

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Blue Slips Returned For:

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for the Eastern District of Oklahoma

- Senator Inhofe
- Senator Nickles

Swen Prior
Nominations Clerk
Senate Judiciary Committee
(202) 224-5225

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REV_00237039

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: cspies@rnchq.org [UNKNOWN] <cspies@rnchq.org>;tomj@rnchq.org [UNKNOWN]
<tomj@rnchq.org>
CC: Susan B. Ralston/WHO/EOP@Exchange@EOP [WHO] <Susan B.
Ralston>;kmehlman@georgewbush.com [WHO] <kmehlman@georgewbush.com>
Sent: 6/3/2003 5:41:38 PM
Subject: : Meeting/memo
Attachments: P_NAYWG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 3-JUN-2003 21:41:38.00
SUBJECT:: Meeting/memo
TO: cspies@rnchq.org (cspies@rnchq.org [UNKNOWN])
READ: UNKNOWN
TO: tomj@rnchq.org (tomj@rnchq.org [UNKNOWN])
READ: UNKNOWN
CC: Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
CC: kmehlman@georgewbush.com (kmehlman@georgewbush.com [WHO])
READ: UNKNOWN
End Original ARMS Header

Tom and Charlie: Can we meet on 11 CFR 9034.7 this week? Also, I would appreciate your comments on the attached rough draft memo re restrictions on use of private and military airplanes. There are a few issues we have not resolved yet, and we need additional internal approvals of this, but I wanted to get your thoughts on the current draft. Please call when convenient.

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_NAYWG003_WHO.TXT_1>

4. The government employee may not travel on an airplane owned by an entity or individual who has a specific matter pending before that government employee or in circumstances that otherwise would be inappropriate.
5. The relevant political campaign or party must reimburse the owner of the airplane *in advance* by paying the relevant first class airfare or, in the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.
6. For White House employees, advance approval of any use of a private airplane for a political trip must be obtained from the Chief of Staff and the Counsel. For other Executive Branch employees, advance approval of any use of private airplane for a political trip must be obtained from the relevant chief of staff and general counsel.
7. [rule for mixed official-political trips]

II. Military Airplanes

1. Executive Branch employees should not use military airplanes for travel to political trips or mixed official/political trips unless the employee is required for security reasons to use military airplanes for air travel.
2. Advance approval of any use of a military airplane for a political trip must be obtained from the Chief of Staff to the President and the Counsel to the President, and appropriate payment to the government must occur before the trip.

From: Leitch, David G.
To: <Gonzales, Alberto R.>; <Kavanaugh, Brett M.>
Sent: 6/4/2003 9:38:53 AM
Subject: Byron York on Chertoff

JUNE 4, 2003

Byron York

In the latest 'investigation,' the joke's on Democrats

For a while, it looked like smooth sailing for Michael Chertoff.

The Bush administration's nominee for a seat on the U.S. Third Circuit Court of Appeals, Chertoff is by general agreement a first-rate candidate for the bench. He's been a Supreme Court clerk (for William Brennan), a mob-fighting prosecutor (U.S. attorney for New Jersey), and is now head of the Justice Department's Criminal Division.

Perhaps the only person who wouldn't be happy with his elevation to the court is Sen. Hillary Rodham Clinton (D-N.Y.), who no doubt remembers Chertoff's days as counsel to the Senate Whitewater investigation.

But don't blame Mrs. Clinton for the snag that recently hit Chertoff's nomination. Blame Larry Klayman.

You remember Klayman. The head of Judicial Watch, he was a "Clinton antagonist" (in the words of The Washington Post) when he was filing lawsuit after lawsuit against the Clinton administration. Now that he is filing suits against the Bush administration, Klayman is a "watchdog" (in the words of The Washington Post).

Whatever the case, Klayman's latest target is Chertoff.

After breezing through his Judiciary Committee hearing, Chertoff was scheduled for a vote on May 22. Everything looked OK until the day before, when Klayman got in touch with some senators to say there were serious concerns about Chertoff's nomination.

The day of the vote, Klayman appeared at the committee meeting and distributed a letter marked "URGENT."

"We have important evidence concerning the misuse of organized crime operatives by the FBI and other government agencies" in New Jersey, the letter began.

"During the period of this illegal activity .. Michael Chertoff ... was U.S. attorney for the District of New Jersey." Klayman asked to meet with senators to "present this evidence."

Although Klayman gave no details, some Democrats who have opposed a number of Bush nominees pronounced themselves deeply concerned. They asked that the vote be delayed. Committee Chairman Orrin Hatch (R-Utah) wanted to go ahead. A compromise was reached when Hatch agreed to a "bipartisan evaluation" of Klayman's charges. The vote was held, and Chertoff was approved, but six deeply concerned Democrats voted "present."

Klayman's "evidence" apparently came from a Judicial Watch client named Peter Paul. Paul, a Hollywood businessman and convicted felon, is a former associate of Stan Lee, creator of Spider-Man and other comic book heroes. In 2001, Paul was charged with securities fraud in an alleged stock manipulation scheme involving the company, Stan Lee Media.

REV_00237045

Paul has also been a big supporter of Bill Clinton. According to court papers filed by Judicial Watch, Paul wanted Clinton to work with Stan Lee Media after leaving the White House. Paul says he approached members of the Clinton circle and was told the best way he could build a relationship with Bill Clinton would be to contribute to Hillary Rodham Clinton's Senate campaign.

So in August 2000, Paul helped put on a huge Hollywood fundraiser for Mrs. Clinton. But the hoped-for business deal with Bill Clinton never materialized. In addition, Paul alleges, Mrs. Clinton concealed his donations from the Federal Election Commission.

So Paul, with help from Larry Klayman, sued the Clintons. "BILL AND HILLARY CLINTON INVOLVED IN MASSIVE ELECTION FINANCE FRAUD," read the Judicial Watch press release. The suit was dismissed, but Paul has appealed.

Judicial Watch also wanted the Justice Department to prosecute the Clintons. In 2001, Klayman met with Criminal Division head Chertoff, asking for immunity for Paul "in exchange for his cooperation with the Justice Department against Bill and Hillary Clinton," according to a letter Klayman wrote the department. Paul never got his deal.

That's how things stood until last week, when, on the eve of the Chertoff vote, Judicial Watch said Paul had incriminating information that might involve ... Michael Chertoff. But after a little investigating, the "bipartisan evaluation" found nothing in Judicial Watch's charges. "It was all smoke," says one administration official. Chertoff's nomination will go forward.

The episode left some Republicans angry, and then amused. With no evidence, Klayman pulled the wool over Democrats who will grab any reason to stop a Bush nominee. But in their eagerness, they left themselves open to an embarrassing question: If Paul's allegation about Chertoff was credible enough to launch an investigation, then why not his charges against Bill and Hillary Clinton?

Byron York is a White House correspondent for National Review. His column appears in The Hill each Wednesday. E-mail: byork@thehill.com

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 6/4/2003 5:39:52 AM
Subject: : Byron York on Chertoff

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 4-JUN-2003 09:39:52.00
SUBJECT:: Byron York on Chertoff
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

JUNE 4, 2003

Byron York
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The Bush administration,s nominee for a seat on the U.S. Third Circuit Court of Appeals, Chertoff is by general agreement a first-rate candidate for the bench. He,s been a Supreme Court clerk (for William Brennan), a mob-fighting prosecutor (U.S. attorney for New Jersey), and is now head of the Justice Department,s Criminal Division.

Perhaps the only person who wouldn,t be happy with his elevation to the court is Sen. Hillary Rodham Clinton (D-N.Y.), who no doubt remembers Chertoff,s days as counsel to the Senate Whitewater investigation.

But don,t blame Mrs. Clinton for the snag that recently hit Chertoff,s nomination. Blame Larry Klayman.

You remember Klayman. The head of Judicial Watch, he was a &Clinton antagonist& (in the words of The Washington Post) when he was filing lawsuit after lawsuit against the Clinton administration, Now that he is filing suits against the Bush administration, Klayman is a &watchdog& (in the words of The Washington Post).

Whatever the case, Klayman,s latest target is Chertoff.

After breezing through his Judiciary Committee hearing, Chertoff was scheduled for a vote on May 22. Everything looked OK until the day before, when Klayman got in touch with some senators to say there were serious concerns about Chertoff,s nomination.

The day of the vote, Klayman appeared at the committee meeting and distributed a letter marked &URGENT.&

&We have important evidence concerning the misuse of organized crime operatives by the FBI and other government agencies& in New Jersey, the letter began.

&During the period of this illegal activity ... Michael Chertoff ... was U.S. attorney for the District of New Jersey.& Klayman asked to meet with senators to &present this evidence.&

Although Klayman gave no details, some Democrats who have opposed a number of Bush nominees pronounced themselves deeply concerned. They asked that the vote be delayed. Committee Chairman Orrin Hatch (R-Utah) wanted to go ahead. A compromise was reached when Hatch agreed to a &bipartisan

evaluation⁸ of Klayman,s charges. The vote was held, and Chertoff was approved, but six deeply concerned Democrats voted ⁸present.⁸

Klayman,s ⁸evidence⁸ apparently came from a Judicial Watch client named Peter Paul. Paul, a Hollywood businessman and convicted felon, is a former associate of Stan Lee, creator of Spider-Man and other comic book heroes. In 2001, Paul was charged with securities fraud in an alleged stock manipulation scheme involving the company, Stan Lee Media.

Paul has also been a big supporter of Bill Clinton. According to court papers filed by Judicial Watch, Paul wanted Clinton to work with Stan Lee Media after leaving the White House. Paul says he approached members of the Clinton circle and was told the best way he could build a relationship with Bill Clinton would be to contribute to Hillary Rodham Clinton,s Senate campaign.

So in August 2000, Paul helped put on a huge Hollywood fundraiser for Mrs. Clinton. But the hoped-for business deal with Bill Clinton never materialized. In addition, Paul alleges, Mrs. Clinton concealed his donations from the Federal Election Commission.

So Paul, with help from Larry Klayman, sued the Clintons. ⁸BILL AND HILLARY CLINTON INVOLVED IN MASSIVE ELECTION FINANCE FRAUD,⁸ read the Judicial Watch press release. The suit was dismissed, but Paul has appealed.

Judicial Watch also wanted the Justice Department to prosecute the Clintons. In 2001, Klayman met with Criminal Division head Chertoff, asking for immunity for Paul ⁸in exchange for his cooperation with the Justice Department against Bill and Hillary Clinton,⁸ according to a letter Klayman wrote the department. Paul never got his deal.

That,s how things stood until last week, when, on the eve of the Chertoff vote, Judicial Watch said Paul had incriminating information that might involve ... Michael Chertoff. But after a little investigating, the ⁸bipartisan evaluation⁸ found nothing in Judicial Watch,s charges. ⁸It was all smoke,⁸ says one administration official. Chertoff,s nomination will go forward.

The episode left some Republicans angry, and then amused. With no evidence, Klayman pulled the wool over Democrats who will grab any reason to stop a Bush nominee. But in their eagerness, they left themselves open to an embarrassing question: If Paul,s allegation about Chertoff was credible enough to launch an investigation, then why not his charges against Bill and Hillary Clinton?

Byron York is a White House correspondent for National Review. His column appears in The Hill each Wednesday. E-mail: byork@thehill.com

From: CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO]
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/4/2003 5:39:08 AM
Subject: :
Attachments: P_8T5XG003_WHO.TXT_1.doc; P_8T5XG003_WHO.TXT_2; P_8T5XG003_WHO.TXT_3.doc;
P_8T5XG003_WHO.TXT_4; P_8T5XG003_WHO.TXT_5.jpeg

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SUBJECT: :
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

In case you guys haven't see this blurb yet. And, compliments of Chuck Blahous, we have Dylan's new campaign poster (please see attached Rusmore jpg). Move over Sforza, there's a new sheriff in town!

Look out, Westmoreland: Glenn's got his boss' OK to make you work for it We're hearing that Dylan Glenn, an African-American aide to Gov. Sonny Perdue, had a sit-down with his boss and has received the necessary blessing to make a Republican run for the 8th Congressional District. House Minority Leader Lynn Westmoreland, who locked horns with Perdue this session over the tax issue, is running for the same seat. Westmoreland is set to kick off his campaign at the state Capitol next Monday.

- RushmoreD.jpg

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File attachment <P_8T5XG003_WHO.TXT_2>

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From: Jon S. Laurich/OA/EOP@Exchange on 06/02/2003 03:14:53 PM

FF From: Jon S. Laurich/OA/EOP@Exchange on 06/02/2003 03:14:53 PMF Record Type:
RecordF

To: Susie Shannon/OA/EOP@EOP

cc: F Subject: (RE: May Employee Benefits Review F0*

Susie*

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Thought we decided some time back that legally we cannot send this out to the world--?? Talk to Joe.

JSL

Fp0*p"

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

From:

Shannon, Susie

Sent:%

Friday, May 30, 2003 5:06 PM

To:<

Weigler, Stephen A.; Wright, Lauren E.; Warner, Sharon A.; Lafontant, Brigitte R.; Stoney, Tara E.; Fibich, Mary; Rogers, Rosemary M.; Cooney, Phil; Stewart, Angela R.; Dimel, Marsha L.; Trumps, Joan; Greenstone, Adam F.; Mull, Zakia; Thompson, Jeffrey G.; Daniel, James F.; Gelfer, Elizabeth; Hembree, Kenneth K.; Bradley, Patricia A.; Frank, Robyn C.; Solari, Carlos; Green, Lorraine ; Tidwell, Deborah ; Buck, Susan ; Dale, Shana L.; Beattie, Steven R.; Sites, Linda; Marx, Michele C.; Roberts, Keith L.; Arle, Kathleen R.; Wedderien, Paul A.; Evans, Sandra K

Cc:

Laurich, Jon S.

Subject:%

May Employee Benefits Review

\$
Managers and Admin Contacts,

Attached below is the May Employee Benefits Review which has many interesting HR updates as well as some great opportunities on training and seminars. Please share with your employees.

V/R,

Susie N. Shannon
Chief, Operations Branch
OA, HRM
202-395-1296

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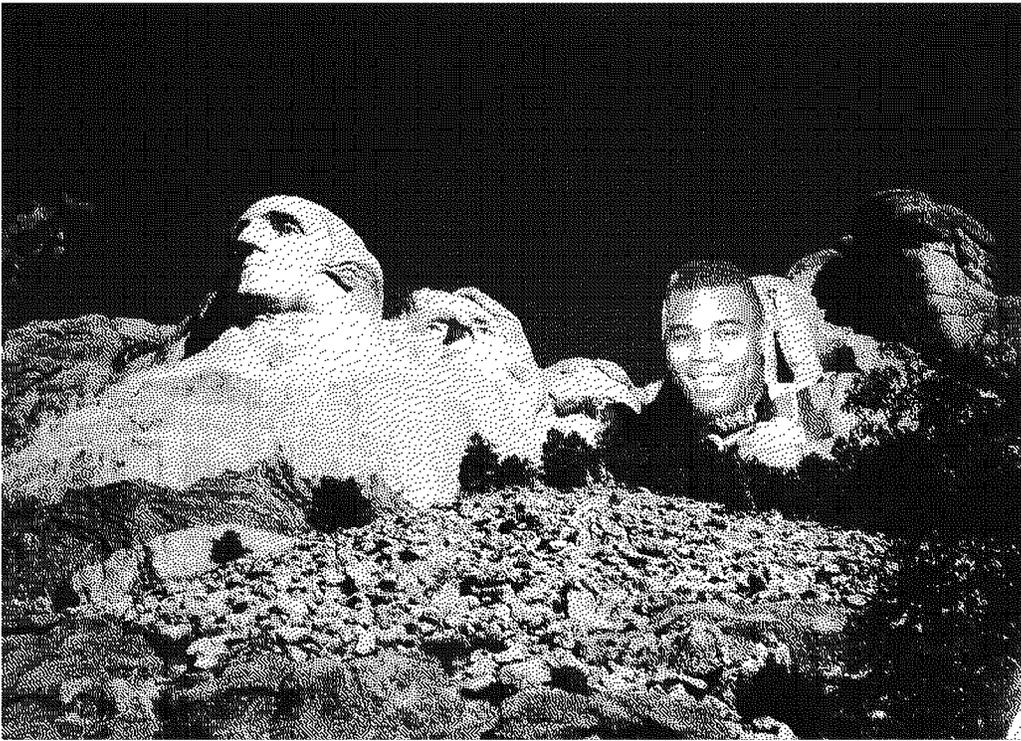
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&4[5<%caRecipients.&CN=Jon S. Laurich/OU=OA/O=EOP@Exchange

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From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Francisco, Noel J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>
Sent: 6/4/2003 10:12:55 AM
Subject: from Orlando paper

Miguel Estrada, the unconfirmed

By Rep. Tom Feeney

Guest Columnist

Two years have passed since the nomination of Miguel Estrada was presented to the Senate by President Bush.

Still, Senate Democrats continue to postpone, delay and filibuster this eminently qualified nominee without reasonable explanations for their actions. Estrada, an attorney with a long and distinguished legal background, has been caught up in the partisan bickering of the Senate, which has held up his nomination since May 2001.

If nominated, Estrada would become the first Hispanic to serve on the District of Columbia Circuit Court, which many consider to be the second most important federal court in America.

The U.S. Constitution gives the Senate the power to confirm judges under the Appointments Clause in Article II, Section 2. However, a minority of senators, using procedural tactics, are refusing to allow these nominees an up-or-down vote and are impeding the constitutional process of judicial appointments.

Instead of appointing judges by a simple majority, which is the requirement in our Constitution, our Senate now needs 60 votes to break the Democrats' filibuster and overcome their parliamentary gymnastics to bring these judicial nominees to a vote.

There are two basic qualifications that a nominee must possess to be appointed to and succeed on the federal bench:

A nominee needs to be morally, intelligently and academically fit.

A nominee needs to adhere to the U.S. Constitution and rules of law.

However, Senate Democrats have decided to add another litmus test to the above. They have decided that to be appointed as a judge, a nominee must agree philosophically with their own liberal politics.

If a nominee doesn't meet this standard, but cannot be defeated in an up-or-down vote, they will be sent to the nominees' "no man's land" of never-ending confirmation hearings.

Estrada's refusal to give the Democrats what is the equivalent of in-house memos -- information which should fall under the attorney-client privilege -- and answer questions on his personal feelings of controversial subjects, proves even further that if he is nominated, Estrada will be a thoughtful and objective member of the bench.

What Estrada thinks on these subjects is irrelevant. The role of a judge is to apply the law in a case from the given facts, not inject his or her personal feelings into the case.

Senate Democrats' unwillingness to confirm Estrada and many other judicial nominees because they do not know

how the nominees feel on controversial issues should cause great alarm in our country.

Unfortunately, it seems that in order to be confirmed as a judge by the Senate, one must fit the Democrats' picture of a good judge, ensuring appointees to the bench who will cement the next generation of liberal jurisprudence.

Feeney, R-Oviedo, represents Florida's 24th Congressional District, which includes Brevard County. Rep. Mario Diaz-Balart, R-Miami, also contributed to this article.

From: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2003 11:21:08 AM
Subject: : Floor speech of former Senator Robert P. Griffin
Attachments: P_HUQXG003_WHO.TXT_1.html; P_HUQXG003_WHO.TXT_2.pdf

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME: 4-JUN-2003 15:21:08.00

SUBJECT:: Floor speech of former Senator Robert P. Griffin

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

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Floor speech of former Senator Robert P. Griffin explaining that Fortas did not have support of Senate majority (10/2/68)

- att1.htm - CR 29150.pdf

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ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_HUQXG003_WHO.TXT_2>

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October 2, 1968

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The problems of foreign aid are not hopeless. But if anything is certain in unpredictable 1968, it is that these problems, at least, will not solve themselves. Progress in technology and economics has been generally encouraging but in politics most of the progress has been in reverse. Experts cannot readjust these factors; only citizens and their representatives can.

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It should not be overlooked that the distinguished Senator from Kentucky [Mr. COOPER] announced during the debate that, although he would vote for cloture, he was against the confirmation of the nomination of Mr. Fortas as Chief Justice.

On the basis of the RECORD, then, it is ridiculous to say that the will of a majority in the Senate has been frustrated.

THE CONFERENCE REPORT ON HIGHER EDUCATION AMENDMENTS OF 1968

Mr. WILLIAMS of New Jersey. Mr. President, late yesterday afternoon the Senate approved the conference report

on the Higher Education Amendments of 1968.

The Higher Education Amendments of 1968 represent another step toward full educational opportunity for all Americans. The bill which we have sent to the President extends the educational opportunity grant and insured student loan programs; makes assistance available for 5 more years under the national defense student loan program; and extends the provisions of the developing institutions program and the education professions development program.

There are three other important provisions in the conference report which reflect a growing commitment on the part of Congress to make education a realistic goal—and not just a promise—for all Americans, regardless of race or social status.

First, the report provides that no student financial aid can be considered as family income for the purpose of computing welfare eligibility. Under present regulations, college financial aid officers are precluded from offering assistance which would boost family income over the allowable welfare limits. This negates the very purpose of student financial assistance, which is to guarantee that educational opportunities are available regardless of family finances.

Second, the report directs the U.S. Office of Education to collect data on college admissions policies, with the intention of discovering new and more flexible admissions practices. Many college admissions officers feel bound by existing procedures and requirements, and many potentially successful students are blocked from further study by these same requirements. This provision in the conference report would open the door to methods and materials for a more flexible, and more workable, college admissions policy.

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I am hopeful that the Commissioner of Education will follow the intent of the Senate to use a portion of the money allotted for talent search to provide for several low-cost experimental demonstration grants, for involvement of students in recruiting of other students. These grants should be a part of, or in addition to, college and university requests for talent search programs, but should only be limited to the expenses of the students, or student organizations that plan and implement these programs through the participating institutions. Young people need to be made working partners in the educational process. In many cases they have not been asked to take part, and in their frustration to participate, they have demonstrated. Students have much to contribute to the growth of higher education. In this vital area of admissions and recruitment, they can be an invaluable resource in selecting other students who will compliment the purposes of higher education. Through these low-cost demonstration programs, with the encouragement and assistance of Federal money, colleges can channel student energies and resources into a working partnership with the administration, and the participating college or university can thereby provide a mechanism for student involvement in its functions.

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
Sent: 6/4/2003 11:22:27 AM
Subject: : Floor speech of former Senator Robert P. Griffin
Attachments: P_RXQXG003_WHO.TXT_1.html; P_RXQXG003_WHO.TXT_2.pdf

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CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2003 15:22:27.00
SUBJECT:: Floor speech of former Senator Robert P. Griffin
TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
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----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
06/04/2003 03:21 PM -----

"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov>
06/04/2003 03:19:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Floor speech of former Senator Robert P. Griffin

Floor speech of former Senator Robert P. Griffin explaining that Fortas did not have support of Senate majority (10/2/68)

- att1.htm
- CR 29150.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_RXQXG003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
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From: Grubbs, Wendy J.
To: <Kavanaugh, Brett M.>
Sent: 6/4/2003 3:46:44 PM
Subject: Fw: Feinstein-Boxer Letter to Hatch on KUHL
Attachments: KUHLogh.wpd

Fyi

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

From: Hantman, David (Judiciary)
To: Delrahim, Makan (Judiciary) ; Grubbs, Wendy J. ; Jamie.E.Brown@usdoj.gov

Sent: Wed Jun 04 15:39:36 2003
Subject: Feinstein-Boxer Letter to Hatch on KUHL

Makan, Wendy, Jamie –

Attached and copied into this email (for blackberry purposes) please find a letter delivered to Senator Hatch within the last hour on Carolyn Kuhl's nomination to the Ninth Circuit. Enjoy.

June 4, 2003

Honorable Orrin Hatch, Chairman
United States Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch,

We write to ask that no further action be taken on the nomination of Judge Carolyn Kuhl to the Ninth Circuit, in accordance with the long-standing Senate practice of deferring to the views of a nominee's "home state" Senators.

Judge Kuhl's nomination has been controversial from the start. Although she has been a local judge in Los Angeles for a number of years, her positions on reproductive rights, discrimination and other key issues of our day raised serious concerns among many. Indeed,

REV_00237077

Senator Boxer did not return a blue slip on this nominee – an action that itself would traditionally have stopped the nominee from even receiving a hearing.

Senator Feinstein did return a blue slip, and withheld judgement until after the hearing. Nevertheless, after speaking to many of Judge Kuhl's supporters and detractors, reading past transcripts of her cases, attending her hearing, reading and re-reading the transcript of that hearing, and meeting with Judge Kuhl personally, Senator Feinstein, too, came to the conclusion that she could not support Judge Kuhl for a Circuit Court position, and voted against her in Committee.

As you well know, in accordance with Senate tradition, when both home state Senators oppose a nominee there is no further action taken. You abided by this tradition during your entire previous tenure as Committee Chairman, as did the Chairmen before you.

In fact, when Ronnie White came to the Senate floor for a vote and was opposed at the last minute by both home state Senators, you said "I might add, had both home-State Senators been opposed to Judge White in committee, Judge White would never have come to the floor under our rules. I have to say, that would be true whether they are Democrat Senators or Republican Senators. That has just been the way the Judiciary Committee has operated."

We only ask that you give California the same courtesy that has always been afforded to every home state Senate delegation.

Sincerely,

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Sincerely,

Dianne Feinstein

Barbara Boxer

From: CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2003 11:47:53 AM
Subject: : Fw: Feinstein-Boxer Letter to Hatch on KUHL
Attachments: P_VFSXG003_WHO.TXT_1.wpd

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 4-JUN-2003 15:47:53.00
SUBJECT:: Fw: Feinstein-Boxer Letter to Hatch on KUHL
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Fyi
.

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

From: Hantman, David (Judiciary) <David_Hantman@Judiciary.senate.gov>
To: Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>;
Grubbs, Wendy J. <Wendy_J._Grubbs@who.eop.gov>; Jamie.E.Brown@usdoj.gov
<Jamie.E.Brown@usdoj.gov>
Sent: Wed Jun 04 15:39:36 2003
Subject: Feinstein-Boxer Letter to Hatch on KUHL

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Washington, DC 20510

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REV_00237081

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;;;;;;;;;; Sincerely,

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VFSXG003_WHO.TXT_1>

June 4, 2003

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United States Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

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Sincerely,

Dianne Feinstein

Barbara Boxer

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Brosnahan, Jennifer R.>; <Newstead, Jennifer G.>; <Bartolomucci, H. Christopher>; <Sampson, Kyle>; <Francisco, Noel J.>; <Powell, Benjamin A.>; <Ullyot, Theodore W.>
Sent: 6/4/2003 3:50:30 PM
Subject: joint Feinstein-Boxer letter to Sen. Hatch on Kuhl

June 4, 2003

Honorable Orrin Hatch, Chairman

United States Senate Judiciary Committee

224 Dirksen Senate Office Building

Washington, DC 20510

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Sincerely,

REV_00237085

From: CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2003 12:01:34 PM
Subject: : Re: Floor speech of former Senator Robert P. Griffin
Attachments: P_B7TXG003_WHO.TXT_1.html; P_B7TXG003_WHO.TXT_2.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 4-JUN-2003 16:01:34.00
SUBJECT:: Re: Floor speech of former Senator Robert P. Griffin
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Interesting further elaboration on the issue. I hope this can be presented in an appealing and understandable way to the public, and that it's not too much inside baseball.

Brett M. Kavanaugh
06/04/2003 03:21:34 PM
Record Type: Record

To: Theodore W. Ullyot/WHO/EOP@EOP
cc:
Subject: Floor speech of former Senator Robert P. Griffin

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
06/04/2003 03:21 PM -----

"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov>
06/04/2003 03:19:32 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Floor speech of former Senator Robert P. Griffin

Floor speech of former Senator Robert P. Griffin explaining that Fortas did not have support of Senate majority (10/2/68)

- att1.htm
- CR 29150.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_B7TXG003_WHO.TXT_1>

REV_00237097

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_B7TXG003_WHO.TXT_2>

Floor speech of former Senator Robert P. Griffin explaining that Fortas did not have support of Senate majority (10/2/68)

October 2, 1968

that Congressmen can develop a substantial national constituency and win local votes on the basis of enlightened foreign policy leadership. Even in the present disillusioned Congress, Representatives Morgan, Zablocki, Morse and Frazer are sustaining their political careers while devoting much of their attention to the U.S. relationships with the underdeveloped countries.

The problems of foreign aid are not hopeless. But if anything is certain in unpredictable 1968, it is that these problems, at least, will not solve themselves. Progress in technology and economics has been generally encouraging but in politics most of the progress has been in reverse. Experts cannot readjust these factors; only citizens and their representatives can.

MINORITY RULE?

Mr. GRIFFIN. Mr. President, after only 4 days of debate, the Senate refused yesterday by a vote of 45 to 43—far short of the necessary two-thirds majority—to invoke cloture on a motion to take up the nomination of Mr. Fortas as Chief Justice.

An editorial in this morning's Washington Post characterized the vote as a defeat for the majority by a "willful minority."

An examination of the CONGRESSIONAL RECORD of October 1, beginning at page S11688, clearly reveals that the will of the majority was not frustrated.

It will be noted that the votes of 12 Senators were not recorded. It appears in the CONGRESSIONAL RECORD that seven of that number sent word and indicated how they would have voted had they been present.

The Senator from Oregon [Mr. MORSE] and the Senator from Idaho [Mr. CHURCH] would have voted "yea," raising the total of those in favor of invoking cloture from 45 to 47.

The RECORD reflects that the Senator from Vermont [Mr. AIKEN], the Senator from Nevada [Mr. BIBLE], the Senator from Louisiana [Mr. ELLENDER], the Senator from Alaska [Mr. GRUENING], and the Senator from Maine [Mrs. SMITH] would have voted "nay," raising the total of those opposed to cloture from 43 to 48.

Accordingly, if every Senator who made his position known in the RECORD had actually been present and had voted, there would have been 47 votes for cloture and 48 votes, or a majority, against cloture.

There is no indication in the RECORD how the other five absent Senators would have voted.

It should not be overlooked that the distinguished Senator from Kentucky [Mr. COOPER] announced during the debate that, although he would vote for cloture, he was against the confirmation of the nomination of Mr. Fortas as Chief Justice.

On the basis of the RECORD, then, it is ridiculous to say that the will of a majority in the Senate has been frustrated.

THE CONFERENCE REPORT ON HIGHER EDUCATION AMENDMENTS OF 1968

Mr. WILLIAMS of New Jersey. Mr. President, late yesterday afternoon the Senate approved the conference report

on the Higher Education Amendments of 1968.

The Higher Education Amendments of 1968 represent another step toward full educational opportunity for all Americans. The bill which we have sent to the President extends the educational opportunity grant and insured student loan programs; makes assistance available for 5 more years under the national defense student loan program; and extends the provisions of the developing institutions program and the education professions development program.

There are three other important provisions in the conference report which reflect a growing commitment on the part of Congress to make education a realistic goal—and not just a promise—for all Americans, regardless of race or social status.

First, the report provides that no student financial aid can be considered as family income for the purpose of computing welfare eligibility. Under present regulations, college financial aid officers are precluded from offering assistance which would boost family income over the allowable welfare limits. This negates the very purpose of student financial assistance, which is to guarantee that educational opportunities are available regardless of family finances.

Second, the report directs the U.S. Office of Education to collect data on college admissions policies, with the intention of discovering new and more flexible admissions practices. Many college admissions officers feel bound by existing procedures and requirements, and many potentially successful students are blocked from further study by these same requirements. This provision in the conference report would open the door to methods and materials for a more flexible, and more workable, college admissions policy.

College and university admissions procedures have been governed by an inflexible attention to past performance, rather than future potential. Admissions directors are the first to acknowledge that the devices like the college entrance examination board and scholastic aptitude tests are often arbitrary and inadequate measurements of an individual student's potential. Tests and other admissions materials are characteristically achievement oriented. As a result, students who do not measure up in these arbitrary tests, lose.

Although the conferees disagreed on the need to create a special program, with its own appropriation, to provide for demonstration grants to experiment and innovate with admissions procedures and policies, they did agree that research needed to accomplish this purpose can be conducted under title IV of the Cooperative Research Act. When the Commissioner of Education gathers all available data—including experiments now being conducted by individual institutions aimed at a more flexible admissions policy—we will be able to determine what direction the Federal Government should take to institute this long overdue objective of flexible admissions criteria.

However, if there is a need for further and more comprehensive research, based

on the data accumulated by the Commissioner, research can and should be conducted under title IV of the Cooperative Research Act. Whatever steps are taken, it is hoped that the final package of information which will be developed will provide new materials, new techniques, and new attitudes directed toward drastically increasing the admissions rate of so-called high-risk students and others who, for sociological, geographical or other reasons, are arbitrarily disadvantaged by current admissions procedures.

Third, the report indicates that there is a role for students in locating and assisting other students who need advice on higher education—a role commonly assigned to a recruiter from the college administration. Colleges and universities, and local education agencies, will be able to use funds under the talent search program to carry out demonstration programs of student involvement in the recruiting processes.

I am hopeful that the Commissioner of Education will follow the intent of the Senate to use a portion of the money allotted for talent search to provide for several low-cost experimental demonstration grants, for involvement of students in recruiting of other students. These grants should be a part of, or in addition to, college and university requests for talent search programs, but should only be limited to the expenses of the students, or student organizations that plan and implement these programs through the participating institutions. Young people need to be made working partners in the educational process. In many cases they have not been asked to take part, and in their frustration to participate, they have demonstrated. Students have much to contribute to the growth of higher education. In this vital area of admissions and recruitment, they can be an invaluable resource in selecting other students who will compliment the purposes of higher education. Through these low-cost demonstration programs, with the encouragement and assistance of Federal money, colleges can channel student energies and resources into a working partnership with the administration, and the participating college or university can thereby provide a mechanism for student involvement in its functions.

While these provisions offer no quick or easy answer to the problems that plague higher education, they do provide new ways for greater participation. The conference report on the Higher Education Amendments of 1968 is a major contribution to a better, stronger educational system in America.

RESEARCH AND DEVELOPMENT

Mr. SYMINGTON. Mr. President, in its report of September 19, 1968, on the Department of Defense appropriations bill, the Senate Appropriations Committee recommended that the funds requested by the Pentagon for research and development for the fiscal year 1968, some \$8 billion, be reduced to \$7,587,393,000.

I strongly support this reduction; and in that connection, believe it appropriate at this time to look at just what the vast

From: Leitch, David G.
To: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;Noel J. Francisco/WHO/EOP <Noel J. Francisco/WHO/EOP@EOP>;Noel J. Francisco/WHO/EOP <Powell, Benjamin A.>;Noel J. Francisco/WHO/EOP <Ulyot, Theodore W.>
Sent: 6/4/2003 5:48:59 PM
Subject: Good news on Chertoff

HATCH, LEAHY ISSUE JOINT STATEMENT ON JUDICIAL WATCH ALLEGATIONS AGAINST MICHAEL CHERTOFF Washington – Chairman Orrin G. Hatch (R-Utah) and Ranking Democratic Member Patrick Leahy (D-Vermont) today issued the following joint statement:

“The Committee has completed its bi-partisan investigation into allegations raised by the interest group Judicial Watch concerning Michael Chertoff, a nominee for the 3rd Circuit Court of Appeals recently reported favorably by the Committee to the full Senate. Consistent with Committee procedure, investigative staff of the Majority and Minority met with representatives of Judicial Watch last week and allowed them to present all relevant evidence relating to Mr. Chertoff. Subsequently, the investigative staff interviewed Mr. Chertoff regarding those allegations. Chairman Hatch and Ranking Democratic Member Leahy have determined that there is no credible evidence linking Mr. Chertoff with any of the wrongdoing alleged by Judicial Watch.”

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Noel J. Francisco@/EOP/FIRST ADMINISTRATIVE GROUP/RECIPIENTS/Ceffce1d-3aa04cd4-852569da-68eb00@EX@Exchange [UNKNOWN] <RECIPIENTS>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/4/2003 1:50:02 PM
Subject: : Good news on Chertoff

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 4-JUN-2003 17:50:02.00

SUBJECT:: Good news on Chertoff

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: RECIPIENTS (Noel J. Francisco@/O=EOP/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=Ceffce1d-3aa04cd4-852569da-68eb00@EX@Exchange [UNKNOWN])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

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From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Theodore W. Ullyot/WHO/EOP@EOP [WHO] <Theodore W. Ullyot>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2003 3:42:04 AM
Subject: : MATERIALS RECEIVED
Attachments: P_LM8YG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2003 07:42:04.00
SUBJECT:: MATERIALS RECEIVED
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

----- Forwarded by H. Christopher Bartolomucci/WHO/EOP on
06/05/2003 07:41 AM -----

"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
06/04/2003 06:04:10 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: MATERIALS RECEIVED

MATERIALS RECEIVED: Wednesday, June 04, 2003

Questionnaires Received

Mark R. Filip, of Illinois, to be United States District Judge for the Northern District of Illinois

Blue Slips Returned For:

John A. Houston, of California, to be United States District Judge for the Southern District of California

* Senator Feinstein

REV_00237120

Roger T. Benitez, of California, to be United States District Judge for the Southern District of California

* Senator Feinstein

Richard J. O'Connell of Arkansas, to be United States Marshal for the Western District of Arkansas

* Senator Lincoln

Richard J. O'Connell of Arkansas, to be United States Marshal for the Western District of Arkansas

* Senator Pryor

Swen Prior

Nominations Clerk

Senate Judiciary Committee

(202) 224-5225

CONFIDENTIALITY NOTE: The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees. If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited. If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy. Thank you.

- att1.htm

Message Sent

To:
"Hardman, Isaac (Judiciary)" <Isaac_Hardman@Judiciary.senate.gov>
Christopher <nathan.sales@usdoj.gov>
"Wikner, Brian (Judiciary)" <Brian_Wikner@Judiciary.senate.gov>
"Arfa, Rachel (Judiciary)" <Rachel_Arfa@Judiciary.senate.gov>
"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov>
"Carroll, Kurt (Judiciary)" <Kurt_Carroll@Judiciary.senate.gov>
"Cohen, Bruce (Judiciary)" <Bruce_Cohen@Judiciary.senate.gov>
"Comisac, RenaJohnson (Judiciary)"
<Rena_Johnson_Comisac@Judiciary.senate.gov>
"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov>
"Codevilla, David (Judiciary)" <David_Codevilla@Judiciary.senate.gov>
"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov>
"DeOreo, Mary (Judiciary)" <Mary_DeOreo@Judiciary.senate.gov>
"Klepper, Leesa (Judiciary)" <Leesa_Klepper@Judiciary.senate.gov>
"Graves, Lisa (Judiciary)" <Lisa_Graves@Judiciary.senate.gov>
"Greenfeld, Helaine (Judiciary)" <Helaine_Greenfeld@Judiciary.senate.gov>

REV_00237121

"Haywood, Amy (Judiciary)" <Amy_Haywood@Judiciary.senate.gov>
"Lucius, Kristine (Judiciary)" <Kristine_Lucius@Judiciary.senate.gov>
"Lundell, Jason (Judiciary)" <Jason_Lundell@Judiciary.senate.gov>
nancy scott-finan <nancy.scottfinan@usdoj.gov>
"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
"Snell, BethAnn (Judiciary)" <BethAnn_Snell@Judiciary.senate.gov>
"Stahl, Katie (Judiciary)" <Katie_Stahl@Judiciary.senate.gov>
"Tapia, Margarita (Judiciary)" <Margarita_Tapia@Judiciary.senate.gov>
"Toomajian, Phil (Judiciary)" <Phil_Toomajian@Judiciary.senate.gov>
H. Christopher Bartolomucci/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_LM8YG003_WHO.TXT_1>

MATERIAL S RECEIVED: Wednesday, June 04, 2003

Question naires Received

Mark R. Filip, of Illinois, to be United States District Judge for the Northern District of Illinois

Blue Slips Returned For:

John A. Houston, of California, to be United States District Judge
for the Southern District of California

- Senator Feinstein

Roger T. Benitez, of California, to be United States District Judge for the Southern District of
California

- Senator Feinstein

Richard J. O'Connell of Arkansas, to be United States Marshal for the Western District of Arkansas<
font
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- Senator Lincoln

Richard J. O'Connell of Arkansas, to be United States Marshal for the Western District of Arkansas<
font
color=black>

- Senator Pryor

Swen Prior
Nominations Clerk
Senate Judiciary Committee
(202) 224-5225

CONFIDENTIALITY NOTE: The information contained in this e-mail is legally privileged and confidential information intended only for the use of the individuals or entities named as addressees. If you, the reader of this message, are not the intended recipient, you are hereby notified that any dissemination, distribution, publication, or copying of this message is strictly prohibited. If you have received this message in error, please forgive the inconvenience, immediately notify the sender, and delete the original message without keeping a copy. Thank you.

REV_00237123

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>
Sent: 6/5/2003 4:57:11 AM
Subject: : Re: FW: FWD Complete Attachment for LRM JAB 110

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CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2003 08:57:11.00
SUBJECT:: Re: FW: FWD Complete Attachment for LRM JAB 110
TO: Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

who is OMB contact on flag burning amendment

From: CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP]
To: Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor.L.Gillmor>;Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Mike.Smith@hq.doe.gov@SMTP@Exchange>;Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kelly.Lugar@hq.doe.gov@SMTP@Exchange>;Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Joe.McMonigle@hq.doe.gov@SMTP@Exchange>;Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Majida.Mourad@hq.doe.gov@SMTP@Exchange>;nina.rees@ed.gov@SMTP@Exchange [UNKNOWN] <nina.rees@ed.gov@SMTP@Exchange>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Kenneth L. Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>;William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>;Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>;Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Dinah Bear/CEQ/EOP@EOP [CEQ] <Dinah Bear>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>;Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Rick.Dearborn@hq.doe.gov@SMTP@Exchange>;Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Jodi.Hanson@hq.doe.gov@SMTP@Exchange>;Kyle.McSarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kyle.McSarrow@hq.doe.gov@SMTP@Exchange>;andrew@thelundquistgroup.com@SMTP@Exchange [OMB] <andrew@thelundquistgroup.com@SMTP@Exchange>;Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>;Matthew R. Rees/NSC/EOP@EOP [NSC] <Matthew R. Rees>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>;Mark A. Weatherly/OMB/EOP@EOP [OMB] <Mark A. Weatherly>;Alan Hecht/CEQ/EOP@EOP [CEQ] <Alan Hecht>;Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>;Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>;David R. Anderson/CEQ/EOP@EOP [CEQ] <David R. Anderson>;Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>;Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;All OVP Users@EOP [UNKNOWN] <All OVP Users@EOP>
CC: Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>
Sent: 6/5/2003 5:16:31 AM
Subject: : REMINDER: Karen Knutson's Farewell Party is Today at 4pm
Attachments: P_0QCYG003_OPD.TXT_1.doc

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CREATOR:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME: 5-JUN-2003 09:16:31.00
SUBJECT:: REMINDER: Karen Knutson's Farewell Party is Today at 4pm
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Mike.Smith@hq.doe.gov@SMTP@Exchange (Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kelly.Lugar@hq.doe.gov@SMTP@Exchange (Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN])
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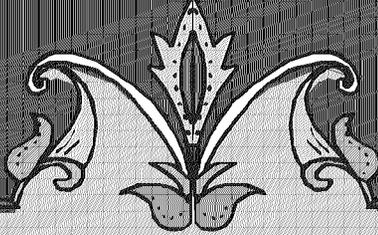
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TO:Rick.Dearborn@hq.doe.gov@SMTP@Exchange (Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN])
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TO:andrew@thelundquistgroup.com@SMTP@Exchange (andrew@thelundquistgroup.com@SMTP@Exchange [OMB])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
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READ:UNKNOWN
TO:All OVP Users@EOP (All OVP Users@EOP [UNKNOWN])
READ:UNKNOWN
CC:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

We look forward;to seeing you;at 4 pm in the Vice President's Ceremonial
Office (EEOB 286).

;

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0QCYG003_OPD.TXT_1>



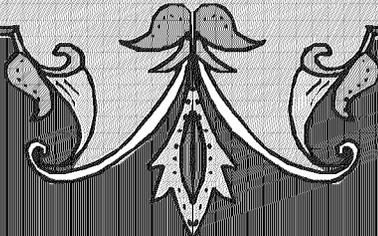
A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)

Date: Thursday, June 5, 2003

Time: 4:00 PM – 5:30 PM



From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/5/2003 7:59:11 AM
Subject: : Today's SJC markup

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 5-JUN-2003 11:59:11.00

SUBJECT: : Today's SJC markup

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

End Original ARMS Header

Nominations reported:

Administration Noms

R. Hewitt Pate, to be an Assistant Attorney General (Antitrust), by voice vote; and

David Rivkin, to be a member of the Foreign Claims Settlement Commission, by a vote of 10-8, with Senator Biden passing; and

Harlon E. Costner, to be U.S. Marshal for the Middle District of North Carolina.

Judicial Noms

Richard C. Wesley, to be a United States Circuit Judge for the Second Circuit, by a 19-0 vote;

J. Ronnie Greer, to be a United States District Judge for the Eastern District of Tennessee, by a vote of 19-0;

Mark R. Kravitz, to be a United States District Judge for the District of Connecticut, by a voice vote; and

John A. Woodcock, to be a United States District Judge for the District of Maine, by a voice vote.

Senator Hatch personally held over the nomination of Thomas M. Hardiman, to be a United States District Judge for the Western District of Pennsylvania.

REV_00237131

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Brosnahan, Jennifer R.>; <Newstead, Jennifer G.>; <Bartolomucci, H. Christopher>; <Sampson, Kyle>; <Brown, Reginald J.>; <Powell, Benjamin A.>; <Ullyot, Theodore W.>
Sent: 6/5/2003 8:44:42 AM
Subject: Senator Cornyn/Wash. Times: A broken tradition

The Washington Times

A broken tradition

By John Cornyn

THE WASHINGTON TIMES

Published June 5, 2003

The current struggle to establish democracy in Iraq reminds us that no society can be either just or prosperous without the rule of law. New and old nations alike need independent and impartial courts as the foundation of government, and civilized nations must vigilantly maintain, not undermine, these institutions.

Today, the Senate Rules Committee will discuss whether the current filibusters of judicial nominations pose a threat to our own independent judiciary. I welcome today's discussion because I believe we need reform: Indeed, senators from both sides of the aisle agree that our process for confirming judges is broken and needs to be fixed.

The American people need the courts to be fully staffed. Our judicial selection process should focus simply on identifying and confirming well-qualified jurists committed to enforcing the law, not their will or agenda.

For too long, this process has been caught in a downward spiral of politics and delay. During the administrations of former Presidents Bush and Clinton, for example, too many appeals court nominees were never voted on at all.

The problem is even worse today.

For months, a bipartisan Senate majority has tried to hold up-or-down votes on a number of judicial nominees. A partisan minority of senators, however, is blocking the Senate from holding those votes. As one leader of the current filibusters has said, "there is not a number [of hours] in the universe that would be sufficient" for debate on certain nominees.

The result: vacant judgeships and empty courtrooms, compelling the U.S. Judicial Conference to declare "judicial emergencies" across the country. People seeking redress for their injuries wait years for their cases to be tried and appealed, while judicial nominees languish in the Senate waiting for an up-or-down vote. The broken confirmation process translates into denial of access to justice in our nation's most important courts.

The use of filibusters not to ensure adequate debate, but to block a Senate majority from confirming judges is unprecedented and wrong. This indefinite, needless and wasteful delay distracts the Senate from other important business. And it leaves would-be judges in limbo, along with thousands of litigants. President Bush has rightly called the situation "a disgrace."

It doesn't have to be this way. As all 10 freshman senators detailed in a bipartisan letter to Senate leadership on April 30, it is time for a fresh start. The ill will of the past should not dictate the terms and direction of the future. And 12 senators have proposed a bipartisan reform to guarantee full debate on nominees, while ensuring the ability of a Senate majority to hold up-or-down votes. This proposal deserves wide support.

More than 175 newspaper editorials representing the home states of 70 senators condemn the current filibusters of judicial nominees. Law professor and former Clinton adviser Michael Gerhardt has condemned supermajority requirements for confirming nominees, saying they "would be more likely to frustrate rather than facilitate the making of meritorious appointments." And last month, legal scholars told the Senate Constitution Subcommittee that filibusters of judicial nominations are uniquely offensive to our nation's constitutional design.

Proposals like the one being debated today in the Rules Committee have been endorsed by congressional experts from

REV_00237134

think tanks as diverse as the American Enterprise Institute, Brookings and Cato. An even more aggressive reform proposal in 1995 was endorsed by 19 Senate Democrats, as well as the New York Times, which editorialized that, "now is the perfect moment ... to get rid of an archaic rule that frustrates democracy and serves no useful purpose."

For nearly its first two decades, a Senate majority had the explicit power under the rules to call for votes. And since that time, senators have consistently obeyed an unwritten rule not to block the confirmation of judicial nominees by filibuster.

As renowned former Senate parliamentarian Floyd Riddick once said, senators are expected to "restrain themselves" and "not abuse the privilege" of debate. Out of respect for an independent judiciary, senators have historically and consistently exercised such restraint.

But this Senate tradition has now been broken. The Rules Committee and the Senate must respond. Reforming filibusters in the judicial nominations context would restore both majority rule and Senate tradition.

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For far too long, our judicial selection process has been tainted by coarse politics and hampered by wasteful delay. The Senate needs a fresh start.

Sen. John Cornyn is chairman of the Senate Subcommittee on the Constitution. He served previously on the Supreme Court of Texas and as the state's attorney general.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/5/2003 4:47:11 AM
Subject: : Senator Cornyn/Wash. Times: A broken tradition

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 5-JUN-2003 08:47:11.00

SUBJECT:: Senator Cornyn/Wash. Times: A broken tradition

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

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TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

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TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

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TO: Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])

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READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

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The Washington Times

A broken tradition

By John Cornyn

THE WASHINGTON TIMES

Published June 5, 2003

The current struggle to establish democracy in Iraq reminds us that no society can be either just or prosperous without the rule of law. New and old nations alike need independent and impartial courts as the foundation of government, and civilized nations must vigilantly maintain, not undermine, these institutions.

Today, the Senate Rules Committee will discuss whether the current filibusters of judicial nominations pose a threat to our own independent judiciary. I welcome today's discussion because I believe we need reform: Indeed, senators from both sides of the aisle agree that our process for confirming judges is broken and needs to be fixed.

The American people need the courts to be fully staffed. Our judicial selection process should focus simply on identifying and confirming well-qualified jurists committed to enforcing the law, not their will or agenda.

For too long, this process has been caught in a downward spiral of politics and delay. During the administrations of former Presidents Bush and Clinton, for example, too many appeals court nominees were never voted on at all.

The problem is even worse today.

For months, a bipartisan Senate majority has tried to hold up-or-down

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votes on a number of judicial nominees. A partisan minority of senators, however, is blocking the Senate from holding those votes. As one leader of the current filibusters has said, "there is not a number [of hours] in the universe that would be sufficient" for debate on certain nominees. The result: vacant judgeships and empty courtrooms, compelling the U.S. Judicial Conference to declare "judicial emergencies" across the country. People seeking redress for their injuries wait years for their cases to be tried and appealed, while judicial nominees languish in the Senate waiting for an up-or-down vote. The broken confirmation process translates into denial of access to justice in our nation's most important courts.

The use of filibusters ? not to ensure adequate debate, but to block a Senate majority from confirming judges ? is unprecedented and wrong. This indefinite, needless and wasteful delay distracts the Senate from other important business. And it leaves would-be judges in limbo, along with thousands of litigants. President Bush has rightly called the situation "a disgrace."

It doesn't have to be this way. As all 10 freshman senators detailed in a bipartisan letter to Senate leadership on April 30, it is time for a fresh start. The ill will of the past should not dictate the terms and direction of the future. And 12 senators have proposed a bipartisan reform to guarantee full debate on nominees, while ensuring the ability of a Senate majority to hold up-or-down votes. This proposal deserves wide support.

More than 175 newspaper editorials representing the home states of 70 senators condemn the current filibusters of judicial nominees. Law professor and former Clinton adviser Michael Gerhardt has condemned supermajority requirements for confirming nominees, saying they "would be more likely to frustrate rather than facilitate the making of meritorious appointments." And last month, legal scholars told the Senate Constitution Subcommittee that filibusters of judicial nominations are uniquely offensive to our nation's constitutional design.

Proposals like the one being debated today in the Rules Committee have been endorsed by congressional experts from think tanks as diverse as the American Enterprise Institute, Brookings and Cato. An even more aggressive reform proposal in 1995 was endorsed by 19 Senate Democrats, as well as the New York Times, which editorialized that, "now is the perfect moment ... to get rid of an archaic rule that frustrates democracy and serves no useful purpose."

For nearly its first two decades, a Senate majority had the explicit power under the rules to call for votes. And since that time, senators have consistently obeyed an unwritten rule not to block the confirmation of judicial nominees by filibuster.

As renowned former Senate parliamentarian Floyd Riddick once said, senators are expected to "restrain themselves" and "not abuse the privilege" of debate. Out of respect for an independent judiciary, senators have historically and consistently exercised such restraint. But this Senate tradition has now been broken. The Rules Committee and the Senate must respond. Reforming filibusters in the judicial nominations context would restore both majority rule and Senate tradition.

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From: CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP]
To: Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor.L.Gillmor>;Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Mike.Smith@hq.doe.gov@SMTP@Exchange>;Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kelly.Lugar@hq.doe.gov@SMTP@Exchange>;Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Joe.McMonigle@hq.doe.gov@SMTP@Exchange>;Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Majida.Mourad@hq.doe.gov@SMTP@Exchange>;nina.rees@ed.gov@SMTP@Exchange [UNKNOWN] <nina.rees@ed.gov@SMTP@Exchange>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Kenneth L. Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>;William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>;Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>;Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Dinah Bear/CEQ/EOP@EOP [CEQ] <Dinah Bear>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>;Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Rick.Dearborn@hq.doe.gov@SMTP@Exchange>;Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Jodi.Hanson@hq.doe.gov@SMTP@Exchange>;Kyle.McSarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kyle.McSarrow@hq.doe.gov@SMTP@Exchange>;andrew@thelundquistgroup.com@SMTP@Exchange [OMB] <andrew@thelundquistgroup.com@SMTP@Exchange>;Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>;Matthew R. Rees/NSC/EOP@EOP [NSC] <Matthew R. Rees>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>;Mark A. Weatherly/OMB/EOP@EOP [OMB] <Mark A. Weatherly>;Alan Hecht/CEQ/EOP@EOP [CEQ] <Alan Hecht>;Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>;Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>;David R. Anderson/CEQ/EOP@EOP [CEQ] <David R. Anderson>;Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>;Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;All OVP Users@EOP [UNKNOWN] <All OVP Users@EOP>
CC: Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>
Sent: 6/5/2003 5:16:02 AM
Subject: : REMINDER: Karen Knutson's Farewell Party is Today at 4pm
Attachments: P_1OCYG003_OPD.TXT_1.doc

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CREATION DATE/TIME: 5-JUN-2003 09:16:02.00
SUBJECT:: REMINDER: Karen Knutson's Farewell Party is Today at 4pm
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
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TO:andrew@thelundquistgroup.com@SMTP@Exchange (andrew@thelundquistgroup.com@SMTP@Exchange [OMB])
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CC:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
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We look forward;to seeing you;at 4 pm in the Vice President's Ceremonial
Office (EEOB 286).

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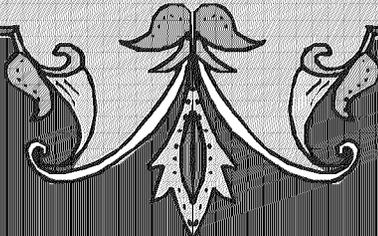
A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)

Date: Thursday, June 5, 2003

Time: 4:00 PM – 5:30 PM



From: CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP]
To: Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor.L.Gillmor>;Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Mike.Smith@hq.doe.gov@SMTP@Exchange>;Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kelly.Lugar@hq.doe.gov@SMTP@Exchange>;Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Joe.McMonigle@hq.doe.gov@SMTP@Exchange>;Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Majida.Mourad@hq.doe.gov@SMTP@Exchange>;nina.rees@ed.gov@SMTP@Exchange [UNKNOWN] <nina.rees@ed.gov@SMTP@Exchange>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Kenneth L. Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>;William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>;Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>;Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Dinah Bear/CEQ/EOP@EOP [CEQ] <Dinah Bear>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>;Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Rick.Dearborn@hq.doe.gov@SMTP@Exchange>;Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Jodi.Hanson@hq.doe.gov@SMTP@Exchange>;Kyle.McSarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kyle.McSarrow@hq.doe.gov@SMTP@Exchange>;andrew@thelundquistgroup.com@SMTP@Exchange [OMB] <andrew@thelundquistgroup.com@SMTP@Exchange>;Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>;Matthew R. Rees/NSC/EOP@EOP [NSC] <Matthew R. Rees>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>;Mark A. Weatherly/OMB/EOP@EOP [OMB] <Mark A. Weatherly>;Alan Hecht/CEQ/EOP@EOP [CEQ] <Alan Hecht>;Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>;Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>;David R. Anderson/CEQ/EOP@EOP [CEQ] <David R. Anderson>;Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>;Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;All OVP Users@EOP [UNKNOWN] <All OVP Users@EOP>
CC: Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>
Sent: 6/5/2003 5:16:33 AM
Subject: : REMINDER: Karen Knutson's Farewell Party is Today at 4pm
Attachments: P_2QCYG003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME: 5-JUN-2003 09:16:33.00
SUBJECT:: REMINDER: Karen Knutson's Farewell Party is Today at 4pm
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Mike.Smith@hq.doe.gov@SMTP@Exchange (Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kelly.Lugar@hq.doe.gov@SMTP@Exchange (Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Joe.McMonigle@hq.doe.gov@SMTP@Exchange (Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Majida.Mourad@hq.doe.gov@SMTP@Exchange (Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:nina.rees@ed.gov@SMTP@Exchange (nina.rees@ed.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB])
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TO:Kenneth L. Peel (CN=Kenneth L. Peel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Horst Greczmiel (CN=Horst Greczmiel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Dinah Bear (CN=Dinah Bear/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN

TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Rick.Dearborn@hq.doe.gov@SMTP@Exchange (Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Jodi.Hanson@hq.doe.gov@SMTP@Exchange (Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kyle.McSllarrow@hq.doe.gov@SMTP@Exchange (Kyle.McSllarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:andrew@thelundquistgroup.com@SMTP@Exchange (andrew@thelundquistgroup.com@SMTP@Exchange [OMB])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Matthew R. Rees (CN=Matthew R. Rees/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth A. Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:David R. Anderson (CN=David R. Anderson/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Edward A. Boling (CN=Edward A. Boling/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Claire Buchan (CN=Claire Buchan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:All OVP Users@EOP (All OVP Users@EOP [UNKNOWN])
READ:UNKNOWN
CC:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

We look forward;to seeing you;at 4 pm in the Vice President's Ceremonial
Office (EEOB 286).

;

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2QCYG003_WHO.TXT_1>



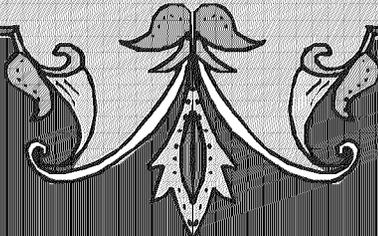
A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)

Date: Thursday, June 5, 2003

Time: 4:00 PM – 5:30 PM



From: CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP]
To: Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor.L.Gillmor>;Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Mike.Smith@hq.doe.gov@SMTP@Exchange>;Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kelly.Lugar@hq.doe.gov@SMTP@Exchange>;Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Joe.McMonigle@hq.doe.gov@SMTP@Exchange>;Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Majida.Mourad@hq.doe.gov@SMTP@Exchange>;nina.rees@ed.gov@SMTP@Exchange [UNKNOWN] <nina.rees@ed.gov@SMTP@Exchange>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Kenneth L. Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>;William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>;Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>;Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Dinah Bear/CEQ/EOP@EOP [CEQ] <Dinah Bear>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>;Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Rick.Dearborn@hq.doe.gov@SMTP@Exchange>;Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Jodi.Hanson@hq.doe.gov@SMTP@Exchange>;Kyle.McSarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kyle.McSarrow@hq.doe.gov@SMTP@Exchange>;andrew@thelundquistgroup.com@SMTP@Exchange [OMB] <andrew@thelundquistgroup.com@SMTP@Exchange>;Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>;Matthew R. Rees/NSC/EOP@EOP [NSC] <Matthew R. Rees>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>;Mark A. Weatherly/OMB/EOP@EOP [OMB] <Mark A. Weatherly>;Alan Hecht/CEQ/EOP@EOP [CEQ] <Alan Hecht>;Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>;Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>;David R. Anderson/CEQ/EOP@EOP [CEQ] <David R. Anderson>;Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>;Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;All OVP Users@EOP [UNKNOWN] <All OVP Users@EOP>
CC: Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>
Sent: 6/5/2003 5:16:31 AM
Subject: : REMINDER: Karen Knutson's Farewell Party is Today at 4pm
Attachments: P_0QCYG003_CEA.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME: 5-JUN-2003 09:16:31.00
SUBJECT:: REMINDER: Karen Knutson's Farewell Party is Today at 4pm
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Mike.Smith@hq.doe.gov@SMTP@Exchange (Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kelly.Lugar@hq.doe.gov@SMTP@Exchange (Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN])
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TO:Joe.McMonigle@hq.doe.gov@SMTP@Exchange (Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Majida.Mourad@hq.doe.gov@SMTP@Exchange (Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:nina.rees@ed.gov@SMTP@Exchange (nina.rees@ed.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])
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TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
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TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
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TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
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TO:William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC])
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TO:Horst Greczmiel (CN=Horst Greczmiel/OU=CEQ/O=EOP@EOP [CEQ])
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TO:Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Dinah Bear (CN=Dinah Bear/OU=CEQ/O=EOP@EOP [CEQ])
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TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN

TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Rick.Dearborn@hq.doe.gov@SMTP@Exchange (Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Jodi.Hanson@hq.doe.gov@SMTP@Exchange (Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kyle.McSllarrow@hq.doe.gov@SMTP@Exchange (Kyle.McSllarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:andrew@thelundquistgroup.com@SMTP@Exchange (andrew@thelundquistgroup.com@SMTP@Exchange [OMB])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Matthew R. Rees (CN=Matthew R. Rees/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth A. Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ])
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TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Claire Buchan (CN=Claire Buchan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:All OVP Users@EOP (All OVP Users@EOP [UNKNOWN])
READ:UNKNOWN
CC:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

We look forward;to seeing you;at 4 pm in the Vice President's Ceremonial
Office (EEOB 286).

;

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_0QCYG003_CEA.TXT_1>



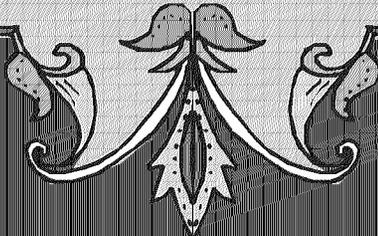
A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)

Date: Thursday, June 5, 2003

Time: 4:00 PM – 5:30 PM



From: CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP]
To: Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor.L.Gillmor>;Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Mike.Smith@hq.doe.gov@SMTP@Exchange>;Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kelly.Lugar@hq.doe.gov@SMTP@Exchange>;Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Joe.McMonigle@hq.doe.gov@SMTP@Exchange>;Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Majida.Mourad@hq.doe.gov@SMTP@Exchange>;nina.rees@ed.gov@SMTP@Exchange [UNKNOWN] <nina.rees@ed.gov@SMTP@Exchange>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Kenneth L. Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>;William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>;Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>;Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Dinah Bear/CEQ/EOP@EOP [CEQ] <Dinah Bear>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>;Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Rick.Dearborn@hq.doe.gov@SMTP@Exchange>;Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Jodi.Hanson@hq.doe.gov@SMTP@Exchange>;Kyle.McSarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kyle.McSarrow@hq.doe.gov@SMTP@Exchange>;andrew@thelundquistgroup.com@SMTP@Exchange [OMB] <andrew@thelundquistgroup.com@SMTP@Exchange>;Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>;Matthew R. Rees/NSC/EOP@EOP [NSC] <Matthew R. Rees>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>;Mark A. Weatherly/OMB/EOP@EOP [OMB] <Mark A. Weatherly>;Alan Hecht/CEQ/EOP@EOP [CEQ] <Alan Hecht>;Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>;Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>;David R. Anderson/CEQ/EOP@EOP [CEQ] <David R. Anderson>;Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>;Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;All OVP Users@EOP [UNKNOWN] <All OVP Users@EOP>
CC: Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>
Sent: 6/5/2003 5:16:03 AM
Subject: : REMINDER: Karen Knutson's Farewell Party is Today at 4pm
Attachments: P_4OCYG003_WHO.TXT_1.doc

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CREATOR:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME: 5-JUN-2003 09:16:03.00
SUBJECT:: REMINDER: Karen Knutson's Farewell Party is Today at 4pm
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Mike.Smith@hq.doe.gov@SMTP@Exchange (Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kelly.Lugar@hq.doe.gov@SMTP@Exchange (Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Joe.McMonigle@hq.doe.gov@SMTP@Exchange (Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Majida.Mourad@hq.doe.gov@SMTP@Exchange (Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:nina.rees@ed.gov@SMTP@Exchange (nina.rees@ed.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
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READ:UNKNOWN
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READ:UNKNOWN
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READ:UNKNOWN
TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
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READ:UNKNOWN
TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
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TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Rick.Dearborn@hq.doe.gov@SMTP@Exchange (Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Jodi.Hanson@hq.doe.gov@SMTP@Exchange (Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kyle.McSllarrow@hq.doe.gov@SMTP@Exchange (Kyle.McSllarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:andrew@thelundquistgroup.com@SMTP@Exchange (andrew@thelundquistgroup.com@SMTP@Exchange [OMB])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Matthew R. Rees (CN=Matthew R. Rees/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
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TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ])
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TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])
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TO:Edward A. Boling (CN=Edward A. Boling/OU=CEQ/O=EOP@EOP [CEQ])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
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TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange [WHO])
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TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
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TO:Claire Buchan (CN=Claire Buchan/OU=WHO/O=EOP@Exchange [UNKNOWN])
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TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:All OVP Users@EOP (All OVP Users@EOP [UNKNOWN])
READ:UNKNOWN
CC:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

We look forward;to seeing you;at 4 pm in the Vice President's Ceremonial
Office (EEOB 286).

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ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_4OCYG003_WHO.TXT_1>



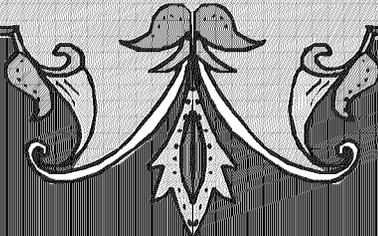
A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)

Date: Thursday, June 5, 2003

Time: 4:00 PM – 5:30 PM



From: CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP]
To: Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor.L.Gillmor>;Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Mike.Smith@hq.doe.gov@SMTP@Exchange>;Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kelly.Lugar@hq.doe.gov@SMTP@Exchange>;Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Joe.McMonigle@hq.doe.gov@SMTP@Exchange>;Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Majida.Mourad@hq.doe.gov@SMTP@Exchange>;nina.rees@ed.gov@SMTP@Exchange [UNKNOWN] <nina.rees@ed.gov@SMTP@Exchange>;Randall S. Kroszner/CEA/EOP@EOP [CEA] <Randall S. Kroszner>;Ronald I. Christie/OPD/EOP@EOP [OPD] <Ronald I. Christie>;Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;Tucker A. Eskew/WHO/EOP@EOP [WHO] <Tucker A. Eskew>;Edward McNally/WHO/EOP@EOP [WHO] <Edward McNally>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>;Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>;Gary R. Edson/NSC/EOP@EOP [NSC] <Gary R. Edson>;Philip J. Perry/OMB/EOP@EOP [OMB] <Philip J. Perry>;Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>;Kenneth L. Peel/CEQ/EOP@EOP [CEQ] <Kenneth L. Peel>;William H. Leary/NSC/EOP@EOP [NSC] <William H. Leary>;Horst Greczmiel/CEQ/EOP@EOP [CEQ] <Horst Greczmiel>;Debbie S. Fiddelke/CEQ/EOP@EOP [CEQ] <Debbie S. Fiddelke>;Dinah Bear/CEQ/EOP@EOP [CEQ] <Dinah Bear>;James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>;Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>;David M. Thomas/WHO/EOP@EOP [WHO] <David M. Thomas>;Christine M. Burgeson/WHO/EOP@Exchange [WHO] <Christine M. Burgeson>;Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>;Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>;Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>;Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>;Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>;Lauren J. Vestewig/OPD/EOP@Exchange [OPD] <Lauren J. Vestewig>;Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Rick.Dearborn@hq.doe.gov@SMTP@Exchange>;Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Jodi.Hanson@hq.doe.gov@SMTP@Exchange>;Kyle.McSarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN] <Kyle.McSarrow@hq.doe.gov@SMTP@Exchange>;andrew@thelundquistgroup.com@SMTP@Exchange [OMB] <andrew@thelundquistgroup.com@SMTP@Exchange>;Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>;John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>;Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>;Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>;Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>;Matthew R. Rees/NSC/EOP@EOP [NSC] <Matthew R. Rees>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Brian Reardon/OPD/EOP@EOP [OPD] <Brian Reardon>;William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>;Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>;Michael Hickey/OMB/EOP@EOP [OMB] <Michael Hickey>;Mark A. Weatherly/OMB/EOP@EOP [OMB] <Mark A. Weatherly>;Alan Hecht/CEQ/EOP@EOP [CEQ] <Alan Hecht>;Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>;Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>;David R. Anderson/CEQ/EOP@EOP [CEQ] <David R. Anderson>;Edward A. Boling/CEQ/EOP@EOP [CEQ] <Edward A. Boling>;Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>;Stephen Friedman/OPD/EOP@Exchange [OPD] <Stephen Friedman>;Kenneth A. Lisaius/WHO/EOP@EOP [WHO] <Kenneth A. Lisaius>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>;Ken Mehlman/WHO/EOP@EOP [WHO] <Ken Mehlman>;Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>;Robert C. McNally/OPD/EOP@EOP [OPD] <Robert C. McNally>;Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>;All OVP Users@EOP [UNKNOWN] <All OVP Users@EOP>
CC: Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>
Sent: 6/5/2003 5:16:03 AM
Subject: : REMINDER: Karen Knutson's Farewell Party is Today at 4pm
Attachments: 03533_p_4ocyg003_who.txt_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Marie K. Fishpaw (CN=Marie K. Fishpaw/OU=OVP/O=EOP@Exchange [OVP])
CREATION DATE/TIME: 5-JUN-2003 09:16:03.00
SUBJECT:: REMINDER: Karen Knutson's Farewell Party is Today at 4pm
TO:Eleanor L. Gillmor (CN=Eleanor L. Gillmor/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Mike.Smith@hq.doe.gov@SMTP@Exchange (Mike.Smith@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kelly.Lugar@hq.doe.gov@SMTP@Exchange (Kelly.Lugar@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Joe.McMonigle@hq.doe.gov@SMTP@Exchange (Joe.McMonigle@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Majida.Mourad@hq.doe.gov@SMTP@Exchange (Majida.Mourad@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:nina.rees@ed.gov@SMTP@Exchange (nina.rees@ed.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Randall S. Kroszner (CN=Randall S. Kroszner/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN
TO:Ronald I. Christie (CN=Ronald I. Christie/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tucker A. Eskew (CN=Tucker A. Eskew/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Philo D. Hall (CN=Philo D. Hall/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Gary R. Edson (CN=Gary R. Edson/OU=NSC/O=EOP@EOP [NSC])
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TO:Philip J. Perry (CN=Philip J. Perry/OU=OMB/O=EOP@EOP [OMB])
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TO:Marcus Peacock (CN=Marcus Peacock/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Kenneth L. Peel (CN=Kenneth L. Peel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:William H. Leary (CN=William H. Leary/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Horst Greczmiel (CN=Horst Greczmiel/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Debbie S. Fiddelke (CN=Debbie S. Fiddelke/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Dinah Bear (CN=Dinah Bear/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth S. Dougherty (CN=Elizabeth S. Dougherty/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:David M. Thomas (CN=David M. Thomas/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Christine M. Burgeson (CN=Christine M. Burgeson/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Sean B. O'Hollaren (CN=Sean B. O'Hollaren/OU=WHO/O=EOP@Exchange [WHO])
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TO:Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ziad Ojakli (CN=Ziad Ojakli/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN

TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Rick.Dearborn@hq.doe.gov@SMTP@Exchange (Rick.Dearborn@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Jodi.Hanson@hq.doe.gov@SMTP@Exchange (Jodi.Hanson@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Kyle.McSllarrow@hq.doe.gov@SMTP@Exchange (Kyle.McSllarrow@hq.doe.gov@SMTP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:andrew@thelundquistgroup.com@SMTP@Exchange (andrew@thelundquistgroup.com@SMTP@Exchange [OMB])
READ:UNKNOWN
TO:Richard M. Russell (CN=Richard M. Russell/OU=OSTP/O=EOP@EOP [OSTP])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ruben S. Barrales (CN=Ruben S. Barrales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Eric C. Pelletier (CN=Eric C. Pelletier/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Matthew R. Rees (CN=Matthew R. Rees/OU=NSC/O=EOP@EOP [NSC])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brian Reardon (CN=Brian Reardon/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:William D. Badger (CN=William D. Badger/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Jess Sharp (CN=Jess Sharp/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Michael Hickey (CN=Michael Hickey/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Alan Hecht (CN=Alan Hecht/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Bryan J. Hannegan (CN=Bryan J. Hannegan/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Elizabeth A. Stolpe (CN=Elizabeth A. Stolpe/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:David R. Anderson (CN=David R. Anderson/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Edward A. Boling (CN=Edward A. Boling/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Phil Cooney (CN=Phil Cooney/OU=CEQ/O=EOP@EOP [CEQ])
READ:UNKNOWN
TO:Stephen Friedman (CN=Stephen Friedman/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:Kenneth A. Lisaius (CN=Kenneth A. Lisaius/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ginger G. Loper (CN=Ginger G. Loper/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ken Mehlman (CN=Ken Mehlman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Robert C. McNally (CN=Robert C. McNally/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Claire Buchan (CN=Claire Buchan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange [OPD])
READ:UNKNOWN
TO:All OVP Users@EOP (All OVP Users@EOP [UNKNOWN])
READ:UNKNOWN
CC:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

We look forward;to seeing you;at 4 pm in the Vice President's Ceremonial
Office (EEOB 286).

;

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <03533_p_4ocyg003_who.txt_1>



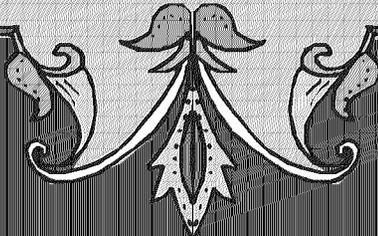
A Proper Send Off

Please join OVP in thanking Karen Knutson for her service
as Deputy Assistant to the Vice President
and wishing her good luck in the days ahead.

Where: EEOB 276 (VP Ceremonial Office)

Date: Thursday, June 5, 2003

Time: 4:00 PM – 5:30 PM



From: Sampson, Kyle
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Kavanaugh, Brett M.>;<Bartolomucci, H. Christopher>;<Ulyot, Theodore W.>;<Newstead, Jennifer G.>;<Brown, Reginald J.>;<Powell, Benjamin A.>;<Brosnahan, Jennifer R.>;<Sampson, Kyle>
Sent: 6/5/2003 11:54:37 AM
Subject: Today's SJC markup

Nominations reported:

Administration Noms

R. Hewitt Pate, to be an Assistant Attorney General (Antitrust), by voice vote; and

David Rivkin, to be a member of the Foreign Claims Settlement Commission, by a vote of 10-8, with Senator Biden passing; and

Harlon E. Costner, to be U.S. Marshal for the Middle District of North Carolina.

Judicial Noms

Richard C. Wesley, to be a United States Circuit Judge for the Second Circuit, by a 19-0 vote;

J. Ronnie Greer, to be a United States District Judge for the Eastern District of Tennessee, by a vote of 19-0;

Mark R. Kravitz, to be a United States District Judge for the District of Connecticut, by a voice vote; and

John A. Woodcock, to be a United States District Judge for the District of Maine, by a voice vote.

Senator Hatch personally held over the nomination of **Thomas M. Hardiman**, to be a United States District Judge for the Western District of Pennsylvania.

From: CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2003 1:51:44 PM
Subject: : phone message

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 5-JUN-2003 17:51:44.00
SUBJECT:: phone message
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

James Meek
w/Daily News
202-467-6670

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/5/2003 10:47:05 AM
Subject: : Rules Committee hearing on channel 66

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2003 14:47:05.00
SUBJECT:: Rules Committee hearing on channel 66
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

From: Parell, Christie
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>;<Oca - Office Of Cabinet Affairs>
Sent: 6/5/2003 5:00:30 PM
Subject: Agency FOIA Requests
Attachments: FOIA 06-05-03.doc

<>

AGENCY FOIA REQUESTS

DOC

Received 05/27/03, from **Holly Hunt, International Animal Exchange**, requesting the permit application and all supplemental information on export for eight California Sea Lions from Sea World to Koh Kong Sea World.

Received 5/27/03, from **Edward Yagi** of the **U.S. Embassy (Cairo, Egypt)** requesting any documents pertaining to a complaint filed by himself with the Commerce Department's Office of Inspector General in August 2002 concerning a claim for reimbursement from the U.S. and Foreign Commercial Service, International Trade Administration.

Received 5/27/03, from **Andrew M. Bragg of McConnaughay, Duff, Coonrod, Pope & Weaver, PA**, requesting documents relating to any investigation by DOC into the Florida Fish and Wildlife Conservation Commission's use of helicopters for routine enforcement patrols.

Received 5/28/03, from **William A. Jordan, Cox & Jordan**, requesting copies of all contracts paid for by the USG for the sale/purchase of General Electric gas turbines made at the Greenville, South Carolina GE Plant.

Received 5/29/03, from **Randy R. Herschaft, Associated Press**, requesting copies of the Records Control Schedules for the Advocacy Center, AS/TD, US&FCS, AS/MAC, CIO, Under Secretary for International Trade, and a copy of the index to all ITA record schedules.

Received 5/29/03, from **Randy R. Herschaft, Associated Press**, requesting copies of US&FCS Tel Aviv's quarterly reports for the last two years.

Received 5/29/03, from **Randy R. Herschaft, Associated Press**, requesting a copy of the incoming FOIA request and the response to FAIA 01-089, pertaining to comity agreements and MOAS of ITA.

EPA

During the week of May 26, 2003, the Agency received 178 FOIA requests. Of the total, 27 were received in Headquarters. Year-to-date totals are 1,592 for Headquarters and 8,487 agency-wide. Significant FOIA requests received this week include:

- 1) **Dave Murray of *The Blade*** (a Toledo paper) has requested copies of all correspondence from Congressman Michael Oxley to the Administrator since 1994;
- 2) **Margaret Allen of *The Dallas Business Journal*** has requested copies of various records issued between January 1, 1998 and the present concerning refineries run by ExxonMobil or its predecessor companies at Baytown, Texas; Beaumont, Texas; and Chalmette, Louisiana;

- 3) **Aaron Colangelo** of the **Natural Resources Defense Council** has requested all Agency records regarding the herbicide, atrazine;
- 4) **Pat Gallagher** of the **Sierra Club** has requested all information regarding safe harbor agreements or other types of agreements relating to the enforcement of the Clean Air Act and/or Comprehensive Environmental Response, Compensation and Liability Act requirements at concentrated animal feeding operations, as described in a June 11, 2002 EPA memorandum and as referenced in an April 7, 2003 letter from the State and Territorial Air Pollution Program Administrators to Administrator Whitman; and
- 5) **Shoren Brown** of the **Southeast Alaska Conservation Council** has requested various information required in the National Pollutant Discharge Elimination System (NPDES) permit Section III, and copies of all correspondence and inspection reports pertaining to non-compliance with NPDES permit requirements and water quality standards concerning the Greens Creek Mine since 1998.

DOJ

Wayne Madsen, of epic.org, has requested all records "relating to any requests for Department of Justice assistance by officials of the State of Texas in locating and/or apprehending absent Democratic members of the Texas House of Representatives."

DOL

Benjamin Jones, Democratic Senatorial Campaign Committee, is seeking: correspondence from January 1, 1997 to the present, concerning Rep. Jim Gibbons (R-NV).

DOT

The National Highway Traffic Safety Administration (NHTSA) has received the following FOIA requests:

The Center for Auto Safety (CAS) requested, under FOIA, records relating to a presentation at the "May 12-14 Government/Industry Meeting listed on the Society of Automotive Engineers' Website for May 13, 2002" regarding "Rollover Injury Causation; Headroom Reduction vs. Head Injury Severity; Maurice E. Hicks." The agency's response is due by June 17.

The **Office of Inspector General (OIG)** received a FOIA request from Bryan Milazzo for records "related to any investigation of the [NHTSA] Office of Vehicle Safety Compliance (OVSC) by the DOT Office of Inspector General including audits as well as investigations of individuals employed in the OVSC." During the OIG's search, they located 58 pages of records that originated in NHTSA. The OIG has requested the agency's recommendation on the disposition of these records.

Bryan Milazzo has requested that four NHTSA employees "be removed and/or prohibited from any and all involvement ... of responding to" a FOIA request he submitted previously to the agency. Mr. Milazzo's letter lists these employees as Richard Merritt and Coleman Sachs of OVSC and Taylor Vinson and Kenneth Weinstein of Office of Chief Counsel.

ONDCP

Dan Chappie of *Roll Call*, requests records related to 2002 Nevada Marijuana Ballot Initiative. May 30.

OPM

Michael Scherer, Washington Editor for Mother Jones Magazine, submitted a FOIA request (5/30) for the application submitted to Harvard University in 2000 to support nomination of OPM's privatization of federal investigations (the US Investigations Services) for the Innovations in American Government Awards Program. The request notes "increased importance" of background investigations following the 9/11 attacks and cites the proposal to transfer the Defense Security Service to OPM.

A request for all applications and related documentation concerning selection of Global Impact as the new Primary Combined Fund Organization (PCFO) for the Combined Federal Campaign (CFC) in the National Capital Region has been received from the **Human & Civil Rights Organizations of America**, an unsuccessful bidder (also requested from Justice).

VA

Request for Photograph of Veteran Buried in a VA National Cemetery. **John Pickett**, son of a veteran who is buried in the Long Island National Cemetery, Farmingdale, New York, has requested a photograph of his father. The National Cemetery Administration (NCA) is unable to accommodate the request; however, NCA will provide the requestor with a possible source to obtain the photograph.

Request for Genealogy Research. **Retired U.S. Army Colonel Robert L. Hull**, a member of the Hull Family Association, has requested data on Hull descendants buried in any VA national cemetery. The National Cemetery Administration is researching the request and will provide documentation once the research has been completed.

From: CN=Christie Parell/OU=WHO/O=EOP [WHO]
To: Jesse O. Villarreal/WHO/EOP [WHO] <Jesse O. Villarreal>;Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>;Sarah Pfeifer/WHO/EOP [WHO] <Sarah Pfeifer>;Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>;Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>;Carmen M. Ingwell/WHO/EOP [WHO] <Carmen M. Ingwell>;Christie Parell/WHO/EOP [WHO] <Christie Parell>;Matthew Koch/WHO/EOP [WHO] <Matthew Koch>;Ali H. Tulbah/WHO/EOP [WHO] <Ali H. Tulbah>;Edward Ingle/WHO/EOP [WHO] <Edward Ingle>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2003 1:04:41 PM
Subject: : Agency FOIA Requests
Attachments: P_7F5ZG003_WHO.TXT_1.doc

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Christie Parell (CN=Christie Parell/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 5-JUN-2003 17:04:41.00

SUBJECT:: Agency FOIA Requests

TO:Jesse O. Villarreal (CN=Jesse O. Villarreal/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Tevi Troy (CN=Tevi Troy/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Sarah Pfeifer (CN=Sarah Pfeifer/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Taylor A. Hughes (CN=Taylor A. Hughes/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Carmen M. Ingwell (CN=Carmen M. Ingwell/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Christie Parell (CN=Christie Parell/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Matthew Koch (CN=Matthew Koch/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Ali H. Tulbah (CN=Ali H. Tulbah/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Edward Ingle (CN=Edward Ingle/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_7F5ZG003_WHO.TXT_1>

AGENCY FOIA REQUESTS

DOC

Received 05/27/03, from **Holly Hunt, International Animal Exchange**, requesting the permit application and all supplemental information on export for eight California Sea Lions from Sea World to Koh Kong Sea World.

Received 5/27/03, from **Edward Yagi** of the **U.S. Embassy (Cairo, Egypt)** requesting any documents pertaining to a complaint filed by himself with the Commerce Department's Office of Inspector General in August 2002 concerning a claim for reimbursement from the U.S. and Foreign Commercial Service, International Trade Administration.

Received 5/27/03, from **Andrew M. Bragg of McConnaughay, Duff, Coonrod, Pope & Weaver, PA**, requesting documents relating to any investigation by DOC into the Florida Fish and Wildlife Conservation Commission's use of helicopters for routine enforcement patrols.

Received 5/28/03, from **William A. Jordan, Cox & Jordan**, requesting copies of all contracts paid for by the USG for the sale/purchase of General Electric gas turbines made at the Greenville, South Carolina GE Plant.

Received 5/29/03, from **Randy R. Herschaft, Associated Press**, requesting copies of the Records Control Schedules for the Advocacy Center, AS/TD, US&FCS, AS/MAC, CIO, Under Secretary for International Trade, and a copy of the index to all ITA record schedules.

Received 5/29/03, from **Randy R. Herschaft, Associated Press**, requesting copies of US&FCS Tel Aviv's quarterly reports for the last two years.

Received 5/29/03, from **Randy R. Herschaft, Associated Press**, requesting a copy of the incoming FOIA request and the response to FAIA 01-089, pertaining to comity agreements and MOAS of ITA.

EPA

During the week of May 26, 2003, the Agency received 178 FOIA requests. Of the total, 27 were received in Headquarters. Year-to-date totals are 1,592 for Headquarters and 8,487 agency-wide. Significant FOIA requests received this week include:

- 1) **Dave Murray of *The Blade*** (a Toledo paper) has requested copies of all correspondence from Congressman Michael Oxley to the Administrator since 1994;
- 2) **Margaret Allen of *The Dallas Business Journal*** has requested copies of various records issued between January 1, 1998 and the present concerning refineries run by ExxonMobil or its predecessor companies at Baytown, Texas; Beaumont, Texas; and Chalmette, Louisiana;

- 3) **Aaron Colangelo** of the **Natural Resources Defense Council** has requested all Agency records regarding the herbicide, atrazine;
- 4) **Pat Gallagher** of the **Sierra Club** has requested all information regarding safe harbor agreements or other types of agreements relating to the enforcement of the Clean Air Act and/or Comprehensive Environmental Response, Compensation and Liability Act requirements at concentrated animal feeding operations, as described in a June 11, 2002 EPA memorandum and as referenced in an April 7, 2003 letter from the State and Territorial Air Pollution Program Administrators to Administrator Whitman; and
- 5) **Shoren Brown** of the **Southeast Alaska Conservation Council** has requested various information required in the National Pollutant Discharge Elimination System (NPDES) permit Section III, and copies of all correspondence and inspection reports pertaining to non-compliance with NPDES permit requirements and water quality standards concerning the Greens Creek Mine since 1998.

DOJ

Wayne Madsen, of epic.org, has requested all records "relating to any requests for Department of Justice assistance by officials of the State of Texas in locating and/or apprehending absent Democratic members of the Texas House of Representatives."

DOL

Benjamin Jones, Democratic Senatorial Campaign Committee, is seeking: correspondence from January 1, 1997 to the present, concerning Rep. Jim Gibbons (R-NV).

DOT

The National Highway Traffic Safety Administration (NHTSA) has received the following FOIA requests:

The Center for Auto Safety (CAS) requested, under FOIA, records relating to a presentation at the "May 12-14 Government/Industry Meeting listed on the Society of Automotive Engineers' Website for May 13, 2002" regarding "Rollover Injury Causation; Headroom Reduction vs. Head Injury Severity; Maurice E. Hicks." The agency's response is due by June 17.

The **Office of Inspector General (OIG)** received a FOIA request from Bryan Milazzo for records "related to any investigation of the [NHTSA] Office of Vehicle Safety Compliance (OVSC) by the DOT Office of Inspector General including audits as well as investigations of individuals employed in the OVSC." During the OIG's search, they located 58 pages of records that originated in NHTSA. The OIG has requested the agency's recommendation on the disposition of these records.

Bryan Milazzo has requested that four NHTSA employees "be removed and/or prohibited from any and all involvement ... of responding to" a FOIA request he submitted previously to the agency. Mr. Milazzo's letter lists these employees as Richard Merritt and Coleman Sachs of OVSC and Taylor Vinson and Kenneth Weinstein of Office of Chief Counsel.

ONDCP

Dan Chappie of *Roll Call*, requests records related to 2002 Nevada Marijuana Ballot Initiative. May 30.

OPM

Michael Scherer, Washington Editor for Mother Jones Magazine, submitted a FOIA request (5/30) for the application submitted to Harvard University in 2000 to support nomination of OPM's privatization of federal investigations (the US Investigations Services) for the Innovations in American Government Awards Program. The request notes "increased importance" of background investigations following the 9/11 attacks and cites the proposal to transfer the Defense Security Service to OPM.

A request for all applications and related documentation concerning selection of Global Impact as the new Primary Combined Fund Organization (PCFO) for the Combined Federal Campaign (CFC) in the National Capital Region has been received from the **Human & Civil Rights Organizations of America**, an unsuccessful bidder (also requested from Justice).

VA

Request for Photograph of Veteran Buried in a VA National Cemetery. **John Pickett**, son of a veteran who is buried in the Long Island National Cemetery, Farmingdale, New York, has requested a photograph of his father. The National Cemetery Administration (NCA) is unable to accommodate the request; however, NCA will provide the requestor with a possible source to obtain the photograph.

Request for Genealogy Research. **Retired U.S. Army Colonel Robert L. Hull**, a member of the Hull Family Association, has requested data on Hull descendants buried in any VA national cemetery. The National Cemetery Administration is researching the request and will provide documentation once the research has been completed.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 6/5/2003 5:20:12 PM
Subject: hearing

anything come out of the judicial confirmation process hearing today?

From: Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>
To: Caramanica, Jessica \(\Judiciary\) <Jessica_Caramanica@Judiciary.senate.gov>; Jamie.E.Brown@usdoj.gov <Jamie.E.Brown@usdoj.gov>; viet.dinh@usdoj.gov <viet.dinh@usdoj.gov>; brian.a.benczkowski@usdoj.gov <brian.a.benczkowski@usdoj.gov>; brian.a.benczkowski@usdoj.gov <Grubbs, Wendy J.>; adam.charnes@usdoj.gov <adam.charnes@usdoj.gov>; adam.charnes@usdoj.gov <Kavanaugh, Brett M.>; adam.charnes@usdoj.gov <Snee, Ashley>; Monica.goodling@usdoj.gov <Monica.goodling@usdoj.gov>; Galyean, James \(\L. Graham\) <James_Galyean@lgraham.senate.gov>; Vogel, Alex \(\Frist\) <Alex_Vogel@frist.senate.gov>; Abegg, John \(\McConnell\) <John_Abegg@mccconnell.senate.gov>; Smith, William \(\Judiciary\) <William_Smith@Judiciary.senate.gov>; Ho, James \(\Judiciary\) <James_Ho@Judiciary.senate.gov>; Duffield, Steven \(\RPC\) <Steven_Duffield@rpc.senate.gov>; Gumerson, Katie \(\RPC\) <Katie_Gumerson@rpc.senate.gov>; Miranda, Manuel \(\Frist\) <Manuel_Miranda@frist.senate.gov>; Ledeen, Barbara \(\Republican-Conf\) <Barbara_Ledeen@src.senate.gov>; Comisac, RenaJohnson \(\Judiciary\) <Rena_Johnson_Comisac@Judiciary.senate.gov>; Delrahim, Makan \(\Judiciary\) <Makan_Delrahim@Judiciary.senate.gov>; Dahl, Alex \(\Judiciary\) <Alex_Dahl@Judiciary.senate.gov>
Sent: 6/5/2003 5:38:08 PM
Subject: Reminder of the Friday Meeting

Just a reminder of the meeting on Friday at 10:30 a.m., in Makan's office (SD-145) to discuss judicial nominations. Hope you can make it.

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From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Theodore W. Ullyot/WHO/EOP@EOP [WHO] <Theodore W. Ullyot>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/5/2003 2:21:49 PM
Subject: : MATERIALS RECEIVED
Attachments: P_E49ZG003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 5-JUN-2003 18:21:49.00
SUBJECT:: MATERIALS RECEIVED
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])
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TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])
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TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

----- Forwarded by H. Christopher Bartolomucci/WHO/EOP on
06/05/2003 06:21 PM -----

"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
06/05/2003 06:17:16 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: MATERIALS RECEIVED

MATERIALS RECEIVED: Thursday, June 05, 2003

Questionnaires Received

Karen P. Tandy, of Virginia, to be Administrator of Drug Enforcement

Henry F. Floyd, of South Carolina, to be United States District Judge
for the District of South Carolina

Blue Slips Returned For:

REV_00237207

Claude A. Allen, of Virginia, to be United States Circuit Judge for the Fourth Circuit

* Senator Warner

ABA

Earl Leroy Yeakel III, of Texas, to be United States District Judge for the Western District of Texas

Maj. Q. Min W.Q.

Swen Prior

Nominations Clerk

Senate Judiciary Committee

(202) 224-5225

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- att1.htm

Message Sent

To: _____
"Hardman, Isaac (Judiciary)" <Isaac_Hardman@Judiciary.senate.gov>
Christopher <nathan.sales@usdoj.gov>
"Wikner, Brian (Judiciary)" <Brian_Wikner@Judiciary.senate.gov>
"Arfa, Rachel (Judiciary)" <Rachel_Arfa@Judiciary.senate.gov>
"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov>
"Carroll, Kurt (Judiciary)" <Kurt_Carroll@Judiciary.senate.gov>
"Cohen, Bruce (Judiciary)" <Bruce_Cohen@Judiciary.senate.gov>
"Comisac, RenaJohnson (Judiciary)"
<Rena_Johnson_Comisac@Judiciary.senate.gov>
"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov>
"Codevilla, David (Judiciary)" <David_Codevilla@Judiciary.senate.gov>
"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov>
"DeOreo, Mary (Judiciary)" <Mary_DeOreo@Judiciary.senate.gov>
"Klepper, Leesa (Judiciary)" <Leesa_Klepper@Judiciary.senate.gov>
"Graves, Lisa (Judiciary)" <Lisa_Graves@Judiciary.senate.gov>
"Greenfeld, Helaine (Judiciary)" <Helaine_Greenfeld@Judiciary.senate.gov>
"Haywood, Amy (Judiciary)" <Amy_Haywood@Judiciary.senate.gov>
"Lucius, Kristine (Judiciary)" <Kristine_Lucius@Judiciary.senate.gov>
"Lundell, Jason (Judiciary)" <Jason_Lundell@Judiciary.senate.gov>
nancy scott-finan <nancy.scottfinan@usdoj.gov>
"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
"Snell, BethAnn (Judiciary)" <BethAnn_Snell@Judiciary.senate.gov>
"Stahl, Katie (Judiciary)" <Katie_Stahl@Judiciary.senate.gov>

REV_00237208

"Tapia, Margarita (Judiciary)" <Margarita_Tapia@Judiciary.senate.gov>
"Toomajian, Phil (Judiciary)" <Phil_Toomajian@Judiciary.senate.gov>
H. Christopher Bartolomucci/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_E49ZG003_WHO.TXT_1>

MATERIAL S RECEIVED: Thursday, June 05, 2003

Questionnaires Received

Karen P. Tandy, of Virginia, to be Administrator of Drug Enforcement

Henry F. Floyd, of South Carolina, to be United States District Judge
for the District of South Carolina

Blue Slips Returned For:

Claude A. Allen, of Virginia, to be United States Circuit Judge
for the Fourth Circuit

- Senator Warner

ABA

Earl Leroy Yeakel III, of Texas, to be United States District Judge for the Western District of Texas

<i>Maj. Q. Min W.Q.

Swen Prior
Nominations Clerk
Senate Judiciary Committee
(202) 224-5225

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REV_00237210

From: Brian.A.Benczkowski@usdoj.gov
To: PRA 6 Benjamin A. Powell/WHO/EOP@EOP [WHO]
<Benjamin A. Powell>;Mark.Chenoweth@usdoj.gov
<Mark.Chenoweth@usdoj.gov>;Kristi.L.Remington@usdoj.gov
<Kristi.L.Remington@usdoj.gov>;Adam.Charnes@usdoj.gov
<Adam.Charnes@usdoj.gov>;'william_smith@judiciary.senate.gov'
<william_smith@judiciary.senate.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M.
Kavanaugh>;Nathan.Sales@usdoj.gov <Nathan.Sales@usdoj.gov>;William.Hall2@usdoj.gov
<William.Hall2@usdoj.gov>;Dan.Bryant@usdoj.gov <Dan.Bryant@usdoj.gov>
CC: 'sMclure@ago.state.al.us' <sMclure@ago.state.al.us>;'ehaden@balch.com'
<ehaden@balch.com>
Sent: 6/5/2003 4:19:32 PM
Subject: : Saturday session for Bill Pryor

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: "Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> (
"Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME: 5-JUN-2003 20:19:32.00
SUBJECT: Saturday session for Bill Pryor
TO: PRA 6 [UNKNOWN
])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Mark.Chenoweth@usdoj.gov" <Mark.Chenoweth@usdoj.gov> ("Mark.Chenoweth@usdoj.gov"
<Mark.Chenoweth@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Kristi.L.Remington@usdoj.gov" <Kristi.L.Remington@usdoj.gov> (
"Kristi.L.Remington@usdoj.gov" <Kristi.L.Remington@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> ("Adam.Charnes@usdoj.gov"
<Adam.Charnes@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"'william_smith@judiciary.senate.gov'" <william_smith@judiciary.senate.gov> (
"'william_smith@judiciary.senate.gov'" <william_smith@judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Nathan.Sales@usdoj.gov" <Nathan.Sales@usdoj.gov> ("Nathan.Sales@usdoj.gov"
<Nathan.Sales@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"William.Hall2@usdoj.gov" <William.Hall2@usdoj.gov> ("William.Hall2@usdoj.gov"
<William.Hall2@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
TO:"Dan.Bryant@usdoj.gov" <Dan.Bryant@usdoj.gov> ("Dan.Bryant@usdoj.gov"
<Dan.Bryant@usdoj.gov> [UNKNOWN])
READ:UNKNOWN
CC:"'sMclure@ago.state.al.us'" <sMclure@ago.state.al.us> ("'sMclure@ago.state.al.us'"
<sMclure@ago.state.al.us> [UNKNOWN])
READ:UNKNOWN
CC:"'ehaden@balch.com'" <ehaden@balch.com> ("'ehaden@balch.com'" <ehaden@balch.com> [
UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

All-

You are invited to attend a meeting this Saturday, June 7th at 3pm with Attorney General Pryor to discuss the issues he will face at next week's nominations hearing, and the responses to those issues. We expect that this meeting will last at least two hours.

Location: Main Justice Building, Office of Legal Policy, Room 4237, 950

REV_00237215

Pennsylvania Avenue, NW Participants will enter at the 10th Street Gate (gate is in the middle of the block on 10th between Pennsylvania and Constitution.) Please let me know tomorrow if you plan to attend so that our staff can have you cleared into the building on Saturday.

Thanks.

BAB

Brian A. Benczkowski
Staff Director and Senior Counsel
Office of Legal Policy
United States Department of Justice
950 Pennsylvania Ave., NW
Room 4228
Washington, DC 20530
Telephone: (202) 616-2004
Fax: (202) 514-1685
E-mail: Brian.A.Benczkowski@usdoj.gov

From: Sampson, Kyle
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Kavanaugh, Brett M.>
Sent: 6/6/2003 12:36:20 AM
Subject: Keisler/Chertoff

Keisler just got confirmed.

Chertoff vote tomorrow at 5:15pm, after 30 minutes of debate for each side.

From: Sampson, Kyle
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Kavanaugh, Brett M.>
Sent: 6/6/2003 12:36:23 AM
Subject: Keisler/Chertoff

Keisler just got confirmed.
Chertoff vote tomorrow at 5:15pm, after 30 minutes of debate for each side.

From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>;<Brown, Reginald J.>;<Newstead, Jennifer G.>
Sent: 6/6/2003 7:26:02 AM
Subject:
Attachments: dot.gif

Interesting U of M follow up:

Friday, June 6, 2003

Judge's misconduct cited in U-M case

Appeals court admits mistakes that could have steered outcome

By Jodi S. Cohen / *The Detroit News*

A 6th U.S. Circuit Court of Appeals judge has found evidence of judicial misconduct that could have helped ensure the University of Michigan's lower court victory in a lawsuit against its admissions policies.

In a rare acknowledgement that a court did not follow its own rules, acting chief judge Alice M. Batchelder said the way the chief judge assigned the case and other irregular procedures "raise an inference that misconduct has occurred," according to a May 28 order from the court.

Legal experts said it's highly unlikely that the order will have an impact on the U.S. Supreme Court's review of the cases. A decision is expected by the end of the month.

Batchelder's letter is a response to complaints by the political and legal watchdog group Judicial Watch that the court's chief judge, Boyce F. Martin, improperly assigned himself to the three-judge panel hearing the case against the Michigan Law school. The group said Martin then failed to disclose for five months a petition for the case to be heard by the entire court.

During that time, two conservative judges took "senior status," meaning they couldn't participate in the case. If the Reagan and George H.W. Bush appointees had still been on the court, the outcome may have been different.

"I have never heard of a complaint filed against the chief judge of a court of this nature that has been successful. It is so rare that you have a judge accused of these sorts of procedural shenanigans," said Philip Pucillo, a former 6th Circuit clerk and law professor at the Ave Maria School of Law in Ann Arbor.

"I only know of one other case ever that had allegations like this in it," said Northwestern Law professor Steven Lubert, who specializes in judicial ethics.

The U.S. Supreme Court heard oral arguments April 1 on whether colleges and universities can give minority applicants an advantage. The decision could affect the way schools nationwide make admissions decisions.

"The question is, what ought the Supreme Court do given what has happened? The case was fixed and the Supreme Court has a case before it that got there through judicial misconduct," said Thomas Fitton, president of Judicial Watch. "What action is the Supreme Court going to take to protect its own integrity?"

Batchelder decided disciplining Martin would be unwarranted, but court members are undergoing "a comprehensive review of the court's internal procedures ... and by doing so the court has greatly reduced the potential for future incidents."

The court is reviewing the way cases are assigned, and when petitions for a full court review are circulated to the judges.

Fitton said he may appeal her decision to not take disciplinary action. If he appeals, a special panel would decide whether Martin would face consequences from reprimand to impeachment.

U-M officials declined to comment.

In a 5-4 opinion, the 6th Circuit upheld the U-M Law School admissions policy and found that the university could consider race to get a diverse student body. Batchelder joined the dissent and ruled in favor of Barbara Grutter, the white plaintiff rejected from the Law School.

"If not for the delay (in circulating the petition), there would have been two more Republican judges sitting ... and we probably would have won. It is hard to dispute that," said Curt Levey, spokesman for the Center for Individual Rights, the law firm that brought the lawsuits against U-M.

Because Batchelder has previously questioned Martin's conduct on procedural issues and was one of the dissenters in the U-M case, some question her ability to act impartially during this latest allegation.

"The fact that one of the dissenters thought it was an improper procedure isn't a surprise any more than if (one of the judges in the majority) had written it, it would have come out the other way," University of Southern California constitutional law professor Erwin Chemerinsky said. "Those in the majority didn't think anything improper happened. Those in the dissent did think something improper happened."

Chemerinsky is referring to a dissenting opinion in the U-M case by Judge Danny Boggs, a Reagan appointee, who included an unusual "procedural appendix" where he denounced the method used to decide which judges heard the case.

The allegations led to a U.S. House Judiciary inquiry that found Martin should conduct a review of court procedures. The recent letter from the court is its first acknowledgement of wrongdoing.

"It is rare and it is rare to have it handled in this way," Chemerinsky said. "Even having (allegations of judicial misconduct) acknowledged is unique."

You can reach Jodi S. Cohen at (313) 222-2269 or jcohen@detnews.com.

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2003 4:48:34 AM
Subject: : Immergut

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 6-JUN-2003 08:48:34.00
SUBJECT: : Immergut
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
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Bush picks Portlander to be U.S. attorney
06/06/03

The Portland Oregonian
MARK LARABEE

President Bush on Thursday announced his nomination of Karin J. Immergut to be the next U.S. attorney for Oregon. Immergut, an assistant prosecutor in the office since December 2001, has long been a favorite of the administration and was a contender for the job that went to Michael Mosman earlier that year. Bush recently nominated Mosman to be a federal judge in Portland, and Immergut's nomination to replace him has been the source of speculation since. Immergut's rise to the top prosecutor's post depends on Mosman's confirmation to the bench by the Senate as well as her own Senate confirmation.

The 42-year-old Immergut lives in Portland and has spent most of her career as a state and federal prosecutor, including a five-month stint in the office of Independent Counsel Kenneth Starr.

Most recently, she's specialized in prosecuting white-collar crime, including identity theft, bank fraud and other financial crimes, and worked closely with Mosman on a Justice Department initiative to reduce gun violence.

Mosman said he thinks Immergut is a "fantastic" choice to lead the office of 48 criminal prosecutors and civil lawyers in Portland, Eugene and Medford. He called her a "tough but fair-minded trial lawyer."

"She's got broad legal experience, both as an assistant U.S. attorney here and in Los Angeles and in a number of other positions she's held," Mosman said.

In an e-mail statement, Sen. Gordon Smith, R-Ore., said: "Karin's a great choice to lead the U.S. Attorney's Office. Mike Mosman is a tough act to follow, but her years of dedicated service leave no doubt that she'll do an exceptional job."

Immergut said Thursday she was honored by the nomination but answered few questions about her career or what she hopes to accomplish if confirmed for the job. She said that at this point it would be premature to talk about it since her confirmation is pending.

"I hope that my experience will allow me to serve the community if I do get the opportunity to serve in that role," she said.

While notifying colleagues Thursday about the nomination, Immergut said she was focusing on preparing for a trial.

Mosman predicted a "seamless transition" once the confirmations are completed. The remaining question is whether those hearings will happen before Congress' August recess or sometime in the fall.

From 1996 to 2001, Immergut was a deputy district attorney in Multnomah County prosecuting major fraud cases before moving literally across the block to the prosecutor's office in the federal courthouse. She worked briefly for Starr in mid-1998 during his investigation of President Clinton's involvement in the so-called Whitewater land deals and relationship with White House intern Monica Lewinsky.

Immergut worked for a private law firm in Burlington, Vt., from 1994 to 1996. From 1988 to 1994, she was an assistant U.S. attorney in Los Angeles, where for a time she was deputy chief of the office's narcotics

and money-laundering section.

She has a bachelor's degree from Amherst College and a law degree from the University of California at Berkeley.

She is married to James T. McDermott, a litigation partner with the law firm Ball Janik, LLP. They have a 4-year-old daughter.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 6/6/2003 9:06:18 AM
Subject: you

New York Daily News - <http://www.nydailynews.com>

Mull Bill prober for fed bench

Friday, June 6th, 2003

A White House lawyer who once investigated the Clintons is being considered for a key judicial nomination that Democrats said would ratchet up the political fight over the federal bench.

President Bush could tap Brett Kavanaugh for the District of Columbia Circuit Court of Appeals, where two of former President Bill Clinton's nominees were blocked from taking seats by Senate Republicans, Democratic congressional aides said yesterday.

Kavanaugh submitted to an FBI background check - a standard first step toward a nomination, the aides said.

He worked for independent counsel Kenneth Starr on the Monica Lewinsky probe; investigated the death of Clinton White House lawyer Vince Foster, an ex-law partner of Sen. Hillary Clinton (D-N.Y.), and helped write Starr's sex-laced Lewinsky report.

Tapping Kavanaugh would "be viewed as a ratcheting up of the confrontation with Senate Democrats" over Bush's judicial picks, a Democratic source said.

Bush nominated another Starr deputy, Karin Immergut, to be the U.S. attorney in Oregon yesterday.

Kavanaugh did not return calls, and White House officials declined to comment last night.

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/6/2003 5:07:18 AM
Subject: : you

Begin Original ARMS Header #####
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CREATION DATE/TIME: 6-JUN-2003 09:07:18.00
SUBJECT:: you
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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New York Daily News - <http://www.nydailynews.com>
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From: Kavanaugh, Brett M.
To: <Snee, Ashley>
Sent: 6/6/2003 9:46:39 AM
Subject: brown

Janice Rogers Brown;

Majority opinion -- passionate but hard to peg;

State Supreme Court's wild card could be key in upcoming votes

SOURCE: Chronicle Legal Affairs Writer

BYLINE: Harriet Chiang

BODY:

On first take, it's hard to believe that **Janice Rogers Brown**, the daughter of **Alabama sharecroppers** and the first African American woman on the California Supreme Court, would write a decision jeopardizing hundreds of affirmative action programs throughout the state.

But friends say Brown has always resisted stereotypes based on her gender or race. A conservative and a Republican, she was Gov. Pete Wilson's chief legal adviser and eventually became his final appointment to the state's highest court.

After four years as a justice, Brown has staked a claim for herself as the outspoken conservative on a court steering a moderate course. Her opinions are pointed and provocative, and she doesn't mind taking swipes at her colleagues.

"She's a very gutsy justice," said Gerald Uelmen, a professor at Santa Clara University School of Law, who closely follows the court. "She's not afraid to stand alone."

And with the court increasingly divided, Brown could play a pivotal role in the next few months as justices decide key issues of gun control, jury nullification and taxpayer rights. The court will also tackle a case -- the first of its kind nationally -- involving the 101 California St. shooting. In it, justices will decide whether gunmakers can be held legally responsible for the criminal use of weapons.

Brown is best known for her November decision upholding Proposition 209, the 1996 voter-approved initiative barring preferential treatment for women and minorities. In writing the majority opinion, Brown attacked the entire history of affirmative action, a move that Chief Justice Ronald George, in a rare dissent, condemned as being "unnecessary and inappropriate."

Ward Connerly, one of the prime backers in the 1996 initiative, is a big fan of Brown's. He says she has "a profound respect for civil rights," but also believes in individual responsibility. Although she is a prominent minority woman, he said, "she doesn't carry on her shoulders the burdens of anybody else or the expectations of anybody else."

A liberal in her college days, the 51-year-old justice became a conservative after law school convinced her that the courts should not be used for sweeping social changes.

She is full of contradictions and also unpredictable. She anchors the right wing of the high court, but occasionally displays an independent streak and bolts to the liberal side in both criminal and civil matters,

suggesting a libertarian leaning.

As a conservative, she has voted to require drug testing of employees and to allow cities to clear the streets of gang members. But she joined the liberal members in objecting to child molesters being prosecuted years after the alleged crime.

She is a quiet, intensely private person -- Brown refused repeated requests to be interviewed for this story and others. In court, she asks few questions when lawyers argue their cases. But when she writes an opinion, she becomes a pugnacious street fighter on legal-size paper.

"She's very passionate about what she believes in and that passion comes across in her dissents," said Justice Vance Raye of the state appeals court in Sacramento and a friend of the justice's for many years.

Brown came onto the court in 1996 amid controversy. She was the only justice ever to be rated "not qualified" by the state agency that evaluates all nominees to the court. The State Bar Commission on Judicial Nominees found her inexperienced -- she had been an appellate court judge for less than two years -- and overly subjective.

Five years later, she has surprised even liberal commentators, who say they are impressed with her intelligence, historical perspective and independence.

Her bare-knuckles style of writing can delight legal experts or make them wince. At the very least, she shakes the stereotype of court opinions as mind-numbingly dull recitations.

Even when she's in the majority, she often writes separate opinions, taking a more extreme position than the rest.

Brown sprinkles her decisions with quotes and characters from Plato's "Republic," George Washington's farewell address, John Grisham novels and songwriter Billy Preston's 1970s song "Nothing From Nothing Leaves Nothing."

Some legal experts find her approach a welcome contrast to most decisions, which tend to be dry and written by law clerks. But court observers say she can get unnecessarily personal with those who disagree with her.

"She's not building consensus," said one appellate court judge. "She's seen as stridently advancing a certain ideological philosophy more than a legal position."

Her defenders say that Brown is motivated by a sense of justice, not by any preconceived notions or political beliefs. "She's not an ideologue, and she gets to her position after a lot of deep thought," said state Sen. Chuck Poochigian of Fresno.

Her passions and forthright opinions came through in the majority opinion she wrote in the Proposition 209 case.

With the court deeply divided, Brown wrote a majority opinion that stung liberals and minorities because of her condemnation of several key civil rights rulings. "There was something there to offend just about everyone," Uelmen at Santa Clara University said.

Clark Kelso, a professor at McGeorge School of Law in Sacramento, was not as harsh on Brown and her version of affirmative action. "It may be an uncomfortable version of history to read," he said, "but I don't find it a particularly surprising history."

Brown was born May 11, 1949, in Greenville, Ala., about 50 miles south of Montgomery. As a child growing up in the segregated South, she was surrounded by color barriers in schools, restaurants and hospitals.

"We could, however, live our lives without seeing a movie if it meant being relegated to the balcony," Brown recalled in a 1996 interview with California Women Lawyers.

After graduating from UCLA law school, Brown spent eight years at the state attorney general's office working on both civil and criminal cases. In 1991, she became Wilson's legal affairs secretary, advising him on such issues as term limits, executions and reapportionment.

Wilson appointed her to the state Court of Appeal in October 1994. In May 1996, she was confirmed to the state Supreme Court.

Brown is not particularly close to any of her colleagues, court sources say. Although she works in San Francisco, she chooses to live in Rancho Murieta, about 20 miles outside of Sacramento, in a gated community with her husband, a jazz musician. Most of her colleagues see her only on Wednesdays, when they meet to decide what cases to review.

While many minority lawyers find her conservative leanings at odds with their own beliefs, several insist they are not disappointed with Brown.

"There is perhaps an expectation or a hope that she could do more for African Americans and other groups historically underrepresented or discriminated against," said Lindberg Porter, a former president of the Bar Association of San Francisco and an African American.

"But that is a heavy burden to carry, that's why I can't be critical. She has an absolute right to say, 'No. Why should I have greater sensitivity than anybody else on this court.' "

-----Biography
State Supreme Court justice- BORN: May 11, 1949, in Greenville, Ala.-
EDUCATION: California State University at Sacramento (B.A., 1974); University of California at Los Angeles (J.D., 1977).- BACKGROUND: Admitted to the California Bar on Dec. 28, 1977. Served as deputy legislative counsel from 1977 to 1979; deputy attorney general from 1979 to 1987; and deputy secretary and general counsel for the California Business, Transportation, and Housing Agency from 1987 to 1989.

Worked in private practice from 1989 to 1991.

Became legal affairs secretary to Gov. Pete Wilson in 1991.

Appointed to the state Court of Appeal for the Third District, Nov. 4, 1994.

Elevated to the state Supreme Court on May 3, 1996.

From: Leitch, David G.
To: <Sampson, Kyle>;<Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
Sent: 6/6/2003 10:30:27 AM
Subject: RE: Keisler/Chertoff

Looks to me from the Executive Calendar like the Chertoff vote is for Monday at 5:15.

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

From: Sampson, Kyle
Sent: Friday, June 06, 2003 12:36 AM
To: Gonzales, Alberto R.; Leitch, David G.; Kavanaugh, Brett M.
Subject: Keisler/Chertoff

Keisler just got confirmed.
Chertoff vote tomorrow at 5:15pm, after 30 minutes of debate for each side.

From: Kavanaugh, Brett M.
To: <Leitch, David G.>
CC: <Sampson, Kyle>;<Gonzales, Alberto R.>
Sent: 6/6/2003 10:31:35 AM
Subject: RE: Keisler/Chertoff

I thought a Friday afternoon vote seemed dubious . . .

From: David G. Leitch/WHO/EOP@Exchange on 06/06/2003 10:30:27 AM

Record Type: Record

To: Kyle Sampson/WHO/EOP@EOP, Alberto R. Gonzales/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: RE: Keisler/Chertoff

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From: Kavanaugh, Brett M.
To: <Leitch, David G.>;<Sampson, Kyle>
Sent: 6/6/2003 12:10:53 PM
Subject: ABC The Note
Attachments: ~~DLNK0.URL; ~~DLNK1.URL; ~~DLNK2.URL

Judicial confirmation battles:

Helen Dewar of the *Washington Post* on the filibuster debate, and the apparently receding prospects of the nuclear option. [LINK](#) <>

The *New York Times* story is nearly identical. [LINK](#) <>

The *New York Daily News*' James Gordon Meek and Joel Siegel observe that former Kenneth Starr deputy Brett Kavanaugh may be in the running for a place on the District of Columbia Circuit Court of Appeals. [LINK](#) <>

[InternetShortcut]

URL=<http://www.washingtonpost.com/wp-dyn/articles/A21175-2003Jun5.html>

[InternetShortcut]

URL=<http://www.nytimes.com/2003/06/06/politics/06FILI.html>

[InternetShortcut]

URL=http://www.nydailynews.com/news/wn_report/story/89938p-81850c.html

From: Kavanaugh, Brett M.
To: <Figg, Kara G.>
Sent: 6/6/2003 12:42:19 PM
Subject: question

Where will President be week of Monday June 23? I ask because that is most likely week for a Supreme Court retirement, if there is one. Thanks.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Brown, Reginald J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>
Sent: 6/6/2003 6:01:31 PM
Subject: Cook Report bottom line on Senate races in National Journal

"If the playing field for the Senate contests still looks the same a year from now, expect the Republicans to gain three or four seats on Election Day."

From: Leitch, David G.
To: <Gonzales, Alberto R.>; <Kavanaugh, Brett M.>
Sent: 6/6/2003 11:53:03 PM
Subject: Fw:

Taylor/Groner article mentioning both of you attached.

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

From: **PRA 6**
To: Leitch, David G.
Sent: Fri Jun 06 22:58:19 2003
Subject:

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Back to Article

Supreme Seat Up for Grabs?

Jonathan Groner and Tony Mauro
Legal Times
06-09-2003

As the clock ticks down to a possible retirement on the U.S. Supreme Court, partisans on all sides are gearing up for what promises to be the bloodiest confirmation battle in a dozen years.

Republicans have already met in the conference room of a Washington, D.C., law firm to brainstorm a campaign on behalf of any nominee. Senate Judiciary Committee staffers are at the ready. And leaders of liberal groups are canceling vacations and charting plans for the opposition fight.

"We've been preparing for this moment, really, since the day Bush was elected, or chosen," says Kate Michelman, president of NARAL Pro-Choice America and a veteran of battles over Robert Bork in 1987 and Clarence Thomas in 1991.

When the Court term ends later this month, it is still highly possible that neither Chief Justice William Rehnquist nor Justice Sandra Day O'Connor -- the subjects of most retirement rumors -- will step down. But that has not stopped the speculation, nor has it slowed the preparation throughout Washington in the event that President George W. Bush gets to fill the first Supreme Court vacancy in nine years.

"We have a fully staffed nominations unit and are preparing for a potential retirement in addition to working on filling the empty spaces on the federal bench," says Margarita Tapia, spokesperson for Judiciary Committee Chairman Orrin Hatch, R-Utah. Other senators say they have not beefed up their staffs yet, but some vacancies have been filled with veterans of past nomination wars -- such as Sen. Edward Kennedy's, D-Mass., new committee counsel Jim Flug, who first worked with Kennedy in the 1960s.

Outside government, the first tangible sign that war councils are convening came on May 22, when about two dozen highly placed Republicans gathered at the offices of Jones Day overlooking the Capitol.

The three-hour session brought together in one room GOP executive-branch veterans of earlier nomination wars over Bork and Thomas, as well as key point people who hold the same positions today. Several Republican Senate staffers were also present.

"It was a collective sharing of memories about what happened then," says attendee C. Boyden Gray, a partner at Wilmer, Cutler & Pickering who was White House counsel when the first President Bush nominated Thomas.

Gray heads the Committee for Justice, a group that presses for confirmation of Bush judicial nominees. "The purpose was to inform the current people so they don't have to reinvent the wheel," he says.

According to several people who were present, Gray was joined at the meeting by Charles Cooper, former assistant attorney general for legal counsel; Michael Carvin, former deputy assistant attorney general for legal counsel, and Lee Liberman Otis, former assistant White House counsel and a founder of the Federalist Society who was a key player in Thomas' confirmation fight in 1991.

Cooper is now a partner at Cooper & Kirk, Carvin is a partner at Jones Day, and Otis is general counsel of the Department of Energy.

"This was a meeting of a group of conservatives engaged in nomination fights in the past or the present who are concerned that we don't have another Borking," says a GOP Senate aide who was not present but heard about the meeting in detail.

Gray says ideological issues and the makeup of the Supreme Court didn't come up at the session, which was totally devoted to practical nitty-gritty issues.

"We told them, 'Here's what to do if there is a vacancy,'" Gray says. "Where to have the war room, things like that."

Says another lawyer who was present but requested anonymity: "No specific decisions were made at the meeting. It was simply about what to expect and how to prepare yourselves for it. An older generation of experienced hands were passing on their insights to the current generation in the executive branch and on the Hill."

Among the topics that participants say were discussed were the importance of developing a press strategy and the need to respond quickly to themes and issues raised by Democrats regarding a nominee.

Several sources confirm that Associate White House Counsel Brett Kavanaugh, who has been working on judicial nominations since the start of the administration, was one of the current officials at the meeting. Kavanaugh declines comment, as do Cooper and Carvin. Otis was traveling and unavailable for comment.

One lawyer who was at the May meeting says a follow-up session has not been scheduled, but the GOP Senate aide says he wouldn't be surprised if one is held later this month.

John Nowacki, a conservative strategist who declined to say whether he attended the meeting, said Bush supporters are anticipating all-out war. "No matter who is nominated, what we've seen so far with the lower court nominees will pale in comparison," says Nowacki, director of legal policy at the Free Congress Foundation, whose predecessors were also active during the Bork and Thomas battles.

Nowacki says his group will defend Bush nominees and also hopes to win public support in the ongoing debate over the role of filibusters in blocking judicial nominations. That issue, currently the subject of Senate maneuvering, could come to the fore if Democrats threaten to filibuster a high court nominee.

"Americans have a sense of fairness, and they will want to know why the Democrats don't want an up or down vote," says Nowacki.

ITCHING FOR A FIGHT

For their part, liberal groups that are likely to oppose a Bush nominee have yet to convene a mass meeting on Supreme Court nomination strategy, but work is underway researching the backgrounds of potential nominees.

Nan Aron, longtime president of the umbrella group Alliance for Justice, still holds out hope that no vacancy will occur.

"Does the administration really want a big fight a year before the election?" asks Aron, whose group is the lead liberal umbrella group on judicial nominations. "It certainly didn't help the first President Bush that Clarence Thomas was fought over the year before his re-election campaign."

Aron also says that if there is a vacancy, liberal opposition to a Bush nominee is not automatic. "I'm very serious about that," she says.

But when asked about White House Counsel Alberto Gonzales -- usually viewed as the most politically palatable possibility for Democrats -- Aron answers without hesitation.

"We would mount a fight on Gonzales," Aron says. The target would not be Gonzales' record on the Texas Supreme Court, but rather his

work as White House counsel and his advocacy of administration policies on civil liberties, judicial nominations and other issues. "We can and will prevail" against Gonzales or any other nominee that is opposed by a broad coalition, Aron says.

A grass-roots campaign on a Bush nominee will look substantially different from the ones mounted against Bork and Thomas, says NARAL's Michelman.

Through its e-mail network, Michelman says, her organization can quickly contact 750,000 people. "This capacity to mobilize, to educate, to inform and to activate, is enormously powerful," she notes.

Michelman says she has already laid the groundwork with senators who favor the right to choose.

"We have made it clear we expect pro-choice senators to filibuster any nominee who does not view the right to choose as a fundamental constitutional right," says Michelman. "Merely stating that Roe v. Wade is settled law is not good enough."

Ralph Neas, president of People for the American Way, also says the filibuster option is part of the arsenal that opponents will use if necessary. Since 60 votes are needed to end a filibuster, opponents would need only 41 senators to block a nominee.

"But we have a good shot at 51 votes too," says Neas, who was a key player in prior battles as head of the Leadership Conference on Civil Rights. Neas says he and his family took a vacation in January in anticipation of the time demands a nomination battle will create for him this summer. Grass-roots mobilization will be crucial to win, Neas says, and his 600,000 members are ready to form the core of a "progressive army" of millions.

NEW FACES ON THE LEFT

Not all the leaders of the likely opposition are veterans of the Bork and Thomas battles. Aron expects that labor and disabilities rights groups will be more visible. Most of all, Aron predicts that environmental groups -- minor players in the confirmation battles over Bork and Thomas -- will be important new combatants.

"There's a level of awareness in the environmental community about the threat involved in judicial nominations that was not there even two years ago," says Douglas Kendall, executive director of the Community Rights Counsel, an environmental and land use group that has focused on judicial nominees for years.

Environmental issues are the subject of only a few Supreme Court cases per term, and the Court's track record is mixed. But the potency of environmental laws can rise or fall on a wide range of Supreme Court rulings on issues of standing, the commerce clause, takings, 11th Amendment and the separation of powers, Kendall notes.

Kendall's group and Earthjustice -- formerly the Sierra Club Legal Defense Fund -- have formed an alliance to beef up environmental groups' research and advocacy in anticipation of a Supreme Court vacancy.

They, like others, are building files on the most-mentioned potential nominees, and they have been active on lower court nominees. A substantial number of senators opposing Miguel Estrada for the U.S. Court of Appeals for the D.C. Circuit have cited environmental concerns among others. Estrada's nomination, approved by the Senate Judiciary Committee, has been shut down by a months-long filibuster.

"We generated tens of thousands of messages into senators" on Estrada and other nominees, says Glenn Sugameli, senior legislative counsel with Earthjustice. For a Supreme Court nominee, he says, "We're talking about research, media, education, lobbying, outreach, networking, all of it. It will be a very high-profile issue for the national environmental community."

At least one other familiar face from past nomination battles has not gotten energized yet. Harvard Law School professor Laurence Tribe, who advised Senate Democrats on constitutional issues before the Bork and Thomas hearings, said in an e-mail last week, "I'm thinking as little about this as I can manage and am resisting requests to become involved. When the time comes, I suspect the force will become irresistible and I will get drawn in. But not without protest. For some reason, I'm feeling fatalistic about things this time around."

For more Supreme Court news, calendars and cases, visit the [Supreme Court Monitor](#)

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/7/2003 9:41:32 AM
Subject: : Montgomery (AL) Advertiser (6/7/03) re: Pryor faces tough times at hearing

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JUN-2003 13:41:32.00
SUBJECT:: Montgomery (AL) Advertiser (6/7/03) re: Pryor faces tough times at hearing
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Pryor faces tough times at hearing

By Ana Radelat
Montgomery Advertiser

WASHINGTON -- Alabama Attorney General Bill Pryor, President Bush's choice for a seat on a federal appeals court, is expected to be the next judicial nomination to draw fire from Democrats and special interest groups trying to keep conservative activists from filling the federal bench.

"Bill Pryor has a record of ultra-right-wing extremism on almost every issue," said Louis Bograd of the Alliance for Justice. "He is vehemently opposed to the rights of reproductive choice, the separation of church and state, and (he has) a record of hostility to criminal defendants so extreme that it will make senators blanch."

Nominated by Bush in April, Pryor, 40, will go before some of the most liberal Democrats in the Senate when he testifies Wednesday at a hearing of the Senate Judiciary Committee.

The Alliance for Justice, the Southern Christian Leadership Council, Planned Parenthood and dozens of other groups are marshalling their forces to try to defeat Pryor's nomination to the Atlanta-based 11th U.S. Circuit Court of Appeals. But the attorney general's candidacy may be harder to derail than other Bush nominees that Democrats oppose.

Senate Democrats have stalled the nominations of Texas Supreme Court Judge Priscilla Owen, a candidate for the 5th U.S. Circuit Court of Appeals; and Miguel Estrada, a lawyer who is Bush's choice to sit on a federal appellate court that handles the most important cases against the government.

The nominations have been held up through a Senate procedure called the filibuster, extended debate that keeps legislation and nominations from a full Senate vote. It takes 60 votes to end a filibuster, and the GOP only has been able to muster a maximum of 55 in its attempts to end debate on Owen and Estrada.

Other nominees are expected to face Democratic filibusters, too, among them Charles Pickering, a district court judge from Hattiesburg, Miss.; Los Angeles Judge Carolyn Kuhl -- and perhaps Pryor.

Senate Majority Leader Bill Frist, R-Tenn., told Gannett News Service that he did not know if Pryor would face a filibuster but said it was possible. Democrats aren't talking until after Wednesday's hearing.

The White House has asked all judicial nominees to stay away from the press, and Pryor has declined all requests for interviews or comment.

The ambitious attorney general may be the most ideological of all of the controversial judicial nominees, but he has an advantage.

The Senate Judiciary Committee rejected Owen and Pickering when Democrats controlled it last year. Estrada has failed to give Democrats information they want about his days at the Justice Department. Both Democratic senators from Kuhl's home state of California opposed her, which used to disqualify a candidate. But Democrats have no procedural reason to stop Pryor's nomination -- at least not yet -- even though his ideology rankles many of them.

The support of several black leaders from the state and the sponsorship of Alabama's Republican senators also likely are to help Pryor.

"Bill Pryor is an outstanding nominee with extensive experience," said Sen. Richard Shelby of Tuscaloosa. "He is well prepared to become a federal judge and that should be the Democrats' focus in the confirmation process."

Sen. Jeff Sessions of Mobile, who is considered Pryor's mentor, said he expects Democratic opposition.

"The pattern has been that when leftist groups target a nomination and stir it up in the newspapers, the allegations bring some negative votes," Sessions said.

Democrats on the judiciary panel likely are to question Pryor about the following:

In 1997, Pryor testified before Congress that a certain provision of the Voting Rights Act, the one requiring Justice Department oversight of voting matters in certain states and counties that have had civil rights problems, is an expensive burden to the states and has outlived its usefulness.

Pryor has been a strong supporter of Alabama Supreme Court Justice Roy Moore's display of the Ten Commandments. He also has battled with the American Civil Liberties Union in a school prayer case from Alabama. Pryor argued that Alabama prison guards have the right to handcuff state prisoners to hitching posts in the summer heat. The U.S. Supreme Court ruled the practice is cruel and unusual, dismissing Pryor's argument that the prison guards should be given legal immunity.

A strong state's rights advocate, Pryor won a Supreme Court case that found the Americans With Disabilities Act doesn't apply to state employees. He also cited federal intrusion on states' rights to argue against part of the Voting Rights Act and enforcement of the Clean Air Act.

Pryor is a staunch abortion foe and has been critical of the Supreme Court's Roe v. Wade decision.

In a recent friend of the court brief in a Texas case, Pryor likened homosexual acts to prostitution, necrophilia and incest.

Critics of the nomination believe the White House has chosen conservative nominees like Pryor to appease the right wing of Republican Party and make it easier for Bush to take more moderate positions on other issues.

"Pryor is no stealth nominee," said Bograd of the Alliance for Justice, "He is an ideological extremist, and our biggest problem is choosing which outrageous quotations as examples to use."

Richard Cohen, general counsel of the Southern Poverty Law Center in Montgomery, said Pryor's activism as attorney general may lead Democrats to believe he lacks the dispassionate judgment needed to sit on an appellate court.

"Being a judge is an issue of wisdom and, when you've made a career out of pursuing a particular agenda and you're so young, one might wonder if it's time for you to sit in judgment of your fellow citizens," Cohen said.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
CC: alberto r. gonzales/who/eop@exchange [WHO] <alberto r. gonzales>
Sent: 6/7/2003 9:05:30 AM
Subject: : Re: Fw:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JUN-2003 13:05:30.00
SUBJECT:: Re: Fw:
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
CC: alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

interesting on many levels.

From: David G. Leitch/WHO/EOP@Exchange on 06/06/2003 11:53:03 PM
Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@Exchange, Brett M.
Kavanaugh/WHO/EOP@EOP
cc:
Subject: Fw:

Taylor/Groner article mentioning both of you attached.

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

From: [REDACTED] **PRA 6**
To: Leitch, David G. <David G. Leitch@who.eop.gov>
Sent: Fri Jun 06 22:58:19 2003
Subject:

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Jonathan Groner and Tony Mauro
Legal Times
06-09-2003

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From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>
Sent: 6/7/2003 1:08:04 PM
Subject: Post story -- see last paragraph

The Pragmatic Chief Justice

He'll Look Better When He's Gone

by Simon Lazarus

Sunday, June 8, 2003: Page B03

Whether Supreme Court Chief Justice William H. Rehnquist resigns at the end of the court's term this month or waits until a second Bush term, his reign is likely to look kinder and gentler in retrospect than the one his liberal critics have often described. In 1986, Senate Majority Leader George Mitchell urged his fellow Democrats to oppose Rehnquist's elevation from associate to chief justice because he considered the nominee "totally hostile to the rights of women and minorities," with a mind "closed on the issues of race." Last year, American University constitutional law expert Herman Schwartz lamented that under Rehnquist's leadership, "Ronald Reagan's efforts to reshape the American judiciary have succeeded."

But in time, the critics will mellow as it becomes clear that the Rehnquist term has sustained, not overturned, the major works of his predecessors, Chief Justices Earl Warren and Warren Burger. More important, the Rehnquist term will appear more pragmatic and centrist than it does now because the court under his successor is likely to lurch much further to the right.

What Rehnquist has done over the past decade by expounding his philosophy of "federalism," which shifts power from the government to the states, is to lay the doctrinal groundwork for a genuinely radical transformation of the federal government's authority to make and enforce social policy. He has set the table. The feast awaits his successor.

To put the Rehnquist record in perspective, recall the great constitutional controversies of the past half-century: Forty years ago, "Impeach Earl Warren" bumper stickers were ubiquitous, in response to three blockbuster decisions -- *Brown v. Board of Education* (1954), which mandated racial desegregation in public schools; *Baker v. Carr* (1962), which required all legislative election districts to be apportioned equally on a one-man, one-vote basis; and *Miranda v. Arizona* (1966), which declared that confessions in criminal cases must be excluded unless the suspect had first been warned of his right to counsel and to remain silent. The Burger Court's blockbuster was *Roe v. Wade* (1973), which legalized abortion. Despite the bumper stickers, and the campaign promises of presidents Nixon and Reagan to select judges who would overturn *Miranda* and *Roe*, all four of those precedents stand today.

Today *Brown*, of course, enjoys iconic status (though in 1953, while serving as a Supreme Court law clerk, Rehnquist recommended against outlawing segregation). *Baker* is so uncontroversial that few remember that Congress nearly passed a constitutional amendment to overturn it. *Miranda* was reaffirmed in 1999, in a 7-2 decision written by Rehnquist himself. His court has twice reaffirmed *Roe*, though Rehnquist himself dissented.

Barely a week ago, the contrast between the court's pragmatic present and its potentially doctrinaire future was vividly displayed when the chief justice stunned observers by writing a 6-3 decision not to block state government workers from suing their employers for violating the 1993 Family and Medical Leave Act (FMLA).

Since the mid-1990s, the five "conservative" justices (Rehnquist, Antonin Scalia, Clarence Thomas, Anthony Kennedy and Sandra Day O'Connor) had stuck together in decision after decision to pare back congressional authority over the states. In 2000 they invalidated provisions of the 1967 Age Discrimination in Employment Act empowering state employees to sue their employers for violations. A year later, the same majority stripped state employees of their right to sue for violations of the Americans with Disabilities Act. So this year, most observers expected the majority to make short shrift of the attempt of a Nevada state employee to sue when he was fired in alleged violation of the FMLA, in *Nevada Department of Human Resources v. Hibbs*.

Certainly nothing in the chief justice's record suggested that he would vote to subordinate state sovereignty to the FMLA, much less write the opinion. He is the principal architect of the court's current drive to strengthen state "sovereignty" and "dignity," as he and his colleagues often put it in decisions, and to limit congressional authority to powers specifically "enumerated" in the Constitution. It is the only real innovation of his tenure. Until the mid-1990s, when Rehnquist assembled his pro-states' rights majority, his court played only defense -- reacting to the civil rights and liberties doctrines of the Warren-Burger Court agenda. But since 1995, the conservative majority has been on the offense with an agenda of its own.

So why did Rehnquist abruptly switch sides in the *Hibbs* case? The most plausible reason is a simple one: damage control. Rehnquist probably figured he had lost O'Connor's vote to her often-expressed aversion to gender discrimination. Hence, his side would lose 5-4 anyway. If he went along with the majority, it wouldn't change the result but would give him the chance to name who wrote the opinion. (The chief justice has that privilege for whichever side he is on.) So he could name himself and keep one of the opponents of his federalism cause from writing an opinion that might do it more long-term harm. And, indeed, Rehnquist's opinion is laced with deft caveats and qualifications that could make it comparatively easy for future courts to distinguish this case, and treat it as an aberration rather than a significant precedent.

But if Rehnquist appears in the *Hibbs* case as a pragmatic and judicious moderate, his dissenting colleagues on the right -- Justices Scalia, Thomas and Kennedy -- showcase the historic sweep of their uncompromising assault on congressional power. Particularly revealing is Kennedy's scornful dismissal of FMLA, which requires employers to grant a minimum of 12 weeks of unpaid leave per year for "family and medical" reasons. Kennedy called this an unjustified "entitlement program" -- an affirmative grant of rights -- rather than a legitimate remedy for discrimination.

This argument echoed the decisions of a Supreme Court majority just after the Civil War that were aimed at shelving the 14th Amendment and blocking development of a nationwide code of federally protected individual rights. The current majority has recently revived some of these long-dormant cases of the 1870s and 1880s, which undermined Reconstruction.

Most remarkably, in his *Hibbs* dissent, Justice Kennedy directly attacked a landmark precedent from the modern civil rights era. He quoted at length (and cited as if it were law) a 1966 dissenting opinion that disputed the legality of the nationwide ban on voter literacy tests.

These sparks from the *Hibbs* debate about Congress's power to enforce civil rights shed light on the president's oft-repeated pledge to nominate judges like Scalia and Thomas. To the devoutly conservative administration lawyers who recommend judicial candidates to the president, this is not simply a campaign slogan. To them, it means *like* Scalia and Thomas and *not* like Souter or O'Connor or even Rehnquist.

The odds are that the Senate will soon have a chance to determine whether the Supreme Court will continue in the mold of the Rehnquist Court -- usually to the right of center but cautious, sometimes messy, and in major cases, often unpredictable -- or whether the next chief justice will have the inclination and the votes to take the court, and the country, in a very different direction.

Author's e-mail: simonlaz@aol.com

Simon Lazarus is public policy counsel to the National Senior Citizens Law Center in Washington.

From: Kavanaugh, Brett M.
To: <Kaplan, Joel>
Sent: 6/7/2003 1:09:16 PM
Subject: Legal Times story per our discussion -- see second half and Nan Aron quote re Gonzales

Supreme Seat Up for Grabs?

Jonathan Groner and Tony Mauro

Legal Times

06-09-2003

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From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin Powell/OMB /EOP@EOP [OMB] <Benjamin Powell>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/7/2003 9:13:54 AM
Subject: : Mobile (AL) Register (6/7/03) re: Bill Pryor Senate Confirmation Hearing set for Wednesday

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JUN-2003 13:13:54.00
SUBJECT: : Mobile (AL) Register (6/7/03) re: Bill Pryor Senate Confirmation Hearing set for Wednesday
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Benjamin Powell (CN=Benjamin Powell/OU=OMB/O=EOP@EOP [OMB])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Bill Pryor Senate Confirmation Hearing
Alabama attorney general's Judiciary Committee hearing set to begin
Wednesday
06/07/03

By SEAN REILLY

Washington Bureau

WASHINGTON -- The same day the Senate Judiciary Committee holds a hearing on Alabama Attorney General Bill Pryor's candidacy for a federal judgeship, it will also consider a nominee to head the federal office created by a 1994 law intended to combat domestic violence and sexual assaults against women.

Considering that Pryor, a Republican and Mobile native, backed a move that killed a key provision in that same statute, it's a coincidence that some find ironic. And Pryor's position in that case is one of a number of subjects that will be brought up at Wednesday's hearing, according to staffers for senior Democratic senators.

"That will certainly be an issue that the committee will examine," said David Carle, a spokesman for Sen. Patrick Leahy of Vermont, the panel's top Democrat.

Carle said the committee will also look at Pryor's role in "stripping" away congressional and federal authority to enforce constitutionally guaranteed protections.

Because Pryor's record is still being reviewed, Carle declined to go into detail.

But as attorney general, Pryor has mounted legal challenges including one involving a Mobile woman who wanted to overturn the state's English-only driver's license test. Several of those cases resulted in U.S. Supreme Court rulings putting new limits on citizens' ability to bring lawsuits against states based on federal discrimination laws.

In those instances, Pryor, an ardent advocate of states' rights, successfully argued that those laws impermissibly stretched federal authority.

At the office of another top Democrat on the committee, Sen. Edward Kennedy of Massachusetts, spokeswoman Stephanie Cutter indicated that the senator had questions for Pryor on his record on civil rights, abortion rights and his position as attorney general on treatment of prisoners when he unsuccessfully fought a lawsuit targeting the state's practice of handcuffing inmates to a hitching post as a means of disciplining them.

Spokesmen for other Democrats on the committee either did not return phone calls or declined to comment Friday. While not a surprise, the responses from Leahy's and Kennedy's offices offer the first specific indication of the kind of intensive questioning Pryor may face.

On Friday, a Pryor spokeswoman declined to discuss any preparations the attorney general is making for the hearing, saying only that he "looks forward to the confirmation process."

President Bush nominated Pryor, 41, two months ago for the lifetime appointment to the Atlanta-based U.S. 11th Circuit Court of Appeals, one step below the U.S. Supreme Court. A number of advocacy groups are already arguing that Pryor won't be able to keep his personal views out of the courtroom. Supporters call him a superb legal scholar who will uphold the law.

The only other nomination on the panel's agenda Wednesday is that of Diane M. Stuart to head the Justice Department's Office on Violence Against Women.

That office was created by the 1994 Violence Against Women Act. Several years ago, Pryor was the only attorney general in the country to file a friend of court brief siding with those seeking to overturn the portion of the law that allowed rape victims to sue their attackers in federal courts. Although three-dozen attorneys general lined up on the other side, the U.S. Supreme Court struck down the provision in 2000 by a 5-4 majority.

In an article that he circulated to the media, Pryor defended his position. He did not dispute the goal of preventing sexual assaults, but said the provision was "unconstitutional and misguided" because it sought to justify federal intervention by the effect that abuse has on interstate commerce.

Federal appeals court judges earn \$164,000 a year.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Matthew E. Smith/WHO/EOP@EOP [WHO] <Matthew E. Smith>; Ashley Snee/WHO /EOP@Exchange@EOP [WHO] <Ashley Snee>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>; Wendy J. Grubbs/WHO/EOP@Exchange@EOP [WHO] <Wendy J. Grubbs>; Alberto R. Gonzales/WHO /EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/7/2003 9:39:13 AM
Subject: : New York Times article for Sunday paper on Court vacancy/battle

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JUN-2003 13:39:13.00
SUBJECT:: New York Times article for Sunday paper on Court vacancy/battle
TO: Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
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TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
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TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Lobbying Starts as Groups Foresee Vacancy on Court
By ROBIN TONER and NEIL A. LEWIS

WASHINGTON, June 7 * Interest groups on the left and the right are beginning full-scale political campaigns * including fund-raising, advertising and major research * to prepare for what many expect to be a Supreme Court vacancy in the next several weeks. While none of the justices have said they plan to retire, any decision would traditionally be announced at the end of the court's term in late June. Both conservatives and liberals say the time is right for a change in at least one and perhaps two seats, given the age of several justices and the general recognition that this is President Bush's last chance to name a justice before the presidential campaign begins in earnest. Neither side wants to be caught off guard in what is expected to be a fast-moving battle for public opinion, set off by the naming of a nominee. The Naral Pro-Choice America Foundation is making a pre-emptive strike with a television campaign beginning on Sunday that highlights the importance of the court to abortion rights. The commercial shows a woman gasping as she reads the newspaper headline "Abortion Outlawed * Court Overturns Right to Choose." Republicans have been raising money and planning strategy under the guidance of the former White House counsel C. Boyden Gray, who was a principal strategist in the bitter struggle over Justice Clarence Thomas's nomination in 1991. Two weeks ago, White House and Justice Department officials met in a Washington law office with several Republican veterans of confirmation battles, including Mr. Gray, to discuss how to deal with liberal attacks on a Bush nominee. The meeting opened with the veterans recalling the failed effort to put Robert H. Bork on the Supreme Court in 1987 and the successful campaign to confirm Mr. Thomas in 1991, after he was confronted with reports that he had sexually harassed Anita Hill, his former employee. "The purpose was to see what lessons we had learned from those two battles," said a lawyer at the meeting, which included Leonard Leo, a top official of the Federalist Society, a conservative lawyers' group. On the other side, a coalition of liberal and progressive groups *

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"If history is any guide, it is quite likely, given the president's stated preference for justices like Thomas and Scalia, that the next Supreme Court nominee is likely to be an ideological extremist," Wade Henderson, executive director of the leadership conference, said. "In that case, we would hope to generate a debate in the Senate and the country at large over what it means to appoint another justice in that mold."

The groups are compiling research on potential nominees. Nan Aron, director of the Alliance for Justice, a Washington liberal group that scrutinizes judicial nominees, said she had added several staff members for the expected confirmation battle and had compiled dossiers on about eight people she said she thought could be named by the White House. Liberals acknowledge, though, that the White House has the advantage of surprise. Kate Michelman, president of Naral Pro-Choice America, said her group planned a rapid-response research operation.

On Capitol Hill, the parties are already engaged in legislative trench warfare over several lower court nominations that are considered dress rehearsals for a Supreme Court battle. While Republicans control the Senate with 51 seats compared with 48 Democrats and one independent, Democrats have staged filibusters to block votes on two of Mr. Bush's nominees they say are right-wing ideologues.

As a result, Republicans are trying to change the rules on filibusters, asserting that Democrats are thwarting the will of the president and have unfairly created the need for a 60-vote majority (enough to break a filibuster) to confirm judges.

Mr. Gray's group, the Committee for Justice, has bought television commercials in some states, supporting those appeals court nominees who have been blocked by Democratic filibusters. "If it becomes accepted lore that you now have to have 60 votes, then we've got a real problem," Mr. Gray said.

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In almost all the possibilities, officials said, Mr. Gonzales, the White House counsel and a longtime legal adviser to Mr. Bush, would be a candidate. Mr. Gonzales would be the first Hispanic member of the Supreme Court. Mr. Bush's top aides, notably Karl Rove, his chief political adviser, are described as well aware that this would provide a political advantage for both him and the Republican Party, which has been aggressively courting Hispanic voters.

But social conservatives, an important component of Mr. Bush's political coalition, have expressed increasing wariness about Mr. Gonzales. Many say he reminds them of Justice David J. Souter, who was named to the court by President Bush's father, and who they say had been sold to them as a solid conservative vote but turned out otherwise.

From: Mamo, Jeanie S.
To: <Kavanaugh, Brett M.>;<Powell, Benjamin A.>;<Snee, Ashley>
Sent: 6/7/2003 1:39:57 PM
Subject: Montgomery (AL) Advertiser (6/7/03) re: Pryor faces tough times at hearing

Pryor faces tough times at hearing

By Ana Radelat

Montgomery Advertiser

WASHINGTON -- Alabama Attorney General Bill Pryor, President Bush's choice for a seat on a federal appeals court, is expected to be the next judicial nomination to draw fire from Democrats and special interest groups trying to keep conservative activists from filling the federal bench.

"Bill Pryor has a record of ultra-right-wing extremism on almost every issue," said Louis Bograd of the Alliance for Justice. "He is vehemently opposed to the rights of reproductive choice, the separation of church and state, and (he has) a record of hostility to criminal defendants so extreme that it will make senators blanch."

Nominated by Bush in April, Pryor, 40, will go before some of the most liberal Democrats in the Senate when he testifies Wednesday at a hearing of the Senate Judiciary Committee.

The Alliance for Justice, the Southern Christian Leadership Council, Planned Parenthood and dozens of other groups are marshalling their forces to try to defeat Pryor's nomination to the Atlanta-based 11th U.S. Circuit Court of Appeals. But the attorney general's candidacy may be harder to derail than other Bush nominees that Democrats oppose.

Senate Democrats have stalled the nominations of Texas Supreme Court Judge Priscilla Owen, a candidate for the 5th U.S. Circuit Court of Appeals; and Miguel Estrada, a lawyer who is Bush's choice to sit on a federal appellate court that handles the most important cases against the government.

The nominations have been held up through a Senate procedure called the filibuster, extended debate that keeps legislation and nominations from a full Senate vote. It takes 60 votes to end a filibuster, and the GOP only has been able to muster a maximum of 55 in its attempts to end debate on Owen and Estrada.

Other nominees are expected to face Democratic filibusters, too, among them Charles Pickering, a district court judge from Hattiesburg, Miss.; Los Angeles Judge Carolyn Kuhl -- and perhaps Pryor.

Senate Majority Leader Bill Frist, R-Tenn., told Gannett News Service that he did not know if Pryor would face a filibuster but said it was possible. Democrats aren't talking until after Wednesday's hearing.

The White House has asked all judicial nominees to stay away from the press, and Pryor has declined all requests for interviews or comment.

The ambitious attorney general may be the most ideological of all of the controversial judicial nominees, but he has an advantage.

The Senate Judiciary Committee rejected Owen and Pickering when Democrats controlled it last year. Estrada has failed to give Democrats information they want about his days at the Justice Department. Both Democratic senators from Kuhl's home state of California opposed her, which used to disqualify a candidate. But Democrats have no procedural reason to stop

Pryor's nomination -- at least not yet -- even though his ideology rankles many of them.

The support of several black leaders from the state and the sponsorship of Alabama's Republican senators also likely are to help Pryor.

"Bill Pryor is an outstanding nominee with extensive experience," said Sen. Richard Shelby of Tuscaloosa. "He is well prepared to become a federal judge and that should be the Democrats' focus in the confirmation process."

Sen. Jeff Sessions of Mobile, who is considered Pryor's mentor, said he expects Democratic opposition.

"The pattern has been that when leftist groups target a nomination and stir it up in the newspapers, the allegations bring some negative votes," Sessions said.

Democrats on the judiciary panel likely are to question Pryor about the following:

In 1997, Pryor testified before Congress that a certain provision of the Voting Rights Act, the one requiring Justice Department oversight of voting matters in certain states and counties that have had civil rights problems, is an expensive burden to the states and has outlived its usefulness.

Pryor has been a strong supporter of Alabama Supreme Court Justice Roy Moore's display of the Ten Commandments. He also has battled with the American Civil Liberties Union in a school prayer case from Alabama.

Pryor argued that Alabama prison guards have the right to handcuff state prisoners to hitching posts in the summer heat. The U.S. Supreme Court ruled the practice is cruel and unusual, dismissing Pryor's argument that the prison guards should be given legal immunity.

A strong state's rights advocate, Pryor won a Supreme Court case that found the Americans With Disabilities Act doesn't apply to state employees. He also cited federal intrusion on states' rights to argue against part of the Voting Rights Act and enforcement of the Clean Air Act.

Pryor is a staunch abortion foe and has been critical of the Supreme Court's *Roe v. Wade* decision.

In a recent friend of the court brief in a Texas case, Pryor likened homosexual acts to prostitution, necrophilia and incest.

Critics of the nomination believe the White House has chosen conservative nominees like Pryor to appease the right wing of Republican Party and make it easier for Bush to take more moderate positions on other issues.

"Pryor is no stealth nominee," said Bograd of the Alliance for Justice, "He is an ideological extremist, and our biggest problem is choosing which outrageous quotations as examples to use."

Richard Cohen, general counsel of the Southern Poverty Law Center in Montgomery, said Pryor's activism as attorney general may lead Democrats to believe he lacks the dispassionate judgment needed to sit on an appellate court.

"Being a judge is an issue of wisdom and, when you've made a career out of pursuing a particular agenda and you're so young, one might wonder if it's time for you to sit in judgment of your fellow citizens," Cohen said.

From: Mamo, Jeanie S.
To: <Kavanaugh, Brett M.>;<Snee, Ashley>
Sent: 6/7/2003 1:45:58 PM
Subject: Montgomery (AL) Advertiser EDITORIAL (6/7/03) re: Scant justification for changing rules

EDITORIAL

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Montgomery (AL) Advertiser

June 7, 2003

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The United States Senate has been called the world's greatest deliberative body. With its longer terms and equal representation from all states, it was intended to function at a more deliberate pace than the House of Representatives.

Given that, and given its crucial "advise and consent" role on presidential nominations, it is hard to see much justification for a Republican effort to change the Senate's rule on filibustering. A three-fifths vote is now required to cut off debate on an issue and call a vote.

On the utterly implausible claim that Senate Democrats are unfairly impeding the confirmation of President Bush's judicial nominees, Republicans are proposing to change the cloture rule to a simple majority, or 51 votes. There are 51 Republicans in the Senate.

If the Democrats are trying to impede Bush's nominees, they aren't doing it very well. The Senate has considered 129 nominees and has confirmed 127 of them. One would think that Bush, a former baseball executive, would consider that a pretty good batting average.

A two-thirds vote is required to change Senate rules, so this proposal is unlikely to go anywhere. That raises the so-called "nuclear option" favored by some GOP senators. Under that scenario, the Republican presiding over the Senate at the time -- Vice President Dick Cheney or one of the GOP senators -- could declare from the chair that a nomination filibuster is over. A simple majority vote would uphold that ruling.

Such heavy-handedness would deeply damage the Senate as an institution. There's no real justification for changing the rules over a dispute over a couple of controversial nominations.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/7/2003 9:48:02 AM
Subject: : Montgomery (AL) Advertiser EDITORIAL (6/7/03) re: Scant justification for changing rules

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 7-JUN-2003 13:48:02.00
SUBJECT:: Montgomery (AL) Advertiser EDITORIAL (6/7/03) re: Scant justification for changing rules
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
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From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 6/7/2003 5:50:52 PM
Subject: Fw: NY Times (6/8/03) re: Lobbying starts as Groups foresee Supreme Court Vacancy

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

From: Jeanie S. Mamo/WHO/EOP

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

Cc:

Date: 06/07/2003 05:14:39 PM

Subject: NY Times (6/8/03) re: Lobbying starts as Groups foresee Supreme Court Vacancy

fyi...

June 8, 2003

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NY Times

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/7/2003 1:52:09 PM
Subject: : Fw: NY Times (6/8/03) re: Lobbying starts as Groups forsee Supreme Court Vacancy

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 7-JUN-2003 17:52:09.00

SUBJECT:: Fw: NY Times (6/8/03) re: Lobbying starts as Groups forsee Supreme Court Vacancy

TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

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From: Jeanie S. Mamo/WHO/EOP

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

Cc:

Date: 06/07/2003 05:14:39 PM

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To: Kristi.L.Remington@usdoj.gov <Kristi.L.Remington@usdoj.gov>; Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>; Brian.A.Benczkowski@usdoj.gov <Brian.A.Benczkowski@usdoj.gov>
CC: Dan.Bryant@usdoj.gov <Dan.Bryant@usdoj.gov>
Sent: 6/8/2003 6:23:45 AM
Subject: : NYT: Leonard's meeting leaked

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June 8, 2003

Lobbying Starts as Groups Foresee Supreme Court Vacancy

By ROBIN TONER and NEIL A. LEWIS

ASHINGTON, June 7 ??? Interest groups on the left and the right are beginning full-scale political campaigns ??? including fund-raising, advertising and major research ??? to prepare for what many expect to be a Supreme Court vacancy in the next several weeks.

While none of the justices have said they plan to retire, any decision would traditionally be announced at the end of the court's term in late June.

Both conservatives and liberals say the time is right for a change in at least one and perhaps two seats, given the age of several justices and the general recognition that this is President Bush's last chance to name a justice before the presidential campaign begins in earnest.

Neither side wants to be caught off guard in what is expected to be a fast-moving battle for public opinion, set off by the naming of a nominee. The Naral Pro-Choice America Foundation is making a pre-emptive strike with a television campaign beginning on Sunday that highlights the importance of the court to

abortion rights. The commercial shows a woman gasping as she reads the newspaper headline "Abortion Outlawed ??? Court Overturns Right to Choose."

Republicans have been raising money and planning strategy under the guidance of the former White House counsel C. Boyden Gray, who was a principal strategist in the bitter struggle over Justice Clarence Thomas's nomination in 1991.

Two weeks ago, White House and Justice Department officials met in a Washington law office with several Republican veterans of confirmation battles, including Mr. Gray, to discuss how to deal with liberal attacks on a Bush nominee.

The meeting opened with the veterans recalling the failed effort to put Robert H. Bork on the Supreme Court in 1987 and the successful campaign to confirm Mr. Thomas in 1991, after he was confronted with reports that he had sexually harassed Anita Hill, his former employee.

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MATERIALS RECEIVED: Friday, June 06, 2003

Nominations

Lance Robert Olson of Iowa, to be United States Marshal for the Northern District of Iowa

REV_00237385

Karin J. Immergut of Oregon, to be United States Attorney for the District of Oregon

Blue Slips Returned For:

Henry F. Floyd, of South Carolina, to be United States District Judge for the District of South Carolina

* Senator Graham

Mark R. Filip, of Illinois, to be United States District Judge for the Northern District of Illinois

* Senator Fitzgerald

Ethics Report

Amended report for Eduardo Aguirre, Jr., of Texas, to be Director of the Bureau of Citizenship and Immigration Services, Department of Homeland Security

Compliant

Swen Prior

Nominations Clerk

Senate Judiciary Committee

(202) 224-5225

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~~—————<i>Compliant~~

-

~~Swen Prior
Nominations Clerk
Senate Judiciary Committee
(202) 224-5225~~

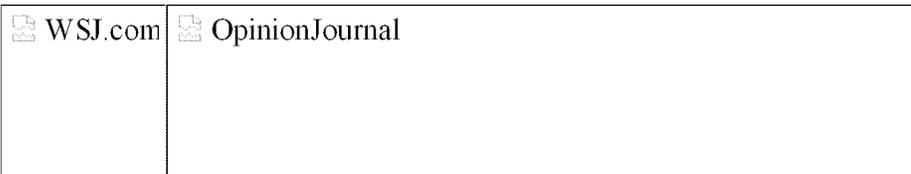
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From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>;<Sampson, Kyle>;<Bartolomucci, H. Christopher>;<Newstead, Jennifer G.>;<Brosnahan, Jennifer R.>;<Brown, Reginald J.>;<Ullyot, Theodore W.>;<Powell, Benjamin A.>;<Addington, David S.>
Sent: 6/9/2003 7:27:55 AM
Subject: Op-ed by our former colleague
Attachments: ballogo.gif; logo.gif; storyend_dingbat.gif



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AT LAW

Justice Served

Nabbing illegal aliens isn't a violation of civil rights.

BY BRADFORD A. BERENSON AND RICHARD KLINGLER

Monday, June 9, 2003 12:01 a.m.

Justice Department Inspector General Glenn Fine released a 198-page report last week criticizing the department's handling of the post-Sept. 11 terrorism detainees. Media and interest-group reaction was swift and gleeful, treating the report as confirmation that the administration has trampled civil rights in the war on terrorism. Various articles featured claims by Anthony Romero, executive director of the ACLU, that the report showed that "the war on terror quickly became a war on immigrants."

In fact, Mr. Fine's report did nothing of the sort. It examined the treatment of 762 indisputably illegal aliens, most of whom were later deported. His most pointed concerns arose from the treatment of 84 detainees at the Metropolitan Detention Center in Brooklyn, all of whom the FBI had classified as among the most high-risk terrorism-related detainees.

To be sure, the report documents a number of problems and areas in which the federal government's actions could have been made more fair or efficient. But the full report shows consistent efforts to meet the demands of security and civil liberties in the most trying circumstances.

Much of the discussion is actually quite mundane. The report describes bureaucratic problems and inefficiencies in carrying out a variety of complex tasks relating to the detainees, rather than wholesale or intentional violations of legal rights. More importantly, nowhere does the report claim that the Department of Justice violated the law--or that the detainees did not. It does not dispute that the department's detention policies were lawful or that all of the detainees were illegal aliens who had no right to be here at all.

If the problems identified in the inspector general's report are the worst things that we as a nation did in the immediate aftermath of the slaughter of thousands of American civilians in an epochal terrorist attack, we have done very well indeed.



The first of the three most salient criticisms leveled by the report relate to the Justice Department's policy of holding without bond all individuals detained as part of the post-Sept. 11 investigation until the FBI cleared them of connections to terrorism. Here, of course, Mr. Fine is forced to acknowledge that he "do[es] not criticize the decision to require FBI clearance of aliens to ensure that they had no connection to the September 11 attacks or terrorism in general." Instead, the gist of the report's complaint on this score is "that the FBI's clearance process was understaffed and not accorded sufficient priority."

But which special agents exactly would the inspector general have taken off of the active investigation of the Sept. 11 attacks to put on the task of trying to clear the names of those terrorism suspects that had already been removed from the streets? And which of the FBI's priorities in the immediate aftermath does Mr. Fine believe was too high?

The report itself notes that "within a week of the attacks, the FBI had assigned more than 7,000 employees to the task of tracking down anyone who had aided the terrorists and attempting to prevent additional attacks." Critical field offices were also preoccupied with investigating the anthrax attacks, the murder of Wall Street Journal reporter Daniel Pearl in Pakistan, searching for evidence in the debris of the World Trade Center and helping with security at the Winter Olympics. Keeping agents working on these matters rather than detainee clearance hardly seems unreasonable, even if that meant it took an average of 80 days to clear detainees rather than the "few weeks" some officials had initially expected.

In another section, the inspector general focuses on the department's delays in meeting its own objectives for notifying detainees of charges against them and deporting them. The stated notification goal of 72 hours, however, was not any sort of legal requirement. And yet, despite disruptions and difficult conditions, the INS still met its goal in 59% of cases and provided notice in most of the remainder shortly thereafter. As for delays in removal, the report's main criticism is that officials did not seek legal clarification soon enough--although when they did, the ruling supported their decision.

The inspector general's third main criticism, while serious, is not as sensational as it sounds. The report found "physical and verbal abuse" directed at the 84 detainees at the MDC in Brooklyn, but not at the hundreds of others at Passaic. While any abuse is wrong, the facts as outlined in the report do not support the more overheated criticisms. Officers subjected the MDC detainees, all of whom had been classified as high-risk by the FBI, to high security lock-downs, including limited time outside their cells. Officers moved detainees in shackles, and the most serious allegations concerned handcuffs that were too tight and officers who shoved detainees against walls upon intake or movement of prisoners.

Some officers also threatened detainees and called them names, including racial epithets. But the U.S. Attorney's Office investigated the allegations and found that evidence did not support criminal charges. In other words, particular corrections officers acted inappropriately in certain cases against a small group of detainees in one facility, but no serious injuries were substantiated and no broad government policy was implicated.



In context, it is remarkable that the allegations were not more extreme. In the immediate aftermath of Sept. 11, hardened corrections officers were overseeing illegal aliens suspected of being terrorists, in a facility within a subway's ride of the remnants of the World Trade Center.

Comparing the report to how critics have characterized the detentions confirms that a vocal minority suffers from a loss of perspective. Critics and their media amplifiers have raised dramatic alarms about military tribunals, confinement of material witnesses, and other alleged misdeeds. In each case, the government's actions have proved to have a sound basis in law and a limited scope. Now, with this widely touted report, another cause celebre has evaporated.

Of course we all want the administration of justice to be as close to perfect as possible, and self-evaluation and self-criticism are valuable. But exaggerated claims and unbalanced fear-mongering have consequences. Crying wolf deprives critics of moral authority that would be valuable when a true injustice arises. Bureaucracies tend to inertia and are naturally cowed by public criticism, well-founded or not. They err on the side of delicacy rather than robustness. Given the threats at hand, robustness has its virtues. *Mr. Berenson is a former associate White House counsel to President Bush. Mr. Klingler is an attorney in Washington, D.C.*

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<Kristi.L.Remington@usdoj.gov>;William.Hall2@usdoj.gov <William.Hall2@usdoj.gov>
Sent: 6/9/2003 8:59:16 AM
Subject: 2 Pryor pieces from today's papers

Red meat for Dems

By Nat Hentoff

THE WASHINGTON TIMES

Published June 9, 2003

Adding to the Senate Democrats' attacks on the president's nominations to federal appeals courts, George W. Bush has given his filibustering opponents welcome ammunition by his remarkably misguided nomination of Alabama Attorney General Bill Pryor to the 11th Circuit Court of Appeals.

Were I on the Senate Judiciary Committee, I would unhesitatingly vote against Mr. Pryor, because his clear record and public statements reveal that he would be the very definition of a judicial activist, letting his hostility toward key parts of the Bill of Rights determine his votes. But I would also urge my colleagues to send his nomination to the floor so that the entire Senate can vote on him — as the Constitution requires.

I would not vote against Mr. Pryor because he is a conservative — in the current battles over nominees, I would have voted for conservatives Priscilla Owen and Charles Pickering, because their opponents have distorted their records. But Mr. Pryor is capable of such extremism that a unanimous U.S. Supreme Court, in a decision written by Antonin Scalia, rejected Mr. Pryor's definition of federalism, which was included in his amicus brief and claimed municipalities have a "state sovereignty" right to be exempted from federal laws (*Jinks vs. Richland County*).

Not even the 19th-century secessionists advocated such reckless undermining of federal law. And Justice Scalia, dismissing Mr. Pryor's argument, is hardly one of the court's liberals.

As for the separation of church and state, Mr. Pryor, in a speech four years ago to the Christian Coalition, declared unambiguously that "we derive our rights from God and not from government." Why, then, do we have a Constitution in which there is no mention of God, except for the date of the end of the 1787 Constitutional Convention? And what of American citizens who are nonbelievers? If government abuses their rights, have they no recourse but a religious conversion?

With regard to Mr. Pryor's capacity as a judge, to deal fairly with all litigants and their attorneys before him, there is this statement by Mr. Pryor at a rally supporting the display of the Ten Commandments in the rotunda of the Alabama Judicial Building: "I became a lawyer because I wanted to fight the ACLU — the American "Anti-Civil" Liberties Union."

Will "Judge" Pryor recuse himself in all cases in which the American Civil Liberties Union has provided the attorney of record?

REV_00237392

Then there was Mr. Pryor's vigorous brief to the Supreme Court, in *Hope vs. Pelzer* (2002), defending Alabama's practice of handcuffing unruly prisoners to chest-high metal bars with rings attached (hitching posts) for long periods of time. A 6-3 majority of the court ruled that this form of discipline was a clear violation of the Eighth Amendment's prohibition of cruel and unusual punishment.

The practice, said the majority — turning away Mr. Pryor's legal brief — was "antithetical to human dignity" and "both degrading and dangerous."

Mr. Pryor's support of capital punishment is shared by the president, but Mr. Pryor, in his ardor, said to the Supreme Court — as was heard in a National Public Radio May 12 profile — that the electric chair in his state "remains a method that is instantaneous and painless."

But overwhelming evidence contradicts Mr. Pryor's claim. In 1983, for instance, John Evans caught on fire during an Alabama execution and was not pronounced dead until 20 minutes later. In 1989, it took three applications of electricity before Horace Dunkins was terminated in Alabama's electric chair. And a 1991-2000 report on executions in the state showed severe burning, scarring and other traumas in the bodies of many prisoners sent "painlessly" to eternity in that electric chair.

In 1999, Mr. Pryor was a founder of the Republican Attorneys Generals Association (part of the Republican National Committee). RAGA took in contributions, as reported in *The Washington Post* (March 30, 2002), from powerful corporations involved in, or trying to head off, lawsuits against them by some of the states whose attorney generals were RAGA members. Pryor said that accepting money from such sources "does not create a conflict of interest."

How does he define "conflict of interest?"

As surely as night follows day, there will be a furious, tumultuous Senate battle when Mr. Bush has his first chance to nominate a Supreme Court justice. By deciding to nominate Mr. Pryor to the federal bench now, the president has thrown red meat to the Democrats, and most likely will create an even more divisive national debate on his eventual choice for the Supreme Court. If Karl Rove is as judicious a presidential adviser as he is purported to be, I wonder if, for once, his fabled research skills failed him this time.

Birmingham News

Pryor to face U.S. Senate committee Wednesday

06/09/03

MARY ORNDORFF

News Washington correspondent

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"It will be a time of intensity, no doubt," said Sessions, who has been studying Pryor's record in preparation. "I'm hopeful it won't be particularly hostile, but we'll have to see how those things play out."

Opponents:

For the most part, the battle is drawn on national lines. Pryor's most organized opposition is from liberal national interest groups that have opposed many of Bush's judicial nominees. Back home, Pryor has cobbled together a diverse list of backers that includes blacks and Democrats.

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irony of the schedule, as Pryor was the only state attorney general to argue that women shouldn't be allowed to sue in federal court under the Violence Against Women Act. The U.S. Supreme Court agreed.

From: Kavanaugh, Brett M.
To: <Grubbs, Wendy J.>
Sent: 6/9/2003 12:26:59 PM
Subject: Re: Does 1:30 on weds

yes

From: Wendy J. Grubbs/WHO/EOP@Exchange on 06/09/2003 12:23:05 PM

Record Type: Record

To: Manuel_Miranda@frist.senate.gov@SMTP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Does 1:30 on weds

Work to meet with lee and makan?

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 6/9/2003 12:38:33 PM
Subject:

have some intel from Wendy about Dem thoughts on SCt.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 6/9/2003 2:33:14 PM
Subject: from Novak

did you see this?

JUDICIAL POLITICS

The selection by Hawaii Republican Gov. Linda Lingle of a Democratic stalwart for the state Supreme Court is interpreted by GOP strategists as a maneuver to confirm one of President Bush's conservative judicial nominees.

Lingle, Hawaii's second Republican governor ever and its first elected since 1958, picked Honolulu lawyer James Duffy. A close associate of Hawaii's Democratic Sen. Daniel Inouye, Duffy was nominated by President Bill Clinton to the U.S. 9th Circuit Court of Appeals but never got a hearing by the Republican-controlled Senate Judiciary Committee.

At stake may be Bush's nomination to the 9th Circuit of Los Angeles County Judge Carolyn Kuhl, who might become the third of the president's judicial nominees blocked by a Democratic filibuster. Republicans hope the Duffy nomination will win support for Kuhl from Hawaii's two senators, Inouye and Daniel Akaka -- enough to break a filibuster.

From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/9/2003 10:34:20 AM
Subject: : from Novak

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 9-JUN-2003 14:34:20.00
SUBJECT:: from Novak
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

did you see this?

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From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
Sent: 6/9/2003 2:39:12 PM
Subject: From today's press briefing

Q Ari, does the President feel the members of his own party might be interfering with or usurping executive branch authority or powers by, A, Tom DeLay involving the Homeland Security Department, Justice Department, Transportation Department in the Texas legislature situation? And, B, Senator Craig putting a hold on Air Force promotions?

MR. FLEISCHER: The question of holds is a long-lasting Senate tradition that often can be problematic. And it's part of working with the Senate and helping the Senate to make progress, particularly on the question of appointments and nominees.

On the first question you asked, as you know, the Department of Homeland Security and the Department of Transportation are reviewing all the facts and circumstances in this matter. And that's where it lies.

Q Well, on the Craig putting the hold on the Air Force promotions, you have complained repeatedly about Democrats blocking judicial -- the progress of judicial nominees. What's the difference?

MR. FLEISCHER: Well, I think that there is, in the case of the judicial nominees, a determination to at all costs block even a vote on the floor, with no end in sight, and that's why it's a filibuster. On the question of holds, we have seen holds come and go before. Holds are often lifted that results in a vote. If the Democrats were to relieve the filibuster and allow a vote to take place, then I think you would have an analogous situation. That's the difference between holds, frankly, and a filibuster.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/9/2003 4:25:09 PM
Subject: : Birmingham News (6/9/03) re: Pryor to face US Senate committee Wednesday

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-JUN-2003 20:25:09.00
SUBJECT:: Birmingham News (6/9/03) re: Pryor to face US Senate committee Wednesday
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

News

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06/09/03

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From Our Advertiser

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REV_00237433

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From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>
CC: matthew a. schlapp/who/eop@eop [WHO] <matthew a. schlapp>
Sent: 6/9/2003 3:42:35 PM
Subject: : Re: Getting the word out

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-JUN-2003 19:42:35.00
SUBJECT:: Re: Getting the word out
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:matthew a. schlapp (CN=matthew a. schlapp/OU=who/O=eop@eop [WHO])
READ:UNKNOWN
End Original ARMS Header

yes

Tim Goeglein
06/09/2003 04:44:57 PM
Record Type: Record

To: Matthew A. Schlapp/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: Re: Getting the word out

M and B

This Wed., 11 June, the Capital Research Center -- a very important center-right think tank -- will send to us 170 of the top center-right interns in Washington this summer for a WH briefing.

May I have each of you stop by for 10-15 minutes to speak between 5-530 p.m.? 1) Schlapp/political briefing and 2) Kavanaugh/judges briefing.

Paul Perkins is coordinating.

Much gracias,

tsg

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/9/2003 7:55:07 PM
Subject: : important event from reorg in June 2001

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 9-JUN-2003 23:55:07.00
SUBJECT:: important event from reorg in June 2001
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

June 30, 2001, Saturday

HEADLINE: GOP abandons bid to keep control of Supreme Court vote

BYLINE: By James Kuhnhenn

BODY:

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After weeks of negotiations that threatened to grind the Senate's work to a halt, Republicans settled for a written statement in which Democrats merely declared their intent to follow Senate tradition to give Supreme Court nominees a vote on the Senate floor.

"But there are no guarantees," said Majority Leader Tom Daschle, D-S.D.

The parties' agreement is a defeat for President Bush, who had insisted on assurances that the full Senate would get to decide the fate of his nominees to the high court.

The Senate Judiciary Committee votes on Supreme Court nominees, then customarily forwards the nominations to the full Senate, whether it has approved the candidate or not. Lesser nominations die in committee if opposed by a majority. Though the Judiciary panel historically has given Supreme Court nominees the courtesy of a full floor vote even when it disapproves of them, it has never made that a written commitment.

Daschle and Judiciary Committee Chairman Patrick Leahy, D-Vt., feared that such a guarantee would undermine the committee's power and set a poor precedent for the Senate's institutional authority.

Republicans won one concession from Daschle _ a new policy that would require senators who single-handedly attempt to block judicial nominees to make their objections public.

The agreement allowed the Senate to approve unanimously a reorganization resolution that gives Democrats a one-seat majority on all Senate committees. Even though Democrats have been in the majority since June 6, senators from both parties who were newly elected last year had been unable to participate in their committees these past three weeks.

That was because of terms in an agreement struck earlier this year by Daschle and Republican leader Trent Lott, R-Miss., governing how the Senate would do business when it was divided 50-50 between the parties.

The Daschle- Lott deal specified that in the event of a shift in party balance committee memberships would revert to the previous Congress' lineup. Friday's resolution ends that arrangement.

From: Kavanaugh, Brett M.
To: <Kaplan, Joel>
Sent: 6/9/2003 11:13:30 PM
Subject:

you're keeping our conversations quiet, correct??

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 6/9/2003 11:47:13 PM
Subject: important event from reorg in June 2001

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From: CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; ehaden@balch.com [UNKNOWN] <ehaden@balch.com>; Kristi.L.Remington@usdoj.gov [UNKNOWN] <Kristi.L.Remington@usdoj.gov>; Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>; William.Hall2@usdoj.gov [UNKNOWN] <William.Hall2@usdoj.gov>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; william_smith@judiciary.senate.gov [UNKNOWN] <william_smith@judiciary.senate.gov>; Brian.A.Benczkowski@usdoj.gov [UNKNOWN] <Brian.A.Benczkowski@usdoj.gov>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/10/2003 4:54:04 AM
Subject: : Pryor Article roundup

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 10-JUN-2003 08:54:04.00
SUBJECT: : Pryor Article roundup
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: ehaden@balch.com (ehaden@balch.com [UNKNOWN])
READ: UNKNOWN
TO: Kristi.L.Remington@usdoj.gov (Kristi.L.Remington@usdoj.gov [UNKNOWN])
READ: UNKNOWN
TO: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: William.Hall2@usdoj.gov (William.Hall2@usdoj.gov [UNKNOWN])
READ: UNKNOWN
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: william_smith@judiciary.senate.gov (william_smith@judiciary.senate.gov [UNKNOWN])
READ: UNKNOWN
TO: Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Roundup of some articles/press releases on the hearing. Note the WSJ op-ed by Kmiec. Also note the last article from the Mobile Register -- it states that Pryor critics are having a press conference this afternoon.

6/10/03 Wall St. J. A18
2003 WL-WSJ 3970141
(Publication page references are not available for this document.)
The Wall Street Journal
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Tuesday, June 10, 2003

Bill Pryor's Turn
By Douglas W. Kmiec

We are edging closer to the end of an important Supreme Court term, and to the resolution of cases dealing with everything from California's attempt to censor Nike's commercial speech, to Michigan's efforts to skew law school and college admissions by race to promote diversity, and Texas's criminal prohibition of homosexual sodomy. Yet these cases are overshadowed by off-stage dramas: constitutional doubts over the

Democratic practice of judicial filibusters, and continued partisan skirmishing over district court nominees. These sideshows spell trouble for the speculated final act of Chief Justice William Rehnquist and possibly Justice Sandra Day O'Connor, rumored to be contemplating retirement to allow a president from the party which appointed them to appoint their successors.

The absence -- on the brink of Supreme Court vacancies -- of a set of constitutional rules regarding filibusters is worrisome. In the meantime, the effect of this acrimonious practice is felt largely by the president's federal appellate nominees, Miguel Estrada, Patricia Owen and Carolyn Kuhl. And this week, the opposition is gearing up to add Bill Pryor, nominated for the 11th Circuit, to the list of able persons who are being denied, not with a politically accountable "up" or "down" vote, but by stealth and delay.

Mr. Pryor has been Alabama's attorney general for over six years and has pages of plaudits from Democrats and Republicans alike. Having graduated near the top of his law class at Tulane and clerked for the civil-rights legend Judge John Minor Wisdom, Mr. Pryor has an impeccable record of seeking racial justice, including assisting the federal prosecution of the 1963 bombing of the 16th Street Baptist Church. Nevertheless, the New York Times recently editorialized that Mr. Pryor's nomination is "troubling" because he wrote a brief supporting the Texas law against homosexual sodomy. When not playing "guilt by client representation," Mr. Pryor's opponents also complain of his successful defense of state sovereignty, as if it is now "out of the mainstream" for a state legal officer to do anything else. Other activists attempt to portray the Pryor nomination as antiwoman since he agreed with the Supreme Court's invalidation of a part of the Violence Against Women Act.

The anti-Pryor opposition is thus the usual litmus litany of complaints: he's skeptical of sweeping assertions of nontextual rights, like abortion; questions unlimited federal power; and defends the authority of the people within their states to reach their own moral judgments. But his adversaries have a problem: Mr. Pryor follows the law, even when he disagrees, and is uniformly acknowledged to be a man of intelligence, industry and fairness. For example, he instructed prosecutors to construe a broadly written Alabama abortion limitation consistently with the viability line put forth in *Planned Parenthood v. Casey*. Mr. Pryor has also been praised by women's groups

across Alabama as
"working tirelessly to protect women and children from the dangers of
domestic
violence."

Bill Pryor is a principled man. In his brief defending the right of states
to legislate
against homosexual sodomy, he candidly argues that our jurisprudence has
"protected
marriage, child-bearing, and the family -- not extramarital sex." Since
such laws are
often unenforceable, there is tremendous pressure on the Supreme Court,
from liberal and
libertarian alike, to tell Texas that the regulation of sexual activity is
off-limits.
There is prudence in this, as even Thomas Aquinas cautioned against
attempting to enact
every virtue or prohibit every vice. Yet Mr. Pryor argues forcefully that
"the category
of morality [has always been] among state concerns. The laws regarding
marriage which
provide both when sexual powers may be used and the legal and societal
context in which
children are born and brought up, as well as laws forbidding adultery,
fornication, and
homosexual practice . . . form a pattern so deeply pressed into the
substance of our
social life that any Constitutional doctrine must be built upon that
basis."

Unlike his strident opponents, Mr. Pryor admits that the path Texas has
chosen is "open
to debate," but his most telling point is that it is not for a judge to
say a statute
favoring the morality of the traditional family is irrational merely
because some
disagree. That other states have decriminalized homosexual activity, or
even adultery,
is "simply an example of how this country's federalist system works,"
writes Mr. Pryor,
and declaring some ill-defined interest in intimate association to be a
constitutional
right does not facilitate debate, it stops it. These are wise and
temperate words,
respectful of opinions deeply contrary to his own. They also reveal
someone who, if
acting in a judicial capacity, would understand that in a democratic
society,
legislatures, not courts, are constituted to respond to the will and moral
values of the
people.

There is a last point that should not be swept under the rug. Mr. Pryor
(and Ms. Kuhl)
are practicing Catholics. Some of the opposition to both comes dangerously
close to a
religious exclusion, or at the very least, indulges the tired belief of
the Legal
Realist school that it is impossible to separate who you are from how you
judge. One
thought that John F. Kennedy had put this kind of sophistry to rest in his
1960
presidential campaign.

Apparently not.

Mr. Kmiec, presently dean of the Catholic University School of Law, will accept the Caruso Chair in Constitutional Law at Pepperdine in August. He was head of the Office of Legal Counsel under Presidents Reagan and George H.W. Bush.

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Monday, June 9, 2003

ACLJ Calls on Senate to Give Alabama Attorney General Bill Pryor Fair Hearing for Seat on Federal ...

ACLJ Calls on Senate to Give Alabama Attorney General Bill Pryor Fair Hearing for Seat on Federal Appeals Court.
WASHINGTON-(BUSINESS WIRE)-June 9, 2003-The American Center for Law and Justice, an international public interest law firm specializing in constitutional law, today called on the U.S. Senate to give Alabama Attorney General Bill Pryor full and fair consideration at a hearing on Wednesday for a seat on the U.S. Court of Appeals for the Eleventh Circuit.

"Bill Pryor is an exceptional nominee who will serve with distinction on the appeals court," said Jay Sekulow, Chief Counsel of the ACLJ. "He is extremely bright, experienced and committed to ensuring that the constitution and the rule of law will be protected and faithfully applied. Bill Pryor deserves a full and fair hearing in the Senate. While he has the votes to clear the Judiciary Committee, he must not become the next victim of a troubling strategy - the use of a filibuster - designed to deny nominees a simple up-or-down vote on the Senate floor. The Senate should put its constitutional responsibilities ahead of its political priorities and not permit a minority of Senators to derail a confirmation process that must move forward without further delay."

Pryor is scheduled to appear before the Senate Judiciary Committee on Wednesday for a hearing on his nomination by President Bush to the 11th circuit.

Sekulow said Pryor did an outstanding job in a case that garnered national attention a few years ago involving student-led prayer in school.

"This was a very difficult case that took more than five years to litigate and was taken to the U.S. Supreme Court on two separate occasions. Ultimately, the Supreme Court in 2001 let stand a federal appeals court decision upholding the constitutionality of student-led and student-initiated religious speech in Alabama schools. I was privileged to assist Attorney General Pryor in a case that not only upheld the

constitution, but resulted in an important First Amendment victory for the students of Alabama," said Sekulow, who was appointed by Pryor to serve as Deputy Attorney General for Alabama in the student prayer case.

Sekulow said the ACLJ is contacting more than 500,000 of its members this week by e-mail asking them to contact their Senators to urge them to support the Pryor nomination.

At the same time, the ACLJ has heard from 40,000 people in the past few weeks that have signed a petition urging the Senate to act immediately to end the filibusters, which are preventing an up-or-down vote on several judicial nominees. In a report presented to the Senate last month, the ACLJ concluded that a simple majority in the Senate - 51 Senators - could act immediately and constitutionally to end the current filibusters and call for a full vote on the Senate floor for Miguel Estrada and Priscilla Owen. The report is posted at www.aclj.org. The Senate Rules Committee last week held a hearing to discuss that alternative and other options available to moving the confirmation process forward.

The American Center for Law and Justice is an international public interest law firm specializing in constitutional law based in Washington, D.C. The ACLJ web site address is www.aclj.org.

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Saturday, June 7, 2003

Pryor faces tough grilling from Democrats
ANA RADELAT
Gannett News Service

WASHINGTON -- Alabama Attorney General Bill Pryor, President Bush's choice for a seat on a federal appeals court, is expected to be the next judicial nomination to draw fire from Democrats and special interest groups trying to keep conservative activists from filling the federal bench. "Bill Pryor has a record of ultra-right-wing extremism on almost every issue," said Louis Bograd of the Alliance for Justice. "He is vehemently opposed to the rights of reproductive choice, the separation of church and state, and (he has) a record of hostility to criminal defendants so extreme that it will make senators blanch.

Nominated by Bush in April, Pryor, 40, will go before some of the most liberal Democrats in the Senate when he testifies Wednesday at a hearing of the Senate Judiciary

Committee.

The Alliance for Justice, the Southern Christian Leadership Council, Planned Parenthood and dozens of other groups are marshalling their forces to try to defeat Pryor's nomination to the Atlanta-based 11th U.S. Circuit Court of Appeals. But the attorney general's candidacy may be harder to derail than other Bush nominees that Democrats oppose.

Senate Democrats have stalled the nominations of Texas Supreme Court Judge Priscilla Owen, a candidate for the 5th U.S. Circuit Court of Appeals; and Miguel Estrada, a lawyer who is Bush's choice to sit on a federal appellate court that handles the most important cases against the government.

The nominations have been held up through a Senate procedure called the filibuster, extended debate that keeps legislation and nominations from a full Senate vote. It takes 60 votes to end a filibuster, and the GOP has only been able to muster a maximum of 55 in its attempts to end debate on Owen and Estrada.

Other nominees are expected to face Democratic filibusters, too, among them Charles Pickering, a district court judge from Hattiesburg, Miss.; Los Angeles Judge Carolyn Kuhl -- and perhaps Pryor.

Senate Majority Leader Bill Frist, R-Tenn., told Gannett News Service that he did not know if Pryor would face a filibuster but said it was possible. Democrats aren't talking until after Wednesday's hearing.

The White House has asked all judicial nominees to stay away from the press, and Pryor has declined all requests for interviews or comment.

Support in Alabama

The ambitious attorney general may be the most ideological of all of the controversial judicial nominees, but he has an advantage.

The Senate Judiciary Committee rejected Owen and Pickering when Democrats controlled it last year. Estrada has failed to give Democrats information they want about his days at the Justice Department. Both Democratic senators from Kuhl's home state of California opposed her, which used to disqualify a candidate. But Democrats have no procedural reason to stop Pryor's nomination -- at least not yet -- even though his

ideology
rankles many of them.

The support of several black leaders from the state and the sponsorship of Alabama's Republican senators also are likely to help Pryor.

"Bill Pryor is an outstanding nominee with extensive experience," said Sen. Richard Shelby of Tuscaloosa. "He is well prepared to become a federal judge and that should be the Democrats' focus in the confirmation process."

Sen. Jeff Sessions of Mobile, who is considered Pryor's mentor, said he expects Democratic opposition.

"The pattern has been that when leftist groups target a nomination and stir it up in the newspapers, the allegations bring some negative votes," Sessions said.

Democrats on the judiciary panel are likely to question Pryor about the following:

-- In 1997, Pryor testified before Congress that a certain provision of the Voting Rights Act, the one requiring Justice Department oversight of voting matters in certain states and counties that have had civil rights problems, is an expensive burden to the states and has outlived its usefulness.

-- Pryor has been a strong supporter of Alabama Supreme Court Justice Roy Moore's display of the Ten Commandments. He also has battled with the American Civil Liberties Union in a school prayer case from Alabama.

-- Pryor argued that Alabama prison guards have the right to handcuff state prisoners to hitching posts in the summer heat. The U.S. Supreme Court ruled the practice is cruel and unusual, dismissing Pryor's argument that the prison guards should be given legal immunity.

-- A strong state's rights advocate, Pryor won a Supreme Court case that found the Americans With Disabilities Act doesn't apply to state employees. He also cited federal intrusion on states' rights to argue against part of the Voting Rights Act and enforcement of the Clean Air Act.

-- Pryor is a staunch abortion foe and has been critical of the Supreme Court's Roe v. Wade decision.

-- In a recent friend of the court brief in a Texas case, Pryor likened homosexual acts to prostitution, necrophilia and incest.

Critics of the nomination believe the White House has chosen conservative nominees like Pryor to appease the right wing of Republican Party and make it easier for Bush to take more moderate positions on other issues.

From advocate to judge

"Pryor is no stealth nominee," said Bograd of the Alliance for Justice, "He is an ideological extremist, and our biggest problem is choosing which outrageous quotations as examples to use."

Richard Cohen, general counsel of the Southern Poverty Law Center in Montgomery, said Pryor's activism as attorney general may lead Democrats to believe he lacks the dispassionate judgment needed to sit on an appellate court.

"Being a judge is an issue of wisdom and, when you've made a career out of pursuing a particular agenda and you're so young, one might wonder if it's time for you to sit in judgment of your fellow citizens," Cohen said.

Sessions, a member of the Senate Judiciary Committee, said the question of whether Pryor can make the transition from advocate to judge is a legitimate one for his Democratic colleagues to ask.

"I think Bill will handle their questions very well," Sessions said. "One of his strengths is that none of his (controversial) decisions were taken lightly. ... He's taken unpopular positions when he thinks it's the law."

Pryor blasted by critics in twin reports
Senate Judiciary Committee to begin hearing Wednesday on Alabama attorney general's nomination to federal bench

06/10/03

By SEAN REILLY

Washington Bureau

WASHINGTON -- Two days before a Senate committee takes its first look at Alabama Attorney General Bill Pryor's bid to join a federal appeals court, several opposition groups issued reports Monday urging lawmakers to scuttle his nomination.

"We believe that he poses an enormous threat to the rights, protections and freedoms of all Americans," said Ralph G. Neas, president of the People for the American Way, which describes itself as a social justice organization with some 600,000 members around the country. "He is certainly one of the most dangerous judicial nominees" put forth by the Bush administration, Neas said.

In a 43-page review sent to all 19 members of the Senate Judiciary Committee, People for the American Way accuses the 41-year-old Mobile native of seeking to undermine constitutional safeguards that guarantee a women's right to an abortion, keep government from sponsoring an official religion, and limit the majority's ability to impose its views on a particular minority.

Although Pryor has been only partially successful in advancing that right-wing agenda, the report states, "the situation would be far different ... if (he) were an appellate judge deciding these critical questions of constitutional and statutory in terpretation."

A second blast came Monday from Americans United for Separation of Church and State, another Washington organization that has tussled with Pryor over government support for school prayer and display of the Ten Commandments in public buildings.

In a much shorter overview of Pryor's record as attorney general, Americans United called him "a hard-line, right-wing ideologue bent on radically undermining core constitutional freedoms.

"Lifetime seats on the federal bench should be re served for dispassionate judges of constitutional law, not politicians who espouse radical agendas."

Representatives of both groups plan to join other critics at a news conference in Washington this afternoon, publicly pressing the Senate to reject Pryor's candidacy. Their research was drawn largely from Pryor's voluminous speeches and legal filings, some readily available on the attorney general's Web site at www.ago.state.al.us.

Two months after his nomination by President Bush for the seat on the Atlanta-based 11th U.S. Circuit Court of Appeals, Pryor, a Republican, is slated to appear at a hearing Wednesday morning before the Senate Judiciary Committee.

Democrats on the panel have already signaled that they plan some aggressive questioning of his views on abortion, civil rights and treatment of state prisoners. Pryor has repeatedly condemned the U.S. Supreme Court's 1973 decision legalizing abortion and successfully pursued a legal challenge that limited state workers' ability to sue for discrimination under a landmark federal disability law. In a losing cause, he also argued that Alabama prison guards could not be sued for disciplining inmates by handcuffing them to an outdoor hitching post.

"I know Bill's philosophy will be to answer questions as long as they want," his friend and mentor, U.S. Sen. Jeff Sessions, R-Mobile, said last week in anticipation of the Wednesday hearing. "I'm hopeful that it would not be particularly hostile."

To Sessions and other supporters, Pryor is a brilliant and principled lawyer whose views -- far from being radical -- have repeatedly prevailed with federal judges.

Under Pryor's leadership, "Alabama has one of the best records of any state" in winning cases before the U.S. Supreme Court, said Larry Childs, a Birmingham lawyer and former colleague who has been acting as an unofficial spokesman during the nomination process.

"It is curious, and even laughable, that these liberal extremist groups are criticizing Bill Pryor as being outside the mainstream of American law for cases in which the Supreme Court ruled in his favor," Childs said via e-mail.

A spokeswoman for Judicia ry Committee Chairman Orrin Hatch, R-Utah, could

not be reached for comment Monday. Under standard procedures, the Republican-controlled panel will wait at least until next week before holding a vote on sending Pryor's nomination to the full Senate. If that occurs, Democrats could face a difficult decision over whether to filibuster his nomination -- a move that would effectively require 60 votes for confirmation instead of a simple majority of 51. Pryor, furthermore, was hand-picked by the White House. He co-chaired Bush's presidential campaign in Alabama three years ago and has a close relationship with the president's top political adviser, Karl Rove, who managed Pryor's 1998 campaign for a full term as attorney general. In an unusual twist, Bush nominated Pryor for the appellate court in April after his original choice for the post --then-U.S. Magistrate Judge William Steele of Mobile -- failed to get a Judiciary Committee hearing during the 2001-02 session of Congress. As Pryor recounted in his response to a committee questionnaire, the White House asked him last December whether he would be interested in interviewing for the appellate judgeship. He spoke a few days later with Alberto Gonzales, the administration's chief lawyer, and submitted the paperwork for the FBI background check in early January. Like other federal appellate courts, the 11th Circuit is one rung below the U.S. Supreme Court. Because the high court only accepts a handful of cases each year, the 12 judges on the 11th Circuit usually represent the legal end of the road in Alabama, Georgia and Florida. The judges make \$164,000 annually.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>
Sent: 6/10/2003 10:11:24 AM
Subject: media headline and take on Chertoff

Former Clinton Investigator Confirmed as Judge

Mon June 9, 2003 08:24 PM ET

WASHINGTON (Reuters) - A one-time congressional investigator of Bill and Hillary Clinton's Arkansas land deals won Senate confirmation on Monday as a federal appeals court judge, with the former first lady casting the lone vote against him.

Michael Chertoff, who has served the past two years as an assistant U.S. attorney general in charge of the Justice Department's criminal division, won the votes of 88 senators.

Chertoff is expected to be sworn in by the end of this month to the 3rd U.S. Circuit Court of Appeals in Philadelphia, a spokesman said.

A decade ago, Chertoff was Republican counsel to the Senate Whitewater investigation, which examined Clinton land dealings in Arkansas.

The probe found no criminal wrongdoing against the Clintons themselves in the Whitewater dealings.

But it helped lead to the appointment of a special prosecutor and a broader investigation, which resulted in the impeachment of then President Bill Clinton in 1998 on charges stemming from his affair with a White House intern.

President Bush's nomination of Chertoff to the federal bench had the potential for a partisan Senate battle, similar to ones now holding up other judicial nominees.

But after an examination of his long legal career, Democrats and Republicans came together to support Chertoff, who watched Monday's Senate vote from the chamber's gallery.

Eleven of the 100 senators did not vote on Chertoff's nomination, many having apparently failed to return to Washington from weekends at home or on the road. Sen. Clinton, however, made it to the Senate from New York where she had been signing copies of her book, "Living History."

Bush has said he intends to nominate Christopher Wray, now the top assistant to Deputy Attorney General Larry Thompson, to replace Chertoff at the Justice Department.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/10/2003 6:13:27 AM
Subject: : media headline and take on Chertoff

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TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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From: Weissmann, Henry <WeissmannHX@mt.com>
To: 'Miranda, Manuel (Frist)' <Manuel_Miranda@frist.senate.gov>; Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2003 9:21:03 AM
Subject: : Kuhl
Attachments: P_G2Y1H003_WHO.TXT_1.html

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READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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The following editorial appeared in today's edition of the Los Angeles Daily Journal:

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June 10, 2003

KUHL'S CRITICS DISTORT MEANING OF HER 'SANCHEZ-SCOTT' RULING

Forum Column

By Kristin Linsley Myles

Los Angeles Superior Court Judge Carolyn B. Kuhl is a well-qualified judge who has devoted her career to public service and earned broad bipartisan support for her nomination to the 9th U.S. Circuit Court of Appeals. Her critics have asserted that her decision in Sanchez-Scott v. Alza Pharmaceuticals shows that she is insensitive to women's rights to privacy. To the contrary, Kuhl's ruling recognized the patient's right to decide who may be present at a medical examination where that patient is made aware that there is a nonmedical party in the room. Kuhl's ruling left open the plaintiff's right to sue the truly responsible party - her physician - who may have been negligent in failing to inform sufficiently the patient of the third party's identity and obtain her express, informed consent. In Sanchez-Scott, a breast-cancer patient was taken to an examination room, where she was met by her physician and a pharmaceutical company's representative, whom the physician introduced as "a person ... who was looking at [the physician's] work." The company's representative did not disclose his identity, background or role, and the plaintiff neither asked questions about him nor objected to his presence. While the representative was still in the room, the plaintiff

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disrobed from the waist up at the physician's request to permit the examination. After it was completed, the plaintiff learned that the extra person was a pharmaceutical company's representative. The patient sued her doctor for the negligent failure to obtain her informed consent to the representative's presence. The patient also brought a separate claim against the pharmaceutical company and its representative and against the doctor for invasion of privacy.

Kuhl ruled only on the privacy claim, where she concluded that it should be dismissed. Kuhl applied controlling state law, which required her to determine whether the facts as alleged demonstrated conduct that would be

highly offensive to a reasonable person. She observed that some intrusion into seclusion is inherent in a medical examination, and that it was reasonable for persons other than physicians to be present, such as nurses, technicians and "perhaps students or researchers."

Kuhl stated that whether the presence of nonmedical individuals would be offensive would depend on the reason the additional person was present. Kuhl noted that the patient was aware that the third party was in the examining room, yet made no attempt to find out why or object to his presence.

Kuhl's ruling did not say that the doctor had acted properly in inviting the representative into the examining room. On the contrary, she said that the doctor may have been negligent and/or have violated his duties

by failing to give the patient complete information about the third party's identity and to obtain her express, informed consent.

Kuhl also held that the plaintiff may be able to recover if she showed that the doctor failed in his professional duties by letting the representative in the room without giving her sufficient information and a chance to make an informed choice about his presence.

Kuhl was right to consider whether the law punishes third parties who enter an examination room at a doctor's request. Sanchez-Scott's attorney argued that a medical student should be liable for damages for entering an examination room with a doctor if the doctor had not fully explained the student's identity and purpose.

Again, Kuhl recognized that it may be part of the doctor's professional responsibilities to make sure that the patient knows why others

are participating in or observing patient care and to allow the patient to exclude them. But those responsibilities rightly belong to the doctor. The person brought in by the doctor should not have to interfere in the doctor-patient relationship in order to avoid liability.

Although the state Court of Appeal reversed Kuhl's ruling, Justice Paul Turner, the author of the appellate decision, supports Kuhl's nomination and describes the Sanchez-Scott case as a tough call. Turner stated that the case "involved some issues of first impression" in an area that has "not been clearly defined with identifiable bright line rules." Turner also observed that "a strong argument can be made that she correctly assessed the competing societal interests."

Contrary to the mischaracterizations of her critics, Kuhl's Sanchez-Scott decision demonstrates sensitivity to women's rights to privacy. Kuhl, who herself has two daughters, acknowledged that a breast examination was a private matter. Nor did she establish a rule that the presence of a person other than the physician at such an examination was, in

all circumstances, intrusive or not intrusive.

Rather, she based her ruling on the complexity of the medical context in which persons other than physicians may be present at an examination. Kuhl's decision recognizes the patient's right to decide who should and should not be present, as well as the doctor's obligation to provide the patient with complete information and an opportunity to make an informed choice.

Nor does Kuhl's ruling call into question her outstanding legal abilities. In Sanchez-Scott, she had to evaluate an unclear area of the law.

She did so objectively and, in Turner's words, "a strong argument" can be made that she did so correctly. Indeed, it is remarkable that, although Kuhl

has presided over more than 2000 cases during her seven years as a judge, her opponents have been able to identify only one decision to criticize. A letter signed by 23 female state Superior Court judges describes her as "a fair, careful and thoughtful judge who applies the law without bias." They also observe that she "has been a mentor to new women judges" and represents "the best values" of a "fair-minded and principled judiciary."

Kuhl has been recognized as a superb jurist by a bipartisan group of

more than a dozen California Court of Appeal justices, by nearly 100 Superior Court judges and by state Supreme Court Justice Carlos Moreno. The American Bar Association has rated her "well-qualified," its highest rating.

Reasonable senators should not be misled by mischaracterizations on Kuhl's Sanchez-Scott ruling and should confirm her nomination.

Kristin Linsley Myles is a partner in the San Francisco office of Munger, Tolles & Olson, the firm at which Kuhl practiced as a partner.

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The following editorial appeared in today's edition of the Los Angeles Daily Journal:

DAILY JOURNAL NEWSWIRE ARTICLE

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Kuhl's ruling did not say that the doctor had acted properly in inviting the representative into the examining room. On the contrary, she said that the doctor may have been negligent and/or have violated his duties by failing to give the patient complete information about the third party's identity and to obtain her express, informed consent.

Kuhl also held that the plaintiff may be able to recover if she showed that the doctor failed in his professional duties by letting the representative in the room without giving her sufficient information and a chance to make an informed choice about his presence.

Kuhl was right to consider whether the law punishes third parties who enter an examination room at a doctor's request. *Sanchez-Scott's* attorney argued that a medical student should be liable for damages for entering an examination room with a doctor if the doctor had not fully explained the student's identity and purpose.

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Contrary to the miscellaneous characterizations of her critics, Kuhl's *Sanchez-Scott* decision demonstrates sensitivity to women's rights to privacy. Kuhl, who herself has two daughters, acknowledged that a breast examination was a private matter. Nor did she establish a rule that the presence of a person other than the physician at such an examination was, in all circumstances, intrusive or not intrusive.

Rather, she based her ruling on the complexity of the medical context in which persons other than physicians may be present at an examination. Kuhl's decision recognizes the patient's right to decide who should and should not be present, as well as the doctor's obligation to provide the patient with complete information and an opportunity to make an informed choice.

Nor does Kuhl's ruling call into question her outstanding legal abilities. In Sanchez-Scott, she had to evaluate an unclear area of the law. She did so objectively and, in Turner's words, "a strong argument" can be made that she did so correctly. Indeed, it is remarkable that, although Kuhl has presided over more than 2000 cases during her seven years as a judge, her opponents have been able to identify only one decision to criticize.

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Reasonable senators should not be misled by mischaracterizations on Kuhl's Sanchez-Scott ruling and should confirm her nomination.

Kristin Linsley Myles is a partner in the San Francisco office of Munger, Tolles & Olson, the firm at which Kuhl practiced as a partner.

From: Becker, Marc <BeckerMA@mto.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2003 9:21:01 AM
Subject: : FW: Daily Journal Article
Attachments: P_B2Y1H003_WHO.TXT_1.htm

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Becker, Marc" <BeckerMA@mto.com> ("Becker, Marc" <BeckerMA@mto.com> [UNKNOWN])
CREATION DATE/TIME:10-JUN-2003 13:21:01.00
SUBJECT:: FW: Daily Journal Article
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett,

Here's the final piece from today's Daily Journal. Best regards.
Marc.

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June 10, 2003

KUHL'S CRITICS DISTORT MEANING OF HER 'SANCHEZ-SCOTT' RULING

Forum Column

By Kristin Linsley Myles

Los Angeles Superior Court Judge Carolyn B. Kuhl is a well-qualified judge who has devoted her career to public service and earned broad bipartisan support for her nomination to the 9th U.S. Circuit Court of Appeals. Her critics have asserted that her decision in Sanchez-Scott v. Alza Pharmaceuticals shows that she is insensitive to women's rights to privacy. To the contrary, Kuhl's ruling recognized the patient's right to decide who may be present at a medical examination where that patient is made aware that there is a nonmedical party in the room. Kuhl's ruling left open the plaintiff's right to sue the truly responsible party - her physician - who may have been negligent in failing to inform sufficiently the patient of the third party's identity and obtain her express, informed consent. In Sanchez-Scott, a breast-cancer patient was taken to an examination room, where she was met by her physician and a pharmaceutical company's representative, whom the physician introduced as "a person ... who was looking at [the physician's] work." The company's representative did not disclose his identity, background or role, and the plaintiff neither asked questions about him nor objected to his presence.

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While the representative was still in the room, the plaintiff disrobed from the waist up at the physician's request to permit the examination. After it was completed, the plaintiff learned that the extra person was a pharmaceutical company's representative. The patient sued her doctor for the negligent failure to obtain her informed consent to the representative's presence. The patient also brought a separate claim against the pharmaceutical company and its representative and against the doctor for invasion of privacy. Kuhl ruled only on the privacy claim, where she concluded that it should be dismissed. Kuhl applied controlling state law, which required her to determine whether the facts as alleged demonstrated conduct that would be highly offensive to a reasonable person. She observed that some intrusion into seclusion is inherent in a medical examination, and that it was reasonable for persons other than physicians to be present, such as nurses, technicians and "perhaps students or researchers." Kuhl stated that whether the presence of nonmedical individuals would be offensive would depend on the reason the additional person was present. Kuhl noted that the patient was aware that the third party was in the examining room, yet made no attempt to find out why or object to his presence. Kuhl's ruling did not say that the doctor had acted properly in inviting the representative into the examining room. On the contrary, she said that the doctor may have been negligent and/or have violated his duties by failing to give the patient complete information about the third party's identity and to obtain her express, informed consent. Kuhl also held that the plaintiff may be able to recover if she showed that the doctor failed in his professional duties by letting the representative in the room without giving her sufficient information and a chance to make an informed choice about his presence. Kuhl was right to consider whether the law punishes third parties who enter an examination room at a doctor's request. Sanchez-Scott's attorney argued that a medical student should be liable for damages for entering an examination room with a doctor if the doctor had not fully explained the student's identity and purpose. Again, Kuhl recognized that it may be part of the doctor's professional responsibilities to make sure that the patient knows why others are participating in or observing patient care and to allow the patient to exclude them. But those responsibilities rightly belong to the doctor. The person brought in by the doctor should not have to interfere in the doctor-patient relationship in order to avoid liability. Although the state Court of Appeal reversed Kuhl's ruling, Justice Paul Turner, the author of the appellate decision, supports Kuhl's nomination and describes the Sanchez-Scott case as a tough call. Turner stated that the case "involved some issues of first impression" in an area that has "not been clearly defined with identifiable bright line rules." Turner also observed that "a strong argument can be made that she correctly assessed the competing societal interests." Contrary to the mischaracterizations of her critics, Kuhl's Sanchez-Scott decision demonstrates sensitivity to women's rights to privacy. Kuhl, who herself has two daughters, acknowledged that a breast examination was a private matter. Nor did she establish a rule that the presence of a person other than the physician at such an examination was, in all circumstances, intrusive or not intrusive. Rather, she based her ruling on the complexity of the medical context in which persons other than physicians may be present at an examination. Kuhl's decision recognizes the patient's right to decide who should and should not be present, as well as the doctor's obligation to provide the patient with complete information and an opportunity to make an informed choice. Nor does Kuhl's ruling call into question her outstanding legal abilities. In Sanchez-Scott, she had to evaluate an unclear area of the law. She did so objectively and, in Turner's words, "a strong argument" can be made that she did so correctly. Indeed, it is remarkable that, although

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1350111767

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_B2Y1H003_WHO.TXT_1>

Brett,

Here's the final piece from today's Daily Journal. Best regards. Marc.

DAILY JOURNAL NEWSWIRE ARTICLE

<http://www.dailyjournal.com>

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REV_00237467

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1350111767

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2003 2:11:49 PM
Subject: : MATERIALS RECEIVED
Attachments: P_60G2H003_WHO.TXT_1.html

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CREATION DATE/TIME:10-JUN-2003 18:11:49.00
SUBJECT:: MATERIALS RECEIVED
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TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
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"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
06/10/2003 06:02:02 PM
Record Type: Record

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Subject: MATERIALS RECEIVED

MATERIALS RECEIVED: Tuesday, June 10, 2003

Nominations

Christopher A. Wray, of Georgia, to be an Assistant Attorney General

Jack Landman Goldsmith III, of Virginia, to be an Assistant Attorney General

Phillip S. Figa, of Colorado, to be United States District Judge for the District of Colorado

REV_00237469

Robert Clive Jones, of Nevada, to be United States District Judge for the District of Nevada

Blue Slips Returned For:

Henry F. Floyd, of South Carolina, to be United States District Judge for the District of South Carolina

* Senator Hollings

Samuel Der-Yeghiayan, of Illinois, to be United States District Judge for the Northern District of Illinois

* Senator Durbin

ABA

William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit

Sub. Maj. Q, Min. NQ, One Recusal

Swen Prior

Nominations Clerk

Senate Judiciary Committee

(202) 224-5225

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Christopher <nathan.sales@usdoj.gov>
"Wikner, Brian (Judiciary)" <Brian_Wikner@Judiciary.senate.gov>
"Arfa, Rachel (Judiciary)" <Rachel_Arfa@Judiciary.senate.gov>
"Caramanica, Jessica (Judiciary)" <Jessica_Caramanica@Judiciary.senate.gov>
"Carroll, Kurt (Judiciary)" <Kurt_Carroll@Judiciary.senate.gov>
"Cohen, Bruce (Judiciary)" <Bruce_Cohen@Judiciary.senate.gov>

REV_00237470

"Comisac, RenaJohnson (Judiciary)"
<Rena_Johnson_Comisac@Judiciary.senate.gov>
"Dahl, Alex (Judiciary)" <Alex_Dahl@Judiciary.senate.gov>
"Codevilla, David (Judiciary)" <David_Codevilla@Judiciary.senate.gov>
"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov>
"DeOreo, Mary (Judiciary)" <Mary_DeOreo@Judiciary.senate.gov>
"Klepper, Leesa (Judiciary)" <Leesa_Klepper@Judiciary.senate.gov>
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"Lucius, Kristine (Judiciary)" <Kristine_Lucius@Judiciary.senate.gov>
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nancy.scott-finan <nancy.scottfinan@usdoj.gov>
"Prior, Swen (Judiciary)" <Swen_Prior@Judiciary.senate.gov>
"Snell, BethAnn (Judiciary)" <BethAnn_Snell@Judiciary.senate.gov>
"Stahl, Katie (Judiciary)" <Katie_Stahl@Judiciary.senate.gov>
"Tapia, Margarita (Judiciary)" <Margarita_Tapia@Judiciary.senate.gov>
"Toomajian, Phil (Judiciary)" <Phil_Toomajian@Judiciary.senate.gov>
H. Christopher Bartolomucci/WHO/EOP@EOP

ATT CREATION TIME/DATE: 0 00:00:00.00
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MATERIAL S RECEIVED: Tuesday, June 10, 2003

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<i>Sub. Maj. Q, Min. NQ, One Recusal

Swen Prior
Nominations Clerk
Senate Judiciary Committee
(202) 224-5225

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From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 6/10/2003 3:04:14 PM
Subject: continuing problem

From ABC The Note:

Judicial confirmation battles:

The *Wall Street Journal* editorial page turns over about 3/5 of its real estate to let Boyden Gray and Douglas Kmiec write separate op-eds on the Senate Democrats filibuster efforts: **a close read of both finds no evidence that either man has any knowledge of how Senate Republicans treated Bill Clinton's judicial nominees.**

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/10/2003 11:05:44 AM
Subject: : continuing problem

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CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
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SUBJECT:: continuing problem
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
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From: Leitch, David G.
To: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>
Sent: 6/10/2003 3:18:51 PM
Subject: Good article on Figa

Denver Post

Successor to Judge Matsch nominated
Figa nomination must be OK'd by U.S. Senate

By Mike Soraghan and Howard Pankratz
Denver Post Staff Writers

Tuesday, June 10, 2003 - WASHINGTON - A civil lawyer who once headed the Colorado Bar Association was nominated Monday by President Bush to replace retiring U.S. District Judge Richard Matsch.

Phillip Figa, 51, of Greenwood Village is known as an active Republican and an even-handed lawyer with a background in commercial civil litigation. His nomination must be confirmed by the Senate. It generated no immediate controversy Monday.

"In the legal community he's very well thought of," said Mike Feeley, a lawyer and former Democratic state senator from Lakewood. "He's a good guy."

Colorado Supreme Court Justice Gregory Hobbs predicted Figa will "call them as he sees them. ...He's got a fine view of the judiciary as the third branch of government."

Senators play the key role of confirming federal judgeships, and Figa's was among five names submitted to the White House by Colorado Sens. Ben Nighthorse Campbell and Wayne Allard.

"Phil Figa is one of Colorado's most respected lawyers who has outstanding professional and personal credentials," Allard said. Campbell called Figa a "fine candidate who would serve Colorado well."

Figa gave \$4,000 to Allard's 2002 re-election effort, going beyond the normal \$2,000 maximum by giving to a second Allard committee aligned with the Republican Party. He gave \$1,000 to Allard's Democratic opponent, Tom Strickland, in their first contest in 1996. He has generally given political contributions to Republicans, though he also supported Sen. Jeff Bingaman, D-N.M.

John Sadwith, executive director of the Colorado Trial Lawyers Association, called Figa fair and thoughtful. "I don't know of anything that would besmirch his reputation whatsoever," Sadwith said. "He is calm, even-tempered. I can't think of anything but superlatives."

Figa was president of the Colorado Bar Association for one year spanning 1995 and 1996. Miles Cortez, a past president of the bar association and general counsel of Apartment Investment and Management Co., said Figa already has a good rapport with the area's federal court judges.

"He's a lawyer, not a politician, and that's why it is a good choice. He has a lot of federal court experience ... and can hit the ground running."

He was also a member of the bar association ethics committee from 1978 to 1993 and chairman for one year spanning. He chaired the board of the Anti-Defamation League's Mountain States Region from 1996 to 1998. He has been a member of the Colorado Commission on Judicial Discipline since 1995.

He has also written extensively on law and the legal profession. Among his articles are: "The First Thing We Do, Let's Kill All the Law Schools," "Women in the Profession: Beyond Tokenism," and "Why the O.J. Simpson Trial Can't Happen Here."

Figa is president of the Burns, Figa & Will law firm in Englewood. If confirmed, he will likely have to sell his interest in the firm and recuse himself from cases involving former clients.

Figa graduated from Northwestern University and received a law degree from Cornell University. Figa and his wife, Candace Cole Figa, have two children.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/10/2003 11:19:57 AM
Subject: : Good article on Figa

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CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:10-JUN-2003 15:19:57.00
SUBJECT:: Good article on Figa
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
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Senators play the key role of confirming federal judgeships, and Figa's was among five names submitted to the White House by Colorado Sens. Ben Nighthorse Campbell and Wayne Allard.

"Phil Figa is one of Colorado's most respected lawyers who has outstanding professional and personal credentials," Allard said. Campbell called Figa a "fine candidate who would serve Colorado well."

Figa gave \$4,000 to Allard's 2002 re-election effort, going beyond the normal \$2,000 maximum by giving to a second Allard committee aligned with the Republican Party. He gave \$1,000 to Allard's Democratic opponent, Tom Strickland, in their first contest in 1996. He has generally given political contributions to Republicans, though he also supported Sen. Jeff Bingaman, D-N.M.

John Sadwith, executive director of the Colorado Trial Lawyers Association, called Figa fair and thoughtful.

"I don't know of anything that would besmirch his reputation whatsoever," Sadwith said. "He is calm, even-tempered. I can't think of anything but superlatives."

Figa was president of the Colorado Bar Association for one year spanning 1995 and 1996.

Miles Cortez, a past president of the bar association and general counsel of Apartment Investment and Management Co., said Figa already has a good rapport with the area's federal court judges.

"He's a lawyer, not a politician, and that's why it is a good choice. He has a lot of federal court experience ... and can hit the ground running."

He was also a member of the bar association ethics committee from 1978 to 1993 and chairman for one year spanning. He chaired the board of the Anti-Defamation League's Mountain States Region from 1996 to 1998. He has been a member of the Colorado Commission on Judicial Discipline since 1995.

He has also written extensively on law and the legal profession. Among his

articles are: "The First Thing We Do, Let's Kill All the Law Schools," "Women in the Profession: Beyond Tokenism," and "Why the O.J. Simpson Trial Can't Happen Here."

Figa is president of the Burns, Figa & Will law firm in Englewood. If confirmed, he will likely have to sell his interest in the firm and recuse himself from cases involving former clients.

Figa graduated from Northwestern University and received a law degree from Cornell University. Figa and his wife, Candace Cole Figa, have two children.

From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
Sent: 6/10/2003 3:26:17 PM
Subject:
Attachments: twt-grey2.gif

Analysis: A lot of talk but no vacancy

By Peter Roff
UPI National Political Analyst

WASHINGTON, June 9 (UPI) -- The approaching end of the current Supreme Court term brings with it speculation that at least one justice may retire.

Whether it is a case of not wanting to be caught off guard or a hope that wishing will, in fact, make it so, Washington interest group insiders and the reporters who cover them are spinning the idea that the mother of all confirmation fights may be on tap for summer.

This has become something of a tradition in Washington. At the end of May the rumors begin to trickle out. By the second week of June the analyses explaining who is likely to leave the court and who might be named as a replacement are in full bloom.

The smart set, as this group might be called, is poised and ready for the battle to begin. They may have a while to wait. To paraphrase the great American philosopher Yogi Berra, the term of a U.S. Supreme Court justice "ain't over 'til it's over."

Whether Chief Justice William Rehnquist or another member of the court is about to retire is currently a matter of opinion for all but the justices themselves. No one is certain if a retirement is imminent but, whatever the reality, the mere speculation is enough to drive the process forward, with groups of many different stripes getting ready for what may not be.

The Committee for Justice is a new group formed to counter the influence of liberal groups on the confirmation process. Led by former White House counsel C. Boyden Gray, CFJ has been working with opinion leaders, grassroots activists and the media to push for the confirmation of Bush nominees including the currently filibustered Miguel Estrada and Priscilla Owen.

When it comes to a possible Supreme Court nomination fight, preparedness is their watchword.

"You cannot start preparing for a Supreme Court confirmation fight after the vacancy is announced," CFJ's Sean Ruston says. "You have to be ready in advance."

"There are lots of people who need to be mobilized, in Washington and at the grassroots. There is a lot of work to do," Ruston says.

The groups on which CFJ will rely to assist them are notoriously scattered, making them hard to motivate. With the exception of business groups that are well-funded but tend to eschew involvement in such ideologically potent fights where they believe their interests are not clearly defined, the right lacks the kinds of turnkey operations the left uses to bring political pressure to bear on the Senate.

Even though the presidential bully pulpit is the single most powerful asset either side can have in such matters, CFJ and the other groups in its broad ideological coalition will probably find they have to play catch-up when a confirmation battle begins.

Though the White House has likely had an informal plan for dealing with a vacancy for some time, the left-leaning organizations that are almost certain to oppose the president's choice have been meeting almost weekly. These groups, many of which are more permanent institutions than citizen-lobbies, are some of America's most influential. They have, for several years, been plotting ways to defeat Bush's judicial nominees at the circuit level and above.

They are well-funded and many prominent citizens endorse the positions they take on political questions. The same may be true for the center-right groups that will be involved, but to a much lesser degree.

Both sides will take full advantage of those strengths, especially to the degree that it helps support a paid media campaign to get their messages across. Paid media, the sponsored messages that appear as television ads, radio spots, direct mail pieces and the like, will be used to lay out a particular case for the confirmation or rejection of a nominee.

Where the left has a distinct advantage, many analysts believe, is in the area of earned media, a political term referring to news coverage that conveys a specific message about a political issue or candidate. Whether it is because there is a greater degree of ideological sympathy among the nation's reporters, editors and producers or because liberal groups are simply better at pitching an idea, it is in this area that the left-leaning groups likely opposed to a Bush nominee will reap the greatest rewards.

Information consumers understand the difference between sponsored messages and reportage that is passed through a supposedly objective filter. For this reason news stories, analyses and commentaries that are produced by wire services, newspapers, television networks and such is much more credible than paid media, even if the news outlet behind it is considered to have a particular ideological bias.

It is in the production and influencing of earned media that these liberal groups excel.

The current analysis of a potential vacancy on the nation's highest court may have in fact been sparked by a June 4, 2003, memo to "Journalists" written by People for the American Way Foundation head Ralph Neas.

His group, originally founded by Hollywood producer and liberal activist Norman Lear, is the acknowledged leader of the coalition working to stop Bush appointees from taking seats on the federal bench. The memo, "Public Airing of Stakes in Upcoming Supreme Court Vacancy Must Begin Now," is an attempt to convince the media to begin covering the fight over a new justice before the vacancy exists.

What are these stakes? According to Neas' memo: "The law of the land for the next generation -- or longer. At risk are many of the great social justice achievements of the 20th century."

Peppered with phrases like "burning desire," "destructive revival" and "19th century approach," the memo attempts to define the terms of the debate that will govern the coverage of any confirmation fight. The coverage of the speculated-upon retirements and their impact tracks closely with many of the arguments he makes in the memo.

There has not been a vacancy on the Supreme Court since 1994, when Nixon-appointed Associate Justice Harry Blackmun stepped down and was replaced by Clinton-appointed Justice Stephen Breyer. This 9-year gap between vacancies is among the longest in the court's history and, as Neas says, the groups with which he works are determined not to be taken by surprise.

That activist groups on the left and right have been girding their loins for some time, preparing for a battle that could fundamentally alter the application of constitutional principles in American life, should come as no surprise. Whether there will be a vacancy over which to fight may yet be.

From: Bumatay, Patrick J.
To: <Leitch, David G.>;<Ullyot, Theodore W.>;<Bartolomucci, H. Christopher>;<Brosnahan, Jennifer R.>;<Brown, Reginald J.>;<Kavanaugh, Brett M.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 6/10/2003 6:04:55 PM
Subject: FW: 3rd Cir. Judge Confirmed

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

From: McCathran, William W.
Sent: Tuesday, June 10, 2003 4:59 PM
To: Bumatay, Patrick J.
Cc: Saunders, G. Timo
Subject: RE: 3rd Cir. Judge Confirmed

Michael Chertoff Appointed today, 6/10/03

From: Patrick J. Bumatay/WHO/EOP@Exchange on 06/10/2003 02:06:19 PM
Record Type: Record

To: William W. McCathran/WHO/EOP@EOP
cc: G. Timothy Saunders/WHO/EOP@EOP
Subject: RE: 3rd Cir. Judge Confirmed

OK to appoint.

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

From: McCathran, William W.
Sent: Tuesday, June 10, 2003 1:09 PM
To: Bumatay, Patrick J.
Cc: Saunders, G. Timo
Subject: 3rd Cir. Judge Confirmed

Michael Chertoff -- OK to appoint?

tk,
Bill

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Lewis Libby/OVP /EOP@EOP [OVP] <Lewis Libby>; David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>
Sent: 6/10/2003 2:06:28 PM
Subject: : FW: Dow Jones on Class Action Bill

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME:10-JUN-2003 18:06:28.00
SUBJECT:: FW: Dow Jones on Class Action Bill
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

US House To Take Up Class Action Lawsuit Legislation
By John Godfrey
545 words
10 June 2003
14:30
Dow Jones International News
English
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Of DOW JONES NEWSWIRES

WASHINGTON -(Dow Jones)- The House of Representatives is scheduled this week to take up legislation that proponents say will streamline the class action lawsuit process and opponents say will make life easier for defendants in such cases.

The House has twice passed similar legislation - 222 to 207 in 1999, and 233 to 190 in 2001. The current bill has 50 cosponsors, 43 of whom are Republicans. It could come to the House floor as early as Wednesday.

Because the House bill would apply to pending cases, it is the most far-reaching bill on the issue the chamber has ever considered.

While similar legislation has been introduced in the Senate - the current version has 19 cosponsors, 16 of whom are Republicans - and hearings have been held, it has never come to a vote before the full Senate.

The most controversial portion of the bill would make it far more likely for a class action lawsuit to wind up in federal court. Proponents say that will prevent plaintiffs from "shopping" for sympathetic state or local courts. Opponents say that will hurt plaintiffs because precedent in federal courts tends to favor defendants.

Under current law, all of the plaintiffs must reside in different

states than all of the defendants before a case based on state law can be removed to federal court.

But under the bill, a class action case could only be kept out of federal court if a "substantial majority" of the members of the proposed class are citizens of a single state of which the primary defendants are citizens and the claims asserted will be governed primarily by laws of that state.

A case can also be kept in state or local courts if it involves less than \$2 million and has fewer than 100 "class" members or when the primary defendants are states, state officials, or other government entities against whom the federal court may be foreclosed from ordering relief, according to a Congressional description of the legislation.

Proponents argue that changes are necessary because the U.S. is drowning in class action lawsuits.

"Among the abuses are those perpetrated by plaintiff's lawyers who gin up class action lawsuits, shamelessly inflate the number of class members, file the case in a state or county court with a friendly judge and then pocket as much as 50% or more of their clients' awards in exorbitant fees and expenses," writes the U.S. Chamber of Commerce's Litigation Fairness Campaign.

In a dissenting opinion, House Judiciary Committee Democrats wrote, "Although the legislation is described by its proponents as a simple procedural fix, in actuality it represents a major rewrite of the class action rules that would bar most forms of state class actions and massively tilt the playing field in favor of corporate defendants in both class action and non-class action cases."

The measure also includes a package of provisions labeled consumer class action protections.

Those provisions would protect against settlements that actually result in a loss for plaintiffs, that discriminate based upon geographic

location, or pay a "bounty" to certain key plaintiffs.

-By John Godfrey, Dow Jones Newswires; 202-862-6601;

John.Godfrey@dowjones.com

From: Powell, Benjamin A.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Ullyot, Theodore W.>;<Newstead, Jennifer G.>;<Sampson, Kyle>;<Bartolomucci, H. Christopher>;<Kavanaugh, Brett M.>;<Brown, Reginald J.>;<Brosnahan, Jennifer R.>;<Snee, Ashley>;<Mamo, Jeanie S.>
Sent: 6/10/2003 7:24:04 PM
Subject: Pryor information
Attachments: Committee for Justice on Pryor.pdf

<>

The Committee for Justice issued the attached pro-Pryor release.



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BILL PRYOR: A PUBLIC OFFICIAL DEDICATED TO FOLLOWING THE LAW

Americans have long expected qualified, intelligent, fair-minded jurists to preside in their federal courtrooms. These jurists should adhere faithfully to binding precedent issued by higher courts, defer to the policy choices made by the political branches of government, and faithfully follow the law wherever it leads them, even in the face of intense pressure from those who wish for the law to be ignored. Sadly, Americans have been faced with all-too-frequent reminders that the bench needs judges that adhere to these principles, most recently with a federal circuit court's decision to hold the pledge of allegiance unconstitutional because it mentions "God."¹

As citizens nationwide have been called on to reconsider what sort of judges should be on the federal bench, the people of Alabama have had the good fortune of having a man that embodies these principles as their chief law enforcement officer for over six years. William H. "Bill" Pryor, Jr., the Attorney General of Alabama, has earned a reputation as one of the nation's most experienced and esteemed public servants. Nominated by President Bush to the U.S. Court of Appeals for the Eleventh Circuit on April 10, 2003, General Pryor, at the age of 41, has already had a distinguished career as a public official, practicing attorney, and law professor that would be the envy of most lawyers twice his age. As "Alabama's lawyer," General Pryor has represented and advanced the state's interests in a vigorous style lacking in partisanship. He has steadfastly advanced the arguments he believes will best defend Alabama's interests – not necessarily the ones that reflect his personal views – with civility and intellectual honesty.

Washington's liberal special interest groups have undertaken an all-out effort to distort General Pryor's record, alleging that he "uses his position to remake the law in order to suit his extreme ideological beliefs."² Nothing could be further from the truth. In office, General Pryor has bucked intense political pressure, often from his own political party, in defense of the rule of law.

¹ See *Newdow v. U.S. Congress*, 321 F.3d 772 (9th Cir. 2003).

² Ralph G. Neas, "William Pryor: Ideology Over All," *MOBILE REGISTER*, May 11, 2003.

- Though pressured from within his own party to support very restrictive partial birth abortion bill, General Pryor **supported a more limited partial birth abortion ban** that he believed was consistent with U.S. Supreme Court precedent.
- Though pressured to support a Republican voting rights lawsuit, Pryor broke with Republicans to support the Democratic position in the case because **he believed that the Democrats' stance was consistent with U.S. Supreme Court precedent**, arguing this position all the way to the U.S. Supreme Court.
- Though pressured to support the position that teachers could lead public school students in prayer, General Pryor broke with the Republican Governor who appointed him Attorney General and **instructed school districts that U.S. Supreme Court precedents forbade teachers leading students in prayer**, but allowed voluntary, student-led prayer.

No wonder former Democratic Alabama Governor Don Siegelman, who served in that office for much of General Pryor's tenure as Attorney General, has stated, "Bill Pryor is an incredibly talented, intellectually honest attorney general. He calls them like he sees them. He's got a lot of courage, and he will stand up and fight when he believes he's right."³ We wholeheartedly agree, and enthusiastically join countless others, both in Alabama and nationwide, in calling on the United States Senate to expeditiously confirm General Pryor to the Eleventh Circuit, where he would fill a seat that has remained vacant for over two years.

An Illustrious Career

General Pryor's rapid ascent to prominence has been the product of outstanding legal training and plenty of old-fashioned hard work. The son of an elementary school teacher and school band director from Mobile, Alabama, General Pryor received his law degree from the Tulane University School of Law, where he graduated *magna cum laude* in 1987 and was editor-in-chief of the *Tulane Law Review*. Upon graduation, General Pryor began his legal career as a law clerk for a civil rights legend, the late Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit. Judge Wisdom achieved renown for his landmark decisions ordering and implementing desegregation in the wake of the Supreme Court's historic ruling in *Brown v. Board of Education*.

After his clerkship, General Pryor went into the private practice of law in Birmingham, Alabama at two of the state's finest law firms, specializing in commercial and complex federal litigation. He also taught for six years as an adjunct professor at the Cumberland School of Law of Samford University, earning a reputation as one of Alabama's brightest young lawyers in the process. That glowing reputation led Alabama's Attorney General, Jeff Sessions (now a U.S.

³ Tom Gordon, "GOP Leaders Find Pryor, Siegelman Too Friendly," BIRMINGHAM NEWS, May 7, 2001.

Senator), to hire General Pryor in 1995 as his chief Deputy Attorney General in charge of special civil and constitutional litigation.

General Pryor's brilliant intellect and superb work ethic quickly made him a rising star on the Alabama legal scene. His rise to prominence was capped on January 2, 1997, when Alabama's sitting governor appointed General Pryor as the Attorney General of Alabama. At the time of his appointment, General Pryor was the youngest Attorney General in the United States.

In the six-plus years since his appointment, General Pryor has gone from "up-and-comer" to national leader. As Attorney General, he has tried civil and criminal cases in state and federal courts and has argued before the Supreme Court of the United States, the Supreme Court of Alabama, and the U.S. Court of Appeals for the Eleventh Circuit. He has amassed a sterling record for prosecuting public corruption and white-collar crime, pursuing civil justice, and reforming both the juvenile justice system and criminal sentencing.

General Pryor is held in such high regard that President Bush selected him to be a member of the State and Local Senior Advisory Committee for the White House Office of Homeland Security. And it isn't just the President that thinks highly of General Pryor – the people of Alabama do as well. After being elected to a full four-year term in 1998, Alabamians overwhelmingly reelected General Pryor as Attorney General in 2002. He garnered 59% of the vote, the highest for any statewide officeholder.

He has also demonstrated an ability to work with people from across the ideological and political spectrum. On many occasions, General Pryor has withstood intense pressure from within his own party in order to apply the law in a fair, impartial manner and defend Alabama's interests. It should come as no surprise that a multitude of prominent Alabama Democrats, including many distinguished African-American leaders, have risen to praise General Pryor:

- Bill Baxley, a former Democratic Attorney General of Alabama, states that "Bill has done his duty and kept his oath to uphold the law as Attorney General. He will keep his oath to impartially uphold the law as a federal judge."⁴
- Dr. Joe Reed, the chairman of the Alabama Democratic Conference (the state party's African-American caucus), believes that General Pryor "has been fair to all people" and "will be a credit to the [j]udiciary and will be a guardian for justice."⁵
- Congressman Artur Davis, an African-American who represents the Seventh District of Alabama, states, "I have the utmost respect for my friend Attorney

⁴ Bill Baxley, "Bill Pryor's Duty to Defend the State's Budget," June 5, 2003.

⁵ Letter from Dr. Joe Reed to President Bush, Jan. 27, 2003.

General Pryor and I believe if he is selected, Alabama will be proud of his service.”⁶

- Cleo Thomas, an African-American attorney who currently serves as Secretary of the Alabama Democratic Party, indicates that General Pryor has “a breadth of legal experience and education and the right judicial temperament.”⁷

The acclaim for General Pryor’s nomination extends far beyond the borders of Alabama. He is especially admired by his peers: the Attorneys General of other states. Thurbert Baker, the Democratic Attorney General of Georgia, says that General Pryor “has always done what he thought was best for the people of Alabama,” and indicates that he “know[s] that [General Pryor’s] work on the bench will continue to serve as an example of how the public trust should be upheld.”⁸ Charlie Crist, the Attorney General of Florida, believes that “General Pryor is well qualified for such a position as he has had a distinguished career as a public servant, practicing attorney, and law professor.”⁹ Mark Earley, the former Attorney General of Virginia who now serves as President of Prison Fellowship Ministries, states: “I am very impressed with General Pryor’s abilities and his temperament. He seems ideally suited for a seat on the Court of Appeals, and I enthusiastically endorse him without reservation.”¹⁰

General Pryor’s training and experience, which are by any measure top-notch, have ideally prepared him for the federal bench. He represents all of the necessary attributes of a great judge: experience, intellect, compassion, an outstanding work ethic, and a proper respect for the judicial role in our constitutional structure. We eagerly look forward to the day that this straight-shooter from Alabama takes his seat on the Eleventh Circuit, where he will serve as an example to all Americans of the type of excellence our federal courts deserve.

Fighter for Racial Equality

General Pryor has improved racial relations and protected racial equality in Alabama. His commitment to civil rights and equal justice for persons of all races began early in his career. His first job out of law school was to work as a law clerk to the late Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit. Judge Wisdom achieved renown for his

⁶ Letter from Congressman Artur Davis to Senators Sessions and Shelby, Jan. 10, 2003.

⁷ Mary Orndorff, “Pryor’s Reputation Eyed Inquiries Standard for Judicial Nominees,” BIRMINGHAM NEWS, January 17, 2003.

⁸ Letter from Thurbert Baker to Senators Sessions and Shelby, Mar. 31, 2003.

⁹ Letter from Charlie Crist to Senators Sessions and Shelby, Apr. 15, 2003.

¹⁰ Letter from Mark Earley to Senators Sessions and Shelby, Apr. 1, 2003.

landmark decisions ordering and implementing desegregation in the wake of the Supreme Court's historic ruling in *Brown v. Board of Education*, and received the American Bar Association Medal, the ABA's highest honor. President Bill Clinton awarded Judge Wisdom the Medal of Freedom in 1993, which is the highest civilian honor the President can bestow on an American. President Clinton said of Judge Wisdom, "He was a son of the Old South who became an architect of the New South."¹¹

General Pryor's Record on Race. General Pryor has taken it upon himself to carry on Judge Wisdom's legacy into the new millennium. African-Americans in Alabama will surely never forget the day that they heard Governor George Wallace bellow, "Segregation today! Segregation tomorrow! Segregation Forever!" On the occasion of his first inauguration as Attorney General, General Pryor made it clear that he was a fighter for the legacy of Judge Wisdom and Martin Luther King, Jr., when he proclaimed, "Equal under law now! Equal under law tomorrow! Equal under law forever!"¹² He went on to issue a challenge to his fellow Alabamians by further declaring, "Any provision of the constitution of Alabama, or for that matter the code of Alabama, that classifies our citizens or any persons on the color of their skin, their race, should be stricken."¹³

With these words, General Pryor started the drive to rid the 1901 Alabama Constitution of its racist prohibition on interracial marriage. At a time when few politicians in Alabama would even deign to talk about the ban, yet alone take a courageous stand to end it, General Pryor was at the forefront of the effort to repeal the law. According to the NEW YORK TIMES, "few politicians . . . even mentioned the measure" in the run-up to the vote on the repeal.¹⁴ The ASSOCIATED PRESS described General Pryor as one of the "two most vocal supporters" for repealing the ban, along with Democratic state Representative Alvin Holmes.¹⁵ General Pryor persuaded the Alabama Legislature to allow a vote on repealing the ban, then, working with a coalition that included the NAACP, put all of his available energies towards repeal. Sixty percent of voters ultimately decided to repeal the ban in 2000, but before the vote was to take place, General Pryor had to overcome one last hurdle: the chairman of the Confederate Heritage Political Action Committee sued in an attempt to stop the vote. General Pryor successfully

¹¹ Rita Braver, "True Wisdom," CBS NEWS.COM, <<http://www.cbsnews.com/stories/1999/05/20/Sunday/main47855.shtml>>.

¹² "Inauguration Speech of Attorney General Bill Pryor," Jan. 18, 1999, <<http://www.ago.state.al.us/issue/inaugural99.htm>>.

¹³ "A.G. Lauds Dismissal of Challenge to Amendment Two; Vote to Remove Interracial Marriage Ban is Upheld," December 18, 2000, <<http://www.ago.state.al.us/news/121800b.htm>>.

¹⁴ Somini Sengupta, "Ideas & Trends: The Color of Love; Removing a Relic of the Old South," N.Y. TIMES, November 5, 2000 at (4)5.

¹⁵ Bob Johnson, "Alabama repeals century-old ban against interracial marriages," THE ASSOCIATED PRESS STATE & LOCAL WIRE, November 8, 2000.

convinced a state court to dismiss the complaint, a decision that was later affirmed by the Alabama Supreme Court.¹⁶

Another example of General Pryor's commitment to racial justice is his successful prosecution of former Ku Klux Klansmen Bobby Frank Cherry and Thomas Blanton Jr. for the 1963 bombing of the 16th Street Baptist Church in Birmingham, Alabama. Four young girls were killed in the bombing of the church, which was a center for civil rights advocates who protested Birmingham's segregation laws. General Pryor appointed Democratic U.S. Attorney Doug Jones to handle the trial stage of the case, and, just last month, personally argued before the Alabama Court of Criminal Appeals to keep Blanton behind bars for life. U.S. Attorney Jones believes that General Pryor's "personal involvement in our joint efforts was critical to the success . . . in the church bombing cases."¹⁷ The press has been equally laudatory of General Pryor's work: the BIRMINGHAM POST-HERALD saluted General Pryor as being one of the people whom "history . . . will note . . . worked to bring [the bombers] to justice."¹⁸

Recently, General Pryor stepped up to defend the efforts of state legislators to afford African-Americans an equal, fair, and reasonable chance of victory in elections. He has successfully defended several majority-minority voting districts from a challenge by a group of white Alabama Republican voters, who were residents of various majority-white voting districts. These plaintiffs had sued the state in federal court, claiming that the Alabama's voting districts were the product of unconstitutional racial gerrymandering. General Pryor, siding with the NAACP, personally defended the majority-minority districts all the way to the U.S. Supreme Court, which held that the white voters could not sue because they did not reside in the majority-minority districts and had not personally been denied equal treatment.¹⁹

General Pryor has made additional efforts to protect racial equality and advance racial justice in Alabama. He has successfully convinced the Alabama Supreme Court that a segregationist state constitutional amendment was an unconstitutional attempt to evade the *Brown v. Board of Education* decision.²⁰ He established an Alabama Sentencing Commission to recommend ways to eliminate racial disparities in sentencing, and designed the Commission to have an inclusive membership that includes all perspectives on the criminal justice system, from a crime victim to a defense lawyer. He has started a program to recruit positive adult role models for thousands of at-risk youth and, through the program, has worked every week as a reading tutor for African-American children in a Montgomery public school for the last three years.

¹⁶ See *Chappell v. State*, 810 So.2d 639 (Ala. 2001).

¹⁷ Letter from G. Douglas Jones to Senators Sessions and Shelby, Jan. 31, 2003.

¹⁸ "BC cycle," THE ASSOCIATED PRESS STATE & LOCAL WIRE, May 23, 2002.

¹⁹ See *Sinkfield v. Kelley*, 531 U.S. 28 (2000) (per curiam).

²⁰ See *Ex parte James*, 836 So.2d 813 (Ala. 2002).

Efforts to Distort General Pryor’s Record: *Alexander v. Sandoval*. Despite this superb record, special-interest groups have nonetheless tried to distort several actions General Pryor was obligated to take as Attorney General. Take, for example, the U.S. Supreme Court case of *Alexander v. Sandoval*.²¹ In that case, General Pryor simply defended the law of Alabama by arguing that a person who didn’t speak English shouldn’t be able to force Alabama to spend its money on printing driver’s license tests in foreign languages. He believed, and the Supreme Court agreed, that Congress never intended to waive states’ sovereign immunity to allow people to file lawsuits of this type under Title VI of the Civil Rights Act of 1964.

General Pryor personally made it clear that “[t]he issue in this case is not so much about ‘English only’ and foreign languages, but whether a private person can sue to enforce agency regulations that were not passed by Congress, but by federal bureaucrats.”²² Although other sections of the Civil Rights Act provide for private lawsuits, Title VI explicitly establishes procedures for enforcement by federal agencies only. These procedures are extremely protective of individuals’ civil rights: they direct that a federal agency may cut funding for state programs that are in violation of the regulations, and that any enforcement action is subject to judicial review.²³ The Supreme Court agreed with General Pryor, holding that “private rights of action to enforce federal law must be created by Congress. . . . Statutory intent on this latter point is determinative. . . . Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter or how compatible with the statute.”²⁴

Because Congress didn’t give people the private right to sue states under Title VI, General Pryor would have been derelict in his duty if he didn’t defend Alabama against this lawsuit. He simply did his job: to defend his state from judgments that would drain the state treasury. As Bill Baxley, a former Democratic Attorney General of Alabama, states, “[A]s the State’s lawyer [General Pryor] defends the State’s pocketbook. . . . It is Bill’s duty now to defend Alabama’s budget If he didn’t, he would be violating his oath of office.”²⁵ The special interest groups attacking General Pryor for doing his job should remember that if citizens wish for there to be private lawsuits under Title VI, they have a very simple remedy – to ask their Congressional representatives to amend Title VI to provide for such suits.

Section 5 of the Voting Rights Act. Special interest groups also have attempted to

²¹ 532 U.S. 275 (2001).

²² “Pryor Wins Another Federalism Victory in U.S. Supreme Court; High Court Rules for State in ‘English Only’ Drivers Testing Case,” April 24, 2001, <<http://www.ago.state.al.us/news/042401.htm>>.

²³ See 42 U.S.C.A. § 2000d-1.

²⁴ *Sandoval*, 532 U.S. at 286-87.

²⁵ Bill Baxley, “Bill Pryor’s Duty to Defend the State’s Budget,” June 5, 2003.

misrepresent some of General Pryor's statements about the Voting Rights Act of 1964. General Pryor has made it clear that "the Voting Rights Act is one of the greatest and most necessary laws in American history."²⁶ Because he believes so much in the Act, he has called for the amendment of Section 5 of the Act to ensure appropriate balance and state flexibility to ensure equal rights. He has criticized the "abuse of federal power" under Section 5, and has also taken to task federal courts that have "turned the Act on its head and wielded . . . power to deprive all voters of the right to select . . . public officers," even though the Act "was passed to empower minority voters in the exercise of the franchise."²⁷ Indeed, as it is currently interpreted by courts, Section 5 has forced states to create or maintain safe minority seats which actually dilute minority voting strength elsewhere by packing minority voters into certain districts.²⁸

General Pryor's concerns about Section 5 have been borne out in Georgia, where Section 5 has recently hampered the commonsense efforts of African-American state legislators to create a plan to maximize the number of voting districts that afford African-Americans a chance at electoral victory. A federal district court has found that Georgia's plan violates Section 5,²⁹ which has forced the state to appeal to the Supreme Court to have the plan approved.³⁰ In Georgia's brief to the Supreme Court, Thurbert Baker, the African-American Democratic Attorney General of Georgia, called Section 5 an "extraordinary transgression of the normal prerogatives of the states" and a "a grave intrusion into the authority of the states."³¹ General Baker added, "Section 5 was initially enacted as a 'temporary' measure to last five years precisely because it was so intrusive."³²

Section 5 has not only placed a burden on the states it covers, but also on the U.S. Justice Department, which has been forced to preclear a huge number of changes in voting practices that have nothing to do with minority voting rights. Section 5 requires covered states to preclear *any decision* to change "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting."³³ For example, if a covered state moved voting booths from

²⁶ "Statement Of Attorney General Bill Pryor Regarding His Record On Racial Fairness," May 8, 2003, <<http://www.ago.state.al.us/news.cfm>>.

²⁷ Testimony of Alabama Attorney General Bill Pryor, U.S. Senate Judiciary Committee Subcommittee on the Constitution, Federalism & Property Rights, July 15, 1997, <<http://www.ago.state.al.us/issue/testimony.htm>>.

²⁸ *See Georgia v. Ashcroft*, 204 F.Supp.2d 4 (D.D.C. 2002).

²⁹ *Id.*

³⁰ *See Georgia v. Ashcroft*, 123 S.Ct. 964 (2003) (granting certiorari).

³¹ Brief of Appellant, 2003 WL 554486 (Feb. 22, 2003).

³² *Id.*

³³ 42 U.S.C. §1973(c).

one side of a street to another, this action would have to be precleared by the Justice Department pursuant to Section 5.³⁴ From 2000-2002, the Justice Department received requests to preclear 49,567 voting changes.³⁵ In response to these requests, the Department issued only 28 letters interposing objections to proposed changes under Section 5.³⁶

Because of these problems, it should come as no surprise that some of the most revered Justices of the U.S. Supreme Court have criticized Section 5. The second Justice John Marshall Harlan wrote, “I find it especially difficult to believe that Congress would single out a handful of States as requiring stricter federal supervision concerning their treatment of a problem that may well be just as serious in parts of the North as it is in the South.”³⁷ Justice Lewis Powell stated that it is “a serious intrusion, incompatible with the basic structure of our system, for federal authorities to compel a State to submit its [reapportionment] legislation for advance review” under Section 5, and observed that he disagrees “with the unprecedented requirement of advance review of state or local legislative acts by federal authorities, rendered the more noxious by its selective application to only a few States.”³⁸

On the occasion of Justice Powell’s death, President Clinton saluted him as being “one of our most thoughtful and conscientious justices” and observed that he reviewed cases “without an ideological agenda.”³⁹ General Pryor should also be saluted for thoughtfully contributing to the public debate on how to best overcome America’s tragic legacy of racism and discrimination, just as these icons of American jurisprudence have.

Defender of Alabama’s Interests

Alabama’s Attorney General is obligated by law to defend his state’s interests. Alabama law makes it clear that the state Attorney General “*shall* appear in the courts of other states or of the United States, in any case in which the state may be interested in the result.”⁴⁰ General Pryor

³⁴ See 28 C.F.R. 51.13 (indicating that “any change in the boundaries of voting precincts or in the location of polling places” requires preclearance).

³⁵ See “Section 5 Changes by Type and Year,” <http://www.usdoj.gov/crt/voting/sec_5/changes.htm>.

³⁶ See “Section 5 Objection Determinations,” <http://www.usdoj.gov/crt/voting/sec_5/obj_activ.htm>.

³⁷ *Allen v. State Bd. of Elections*, 393 U.S. 544, 585-56(1969) (Harlan, J., concurring and dissenting).

³⁸ *Georgia v. U.S.*, 411 U.S. 526, 544 n. (1973) (Powell, J., dissenting) (footnotes and quotation marks omitted).

³⁹ “Former Supreme Court Justice Powell Dead At 90,” CNN.COM, Aug. 15, 1998, <<http://www.cnn.com/ALLPOLITICS/1998/08/25/obit.powell/>>.

⁴⁰ ALA. CODE § 36-15-1 (emphasis added).

has safeguarded Alabama's interests in three key ways: by defending Alabamians' right to civil justice, defending Alabama's laws against legal challenges, and protecting Alabama taxpayers against huge money judgments that drain the state treasury.

General Pryor's Commitment to Civil Justice. General Pryor has repeatedly demonstrated his commitment to civil justice and the protection of consumers. For example, he has led the fight to bring corporate wrongdoers to justice. Working both alone and with other states' Attorneys General, he has secured millions of dollars of relief for Alabamians: Joining over 30 states, General Pryor forced several contact lens manufacturers charged with collusion and conspiracy to limit the supply of replacement contact lenses to pay \$50 million in a nationwide settlement.⁴¹

- He helped force Ford Motor Company to pay \$51.5 million in a nationwide settlement related to its deceptive marketing of SUVs.⁴²
- He helped compel Bridgestone/Firestone, Inc. to enter into comprehensive settlement with 53 states and U.S. territories related to the company's August 2000 recall. Firestone agreed to review previously denied claims, provide a process for future review, provide a \$5 million tire maintenance consumer education campaign, and pay \$500,000 to each state and territory involved in the investigation.⁴³
- In 2001 (the last year for which statistics are available), General Pryor's office handled over 6,000 consumer inquiries, resolved over 3,000 consumer complaints, and pursued 18 multi-state actions.⁴⁴

The Tobacco Settlement: Alabama Wins. General Pryor also ensured that Alabama collected from the nationwide tobacco settlement, while making sure that the award paid by tobacco companies went to the state, not trial attorneys. This has understandably upset some liberal groups and trial lawyers, especially because General Pryor didn't agree with some of their legal theories and believed the lawsuit was a litigation solution to a legislative problem. He instead agreed with numerous federal appellate judges appointed by Democratic presidents that

⁴¹ See "Pryor Announces Benefits to Alabama Consumers in Concluding Settlement of Contact Lens Lawsuits," <<http://www.ago.state.al.us/news/053101.htm>> (undated).

⁴² See "Attorneys General Announce Settlement with the Ford Motor Company," December 20, 2002, <<http://www.ago.state.al.us/news/122002.htm>>.

⁴³ See "Pryor Announces New Initiatives in Tire Recall," Aug. 18, 2000, <<http://www.ago.state.al.us/news/081800.htm>>.

⁴⁴ See Office of the Attorney General, "2000 Year in Review," <<http://www.ago.state.al.us/documents/2001YIR.pdf>>, at 29.

when a person is hurt by tobacco smoke, he, not his health provider, can sue the tobacco company. For example, the Ninth Circuit, which even U.S. Senator Charles Schumer has called “way out of the mainstream on the left side,” found no legal basis for plaintiffs to sue the tobacco industry.⁴⁵ The court ruled that there was no basis for a number of Oregon labor union funds to sue the tobacco industry because the union funds had not suffered any direct harm. The other circuit courts that have addressed the issue have ruled similarly.⁴⁶

Despite his misgivings about the tobacco lawsuit, General Pryor promised Alabama taxpayers that he would ensure that the state received its fair share of the proceeds of any settlement. General Pryor did just that, securing \$3.16 billion dollars for Alabamians in settling the case. This payout was the largest civil recovery ever by the state of Alabama. Alabama’s award was dictated by a formula (based on the smoking-related Medicaid expenditures and smoking-related non-Medicaid health care costs of each state), and was proportional to the amounts recovered by the other 45 states participating in the settlement.⁴⁷

Harvard Law School professor Kip Viscusi, a nationally-recognized expert on tobacco policy, concluded that Alabama got \$1.08 for every \$1 it should have received based on its share of cigarette-related medical expenses. This was a better deal than twenty-four of the other forty-five states obtained in the national settlement.⁴⁸ And Alabama’s money has since been allocated responsibly. Except for monies paid to debt service on industrial development bonds for the state and Medicaid and seniors’ services programs, all of Alabama’s tobacco settlement funds are paid into the into the Children’s First Trust Fund. The Fund, which received \$70 million in 2002, has used these proceeds to implement a wide variety of programs to help youth succeed and to reduce juvenile crime, including foster care, alternative schools, and drug and alcohol treatment programs.⁴⁹

⁴⁵ See *Oregon Laborers-Employers Health & Welfare Trust Fund v. Philip Morris Inc.*, 185 F.3d 957 (9th Cir. 1999).

⁴⁶ See *Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229 (2d Cir. 1999); *Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.*, 171 F.3d 912 (3d Cir. 1999) (dismissing RICO and fraud claims); *Texas Carpenters Health Benefit Fund v. Philip Morris, Inc.*, 199 F.3d 788 (5th Cir. 2000) (dismissing RICO and antitrust claims); *International Brotherhood of Teamsters, Local 734 Health & Welfare Fund v. Philip Morris, Inc.*, 196 F.3d 818 (7th Cir. 1999) (dismissing RICO, antitrust, and various state law claims); *United Food and Commercial Workers Unions, Employers Health and Welfare Fund v. Philip Morris, Inc.*, 223 F.3d 1271 (11th Cir. 2000).

⁴⁷ See, e.g., General Accounting Office, “States’ Use of Master Settlement Agreement Payments,” No. 01-851, June 2001, at 11.

⁴⁸ See W. Kip Viscusi, “A Postmortem on the Cigarette Settlement,” 29 CUMB. L. REV. 523, 541 (1999).

⁴⁹ See State of Alabama, “Children First Trust Fund: FY 02 Annual Report,” <<http://www.dca.state.al.us/cpc/Children%20First%202002-2003.pdf>>.

After securing a huge award for Alabamians, General Pryor next set his sights on making sure that fees paid by tobacco companies to the state were not diverted to trial lawyers. He personally argued that lawyers involved with Alabama's lawsuit were not entitled to collect any legal fees, and they ultimately received only \$125,000.⁵⁰ The fee reduction obtained by General Pryor went in part to pay for health insurance for children and the poor.⁵¹

General Pryor has also been a key figure in the effective enforcement of Alabama's laws against sale of tobacco products to minors. In 1997 he strongly supported legislation to increase the penalties for such sales. After the legislation was passed, giving the primary responsibility for enforcement to the state Alcoholic Beverage Control ("ABC") Board, General Pryor was very active in designing and implementing a program to educate retail businesses about how to comply with the new law. Since then, attorneys from his office have worked with the ABC Board in several capacities, including tobacco education projects for young people.

The Texas Sodomy Case. Washington-based special interest groups have made much hay over the fact that General Pryor fulfilled his obligation to defend his state's laws in court by filing an amicus brief in the Supreme Court case of *Lawrence v. Texas*,⁵² often referred to as the "Texas sodomy case." Like Texas, Alabama has a law prohibiting sodomy (called "sexual misconduct" under the Alabama Code).⁵³ Unlike the law at issue in *Lawrence*, however, Alabama's law does not single out gays and lesbians for disparate treatment. As Attorney General, General Pryor has a duty to defend his state's laws against attack, pursuant to § 36-15-1 of the Alabama Code. Indeed, both federal and state law anticipate that the Alabama Attorney General will defend any state law whose constitutionality is challenged. Because of this duty, General Pryor has been called upon to defend some laws he might not personally have voted for. His critics have unfairly criticized him for strenuously defending the legislature's statutes, even though it is his sworn obligation to do so as the state's top lawyer.

General Pryor has defended the law pursuant to his obligations under § 36-15-1 of the Alabama Code, for a simple reason – if the Supreme Court were to agree with the petitioners in *Lawrence* that the act of sodomy is constitutionally protected and reverse its decision in *Bowers v. Hardwick*,⁵⁴ Alabama's sodomy ban would be effectively struck down. His argument was a narrow one: that a constitutional protection for effectively any type of sexual conduct whatsoever has no logical stopping point. This course of reasoning is nothing new; it was first voiced by the late Justice Byron White of the U.S. Supreme Court, who stated in *Bowers v.*

⁵⁰ See *State v. American Tobacco Co.*, 772 So. 2d 417, 422-23 (Ala. 2000).

⁵¹ See "Children First Trust Fund: FY 02 Annual Report."

⁵² 123 S. Ct. 661 (2002) (granting certiorari).

⁵³ See ALA. CODE § 13A-6-65.

⁵⁴ 478 U.S. 186 (1986).

Hardwick, “If respondent’s submission is limited to the voluntary sexual conduct between consenting adults, it would be difficult, except by fiat, to limit the claimed right to homosexual conduct while leaving exposed to prosecution adultery, incest and other sexual crimes even though they are committed in the home.”⁵⁵

The inclusion of homosexuality with polygamy and bigamy is not some sort of spurious charge, but has rather been the American Civil Liberties Union’s actual litigation strategy. For instance, the argument that there exists such an expansive constitutional right to privacy has been used by the ACLU to challenge the state of Utah’s ban on polygamy.⁵⁶ The ACLU’s Utah legal director has commented that “[t]alking to [Utah’s polygamists] is like talking to gays and lesbians who really want the right to live their lives, and not live in fear because of whom they love. So certainly that kind of privacy expectation is something the ACLU is committed to protecting.”⁵⁷ The ACLU has a national policy stating that it “believes that criminal and civil laws prohibiting or penalizing the practice of plural marriage violate constitutional protections of freedom of expression and association, freedom of religion, and privacy for personal relationships among consenting adults.”⁵⁸ It has even contended that the Child Pornography Prevention Act of 1996, which prohibits virtual depictions of children in sex acts, is unconstitutional, noting, “[P]eople’s thoughts are their private thoughts.”⁵⁹

In fact, the expansive privacy argument criticized by General Pryor has been used to argue that bans on prostitution are unconstitutional, by none other than a U.S. Supreme Court Justice. In a 1977 ACLU report, Ruth Bader Ginsburg, now an Associate Justice, asserted that “prostitution as a consensual act between adults is arguably within the zone of privacy protected by recent constitutional decisions.”⁶⁰ Justice Ginsburg’s assertion was used in court by a former Florida prostitute who, with the help of the ACLU, filed suit alleging that Florida’s laws against prostitution violate “her fundamental right of privacy, and pursuant to that right, the right to control her own reproductive organs whether in a private or a commercial transaction.”⁶¹ Whether one may ultimately agree or disagree with General Pryor’s argument about the right to privacy, the actions by the ACLU and other groups make it clear that Alabama’s stance is eminently reasonable.

⁵⁵ *Id.* at 195-96.

⁵⁶ See Greg Burton, “ACLU to Join Polygamists in Bigamy Fight,” SALT LAKE TRIBUNE, July 16, 1999.

⁵⁷ *Id.*

⁵⁸ Policy #91, National ACLU Policy on Polygamy, April 1991.

⁵⁹ “Thought Police Recruited in New Child Porn Law,” ACLU Press Release, Oct. 3, 1996.

⁶⁰ Jameson Taylor, “Prostitution as Political Philosophy,” HLI REPORTS, April 2002.

⁶¹ *Id.*

Sovereign Immunity. General Pryor has also been obligated to defend Alabama taxpayers from huge money judgments that drain the state treasury. One of the key tools that any state Attorney General would employ to mount such a defense is enshrined in the Eleventh Amendment to the U.S. Constitution. Under the doctrine of sovereign immunity, suits against a state for damages that must be paid from the public fisc are barred, absent a sufficient showing under the Fourteenth Amendment that Congress intended to abrogate state sovereign immunity. The Supreme Court's seminal case recognizing the sovereign immunity protection for state budgets is *Seminole Tribe v. Florida*,⁶² in which Democratic Attorney General Bob Butterworth of Florida fought for and won protection for state treasuries against lawsuits. Keying off General Butterworth's victory, General Pryor, like Attorneys General from around the country, asserted *Seminole Tribe*'s interpretation of sovereign immunity to protect their state budgets from lawsuits.

The use of sovereign immunity by states as a defense against lawsuits is in no way groundbreaking or controversial. Indeed, numerous Democratic Attorneys General have asserted the exact same position as General Pryor. New York Attorney General Eliot Spitzer, a liberal Democrat, recently asserted sovereign immunity as a defense for a suit against a state hospital, and successfully argued that sovereign immunity barred an age discrimination claim.⁶³ Vermont Attorney General William Sorrell, a Democrat, successfully asserted the sovereign immunity defense against a plaintiff who sued Vermont's Office of Child Support claiming that it had not adequately pursued her ex-husband for child support.⁶⁴ And Wisconsin's Attorney General, Jim Doyle, another Democrat, unsuccessfully asserted sovereign immunity against the EEOC, which had sued the University of Wisconsin on behalf of four terminated employees, arguing that they were fired because of their age.⁶⁵

Liberal critics have distorted General Pryor's involvement with the U.S. Supreme Court case of *Kimel v. Florida Board of Regents*,⁶⁶ where he, along with General Butterworth, argued that one small portion of the Age Discrimination in Employment Act ("ADEA") – its abrogation of state sovereign immunity – was unconstitutional. Alabama's brief in that case stressed that the ADEA was a desirable piece of legislation: "The States of Florida and Alabama do not make this claim lightly. The ADEA advances a commendable policy – non-discrimination against the elderly – and does so at the end of a lawmaking process that is . . . deserving of respect."⁶⁷

⁶² 517 U.S. 44 (1996).

⁶³ See *Leiman v. New York*, 2000 WL 1364365 (S.D.N.Y. Sep. 21, 2000).

⁶⁴ See *Powers v. Office of Child Support*, 795 A.2d 1259 (Vt. 2002).

⁶⁵ See *EEOC v. Bd. of Regents of the Univ. of Wis. System*, 288 F.3d 296 (E.D. Wis. 2002).

⁶⁶ 528 U.S. 62 (2000).

⁶⁷ Brief for Respondents, 1999 WL 631661 at *1.

Alabama's argument in *Kimel* was that it was not necessary for Congress to abrogate state sovereign immunity because the states were already protecting their senior citizens against discrimination. In fact, the ADEA's legislative history indicates that Congress looked to the states for guidance on how to prevent discrimination against the elderly. The ADEA Congress "found that strong State laws, when actively administered, reduce arbitrary discrimination against middle-aged and older people, enabling them to be considered more frequently for vacant positions."⁶⁸ Several Senators even explained that "State experience with statutes prohibiting discrimination in employment on the basis of age indicates that such practice can be reduced by a well-administered and well-enforced statute, coupled with an educational program."⁶⁹

Twenty-three state Attorneys General signed a brief in *Kimel* in support of Alabama. Fifteen of those Attorneys General were Democrats. They agreed with Generals Pryor and Butterworth because they understood that the elderly have a number of alternative methods of redressing unlawful state discrimination. They can sue for money damages under state law in state court, can file suit for injunctive relief in federal court, and may be able to seek back pay in federal court. Moreover, the federal government can file suit on their behalf in federal court for money damages or injunctive relief.

General Pryor took the same mainstream stance in *University of Alabama v. Garrett*,⁷⁰ a U.S. Supreme Court case where he contended that the Americans With Disabilities Act's ("ADA") abrogation of state sovereign immunity was similarly unconstitutional. Again, the state of Alabama had no quarrel with the ADA's policy objectives, as General Pryor's brief explicitly stated that Alabama shared the ADA's goal of increasing opportunity for, and prohibiting discrimination against, the disabled. General Pryor simply argued in *Garrett* that it was not necessary for Congress to authorize lawsuits against the states because they were already protecting their disabled citizens against discrimination.

Indeed, during the debate over the ADA, Congress repeatedly praised the states for their efforts to combat disability-based discrimination. One member stated: "This is probably one of the few times where the states are so far out in front of the federal government, it's not funny."⁷¹ Another legislator took Congress to task for failing to do what the states already had done by stating, "It is a sad commentary on the Congress of the United States when you see so many

⁶⁸ "Senate Special Comm. on Aging, Improving the Age Discrimination Act: A Working Paper," 93d Cong. 9 (1973).

⁶⁹ S. REP. NO. 89-1487, at 47 (1966) (Sens. Javits, Prouty, Murphy, and Griffin).

⁷⁰ 531 U.S. 356 (2001).

⁷¹ Hearing Before the House Subcomm. on Employment Opportunities and Select Education, 101 Cong. 5 (Oct. 6, 1989) (Rep. Moakley).

states in the vanguard, who long since have established more humane policy in this area.”⁷² In fact, many states offer stronger protections to the disabled than the ADA contains. For example, Alabama has enacted affirmative-action policies that grant preferential treatment to the disabled, whereas the ADA requires neutrality.⁷³

As with *Kimel*, General Pryor’s peers rallied to his side to support his argument. A number of state attorneys general signed a brief in *Garrett* supporting Alabama’s position, including three Democrats. One of those Democrats was U.S. Senator Mark Pryor, then Arkansas’s Attorney General. Needless to say, the Supreme Court agreed with General Pryor’s commonsense arguments in *Kimel* and *Garrett*, holding in both cases that Alabama could not be subject to suit because of sovereign immunity.⁷⁴

The Restraining Bar Case. Pursuant to his obligations to defend Alabama against lawsuits, General Pryor raised another immunity-related defense – the defense of qualified immunity – in the U.S. Supreme Court case of *Hope v. Pelzer*.⁷⁵ According to the Supreme Court, qualified immunity protects government officials sued in their individual capacities as long as their conduct does not violate “clearly established statutory or constitutional rights of which a reasonable person would have known.”⁷⁶ The Eleventh Circuit has made it clear that the purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation,⁷⁷ by ensuring that only the plainly incompetent or those who knowingly violate the law are subjected to liability.⁷⁸

For a time in Alabama, prisoners who would not work or who fought with other prisoners on work detail were handcuffed to a restraining bar by Alabama Department of Corrections prison guards until they decided to work with the other prisoners or the work day ended.⁷⁹ Under the regulation ordering use of the restraining bar, officers were required to provide

⁷² Hearing Before the House Subcomm. on Employment Opportunities and Select Education, 101 Cong. 7 (June 17, 1989) (Rep. Biaggi).

⁷³ See, e.g., ALA. CODE §§ 21-7-8, 36-26-16.

⁷⁴ See *Kimel*, 528 U.S. at 79; *Garrett*, 531 U.S. at 360.

⁷⁵ 536 U.S. 730, 733 (2002).

⁷⁶ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

⁷⁷ See *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002).

⁷⁸ See *Chesser v. Sparks*, 248 F.3d 1117, 1123 (11th Cir. 2001).

⁷⁹ See *Hope*, 536 U.S. at 733.

prisoners with food, water, bathroom breaks, and medical attention.⁸⁰

The plaintiff in the case, a prisoner convicted of rape, filed suit against three prison guards who allegedly placed him on the restraining bar. The prisoner never alleged that the three guards he was suing in any way failed to provide him with food, water, bathroom breaks, or everything else required by the regulation. Instead, the convicted rapist was seeking money damages for the allegedly unconstitutional actions of the guards.⁸¹ This is despite the fact that, by the time the prisoner's case was litigated in court, the Alabama Department of Corrections had ceased using the restraining bar.⁸²

General Pryor's argument was simply that the three defendant guards should not be sued for money damages, because the relevant case law at the time did not come close to establishing a clear rule that the restraining bar was unconstitutional. Under established Supreme Court precedent, state officials are entitled to qualified immunity unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known."⁸³ One year before the conduct at issue in *Hope* took place, the United States District Court for the Northern District of Alabama rejected the Eighth Amendment claim of an Alabama prisoner who was attached to a restraining bar for five hours after he refused to work and scuffled with guards.⁸⁴ In fact, federal district courts in five other Alabama cases decided before the conduct at issue in *Hope* took place also rejected claims that handcuffing a prisoner to a restraining bar or other stationary object violated the Eighth Amendment.⁸⁵ Because of the lack of clear guidance from federal courts, General Pryor believed the guards had no idea that their actions, which were ordered by then-Governor Fob James and the former prisons commissioner, were in any way illegal. The Eleventh Circuit agreed with General Pryor in 2001, dismissing the prisoner's suit on qualified immunity grounds.⁸⁶

Because the convicted rapist appealed to the Supreme Court, General Pryor had no choice but to ask the Court to uphold the Eleventh Circuit's decision. Although a bitterly

⁸⁰ See *Respondents' Brief*, 2002 WL 481135 at *21-22.

⁸¹ See *Petitioner's Brief*, 2002 WL 313546.

⁸² See *Petitioner's Brief*, 2002 WL 313546 at *1 n.2.

⁸³ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

⁸⁴ See *Lane v. Findley*, No. CV-93-C-1741-S (Aug. 4, 1994).

⁸⁵ See, e.g., *Ashby v. Dees*, No. CV-94-U-0605-NE (N.D. Ala., Dec. 27, 1994); *Vinson v. Thompson*, No. CV-94-A-268-N (M.D. Ala., Dec. 9, 1994); *Hollis v. Folsom*, No. CV-94-T-0052-N (M.D. Ala., Nov. 4, 1994); *Williamson v. Anderson*, No. CV-92-H-675-N (M.D. Ala., Aug. 18, 1993); *Dale v. Murphy*, No. CV-85-1091-H (S.D. Ala., Feb. 4, 1986).

⁸⁶ See *Hope v. Pelzer*, 240 F.3d 975, 981 (11th Cir. 2001).

divided Supreme Court held 5-4 that the three prison guards were not entitled to qualified immunity,⁸⁷ General Pryor's colleagues once again rallied to his side. Fifteen state Attorneys General filed an amicus brief in support of General Pryor's position in the case, including ten Democrats.⁸⁸ The Attorneys General fully agreed with General Pryor's mainstream argument, noting: "It would not be appropriate to expect lay state officers to anticipate what was not grasped by several contemporary federal courts – and to hold those officers personally liable for this lack of prescience."⁸⁹

Champion of Religious Liberties

During his six-plus years in office, General Pryor has been a tireless defender of religious liberties and freedoms. A devout Catholic himself, General Pryor fully appreciates the need for lawmakers to remain faithful to the rule of law yet remain committed to the protection of citizens' right to free expression of their religious beliefs. He has gone about defending religious liberties in a fair, responsible manner, while at the same time rebuffing the unconstitutional efforts of powerful lawmakers to use the government to promote religion.

General Pryor's Record on Religion. A prime example of General Pryor's commitment to religious liberties was his tireless work to promote the passage of the Alabama Religious Freedom Amendment ("ARFA") to the Alabama Constitution, which helps protect the religious freedom of political and religious minorities such as Native Americans and prisoners. The Amendment was enacted in response to the U.S. Supreme Court's decision in *Employment Division v. Smith*,⁹⁰ authored by Justice Antonin Scalia. *Smith* held that the Constitution does not forbid the enforcement of generally applicable criminal laws against those who are engaged in good faith exercise of their religious convictions. General Pryor was motivated to draft ARFA because he felt "a lot of people were alarmed at the way the [C]ourt radically changed the standard for dealing with religious freedom [in *Smith*]."⁹¹ The campaign he led advocating passage of the Amendment was a success, as Alabama voters approved ARFA by an overwhelming margin.

The protections for religious liberties that ARFA secured for Alabamians have recently been put to use by General Pryor in his efforts to protect the religious liberties of a Jewish congregation, Temple B'nai Sholom in Huntsville, Alabama. Members of the congregation have

⁸⁷ See *Hope*, 536 U.S. at 741-42.

⁸⁸ See *Brief of the States of Missouri, Nebraska, Nevada, et. al.*, 2000 WL 471808.

⁸⁹ *Id.* at *28 (citation omitted).

⁹⁰ 494 U.S. 972 (1990).

⁹¹ "Religious freedom amendment worries some preservationists," THE ASSOCIATED PRESS STATE & LOCAL WIRE, August 1, 1998.

worshiped at the temple since 1899. The congregation wanted to demolish a dilapidated house on nearby property for future expansion of its sanctuary. The city's preservation commission refused permission. The congregation, which did not have enough money to restore the house, sued in federal court. General Pryor's office intervened in the case on the side of the temple, contending that the denial of permission constituted an infringement on religious liberty. The case is pending.⁹²

Many states have considered exempting prisoners from the coverage of religious liberties protections, despite vocal criticism by prisoners rights groups. But not Alabama: General Pryor successfully prevented ARFA from including a "prison exemption." His defense of prisoners' religious liberties stood in contrast to the stance of twenty-three other states' Attorneys General, who signed a letter advocating the inclusion of a prison exemption in federal legislation similar to ARFA.⁹³

In recognition for his efforts to promote the passage of the ARFA and include protections for prisoners within its ambit, General Pryor was honored with the 1999 Guardian of Religious Freedom Award by Prison Fellowship Ministries, the Justice Fellowship, and Neighbors Who Care. His nomination has also been strongly endorsed by some of America's most prominent advocates for prisoners' rights, including Charles Colson, the founder of Prison Fellowship Ministries, and Pat Nolan, the president of the Justice Fellowship.

General Pryor has also stood up to defend the religious liberties of schoolchildren by successfully convincing the Eleventh Circuit to reverse a district court injunction in a school prayer case.⁹⁴ The injunction not only prohibited public school officials from organizing religious activities, but also impermissibly required school officials to censor the religious speech and prayers of students, even if the prayers were student-initiated and not the product of any school policy which actively or surreptitiously encouraged them.⁹⁵

During litigation of the case, General Pryor successfully rebuffed former Alabama Governor Fob James, who tried to pressure him into arguing that the First Amendment does not apply to the states on issues such as religious freedom. While General Pryor believed that only students could initiate prayer, Governor James wanted teachers to lead prayer. Governor James actually wrote to the district court judge that had issued the injunction, asking him to reverse his decision and arguing that the U.S. Constitution's Bill of Rights does not apply to the states.

⁹² See "Pryor sides with Huntsville synagogue in city dispute," THE ASSOCIATED PRESS STATE & LOCAL WIRE, February 10, 2002.

⁹³ See Abbott Cooper, "Dam the RFRA at the Prison Gate: the Religious Freedom Restoration Act's Impact on Correctional Litigation," 56 MONT. L. REV. 325, 336 (1995).

⁹⁴ See *Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000).

⁹⁵ See *id.* at 1316.

Then, when the case was on appeal, Governor James filed his own brief before the Eleventh Circuit, making the same argument. General Pryor repudiated Governor James's stance by filing a separate brief on behalf of the state and declaring that Governor James's views "d[id] not state the legal position of the state of Alabama."⁹⁶

Because of the confusion surrounding the district court judge's injunction (later found to itself be unconstitutional), General Pryor distributed guidelines to school superintendents concerning student-initiated prayer in schools. The guidelines were praised by the ATLANTA JOURNAL AND CONSTITUTION in an editorial as bringing "a little light" to the "heat . . . over the issue of separation of church and state."⁹⁷ The editorial went on to note that the guidelines were based "on the most recent rulings from the U.S. Supreme Court and federal district courts," unlike Governor James's brief, which "jeopardize[d] the rule of law and d[id] a disservice to religious people"⁹⁸

The Ten Commandments Case. The usual Washington special interests have also attempted to misrepresent General Pryor's efforts to defend Alabama Supreme Court Justice Roy Moore's courthouse display of the Ten Commandments. Justice Moore's display is, of course, far from the only display of the Ten Commandments in a public courtroom or courthouse. For instance, the courtroom of the U.S. Supreme Court has three depictions of the Ten Commandments: carvings on the front doors, a representation directly above the seat of the chief justice, and a depiction of Moses holding tablets on a sidewall.⁹⁹ The courtrooms of the Supreme Court of Pennsylvania contain large murals depicting Moses and the Ten Commandments, Jesus preaching the Beatitudes, and Jesus walking on water.¹⁰⁰

Although obligated to defend the display, General Pryor has refused to follow the lead of others who sought to turn the case into a referendum on the power of the federal government. He pointedly rejected the views of former Alabama Governor Fob James, who had threatened to use the National Guard or state troopers if necessary to defend Justice Moore's display. Governor James believed that the First Amendment does not apply to the states on issues such as religious freedom. General Pryor has indicated that the dispute over the Commandments had the potential to rock the foundations of the judiciary, and publicly repudiated Governor James's

⁹⁶ Kevin Sack, "Alabama's leader has ornery streak," CHATTANOOGA TIMES, Sept. 8, 1997 at A1.

⁹⁷ "Editorial: A way for church, state to coexist," ATLANTA JOURNAL AND CONSTITUTION, Dec. 11, 1997 at 22A.

⁹⁸ *Id.*

⁹⁹ *See, e.g.*, "The Constitution's commands," CHICAGO TRIBUNE, November 25, 2002 at 18.

¹⁰⁰ *See, e.g.*, Jonathan Gelb, "Fight over plaque returns to court," PHILA. INQUIRER, April 4, 2003 at B1.

stance regarding the inapplicability of the First Amendment to the states.¹⁰¹ General Pryor has also been by no means a supporter of Justice Moore's – he even endorsed one of Justice Moore's opponents, Justice Harold See, in the 2000 election for Chief Justice of the Alabama Supreme Court.

General Pryor's argument about the display – that, within reason, the government may acknowledge and accommodate religion as being an important part of our nation's heritage – is squarely within the legal mainstream. It is also consistent with recent federal court decisions on the issue. Just last October, a federal district court judge ruled that a Ten Commandments monument on the northwest side of the Texas Capitol grounds did not violate the Establishment Clause.¹⁰² The judge, United States District Judge Harry Lee Hudspeth, was a 1979 appointee of President Carter.

General Pryor Puts Aside His Personal Views on Abortion. The same extremist special interest groups that have misrepresented General Pryor's defense of Justice Moore have also condemned his personal opposition to abortion, which is rooted in his devout Catholicism and the teachings of his Church. To suggest that General Pryor is unfit for judicial office because of his religious convictions threatens to violate the Constitution's Religious Test Clause, which specifically forbids disqualifying candidates for office on the ground of their religious convictions.¹⁰³

This unfair attack on General Pryor is all the more galling in light of the fact he has a proven record of subordinating his personal views to the demands of the law. For instance, as Attorney General, he has faithfully applied the Supreme Court's rulings regarding partial-birth abortion. He specifically instructed Alabama officials that they could not enforce the state's partial-birth abortion ban in a way that would violate the Supreme Court's decision in *Planned Parenthood of Southeastern Pa. v. Casey*.¹⁰⁴ In particular, he ordered that the law could be applied to ban such procedures only on viable fetuses. The ACLU even praised General Pryor's instructions, emphasizing that his order has “[s]everely [l]imited” Alabama's ban.¹⁰⁵

¹⁰¹ See Bill Poovey, “Gov. James Backs Judge On 10 Commandments,” THE ASSOCIATED PRESS STATE & LOCAL WIRE, February 15, 1997.

¹⁰² See Brandi Grissom, “Commandments displays embroiled in court battle,” THE DAILY TEXAN, Nov. 20, 2002.

¹⁰³ See U.S. CONST. art. VI. (“no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States”).

¹⁰⁴ 505 U.S. 833, 879 (1992).

¹⁰⁵ “Alabama Partial-Birth Abortion Ban Act,” Oct. 14, 1999, <<http://archive.aclu.org/congress/1101499b.html>>.

In the wake of the Supreme Court's decision in *Stenberg v. Carhart*,¹⁰⁶ which further limited state partial-birth abortion laws, General Pryor called on the Alabama legislature to amend the statute to ensure that it conformed with the Supreme Court's rulings, declaring: "In all likelihood, the Alabama law will have to be amended to conform to [*Stenberg*]."¹⁰⁷ He also made it a point to release a statement telling state officials that they "are obligated to obey [the *Stenberg* ruling] until it is overruled or otherwise set aside."¹⁰⁸ General Pryor took these steps despite intense pressure from the pro-life community to ignore the decision and enforce the state law as originally written.

The Catholic Church is unambiguous in its opposition to abortion. The Catechism of the Catholic Church specifically instructs that "[h]uman life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person – among which is the inviolable right of every innocent being to life."¹⁰⁹ Pope John Paul II's encyclical *Evangelium Vitae* states, "Among all the crimes which can be committed against life, procured abortion has characteristics making it particularly serious and deplorable. The Second Vatican Council defines abortion, together with infanticide, as an 'unspeakable crime.'"¹¹⁰ General Pryor should not be disqualified for a seat on the federal bench simply because he faithfully adheres to this religious teaching.

Under the new litmus test proposed by these special interests, the late Justice Byron White – a Kennedy appointee who dissented in *Roe* – never would have been confirmed. General Pryor's criticism of *Roe* is almost identical to Justice White's. Justice White wrote: "I find nothing in the language or history of the Constitution to support the Court's judgments. The Court simply fashions and announces a new constitutional right for pregnant women . . . with scarcely any reason or authority for its action." President Clinton has said that Justice White "led a truly remarkable life and served on the Court as he lived—with distinction, intelligence, and honor."¹¹¹

¹⁰⁶ 530 U.S. 914 (2000).

¹⁰⁷ Ashley Estes, "State partial-birth abortion law may require change," ASSOCIATED PRESS STATE & LOCAL WIRE, June 30, 2002.

¹⁰⁸ "Pryor Announces Dismissal of Challenge to State Law Banning Late-Term Abortions," Oct. 30, 2000, <<http://www.ago.state.al.us/news/103100.htm>>.

¹⁰⁹ CATECHISM ¶ 2270.

¹¹⁰ EVANGELIUM VITAE ¶ 58 (1995).

¹¹¹ Charles Lane and Bart Barnes, "Longtime Justice Byron White Dies," WASH. POST, Apr. 16, 2002 at A1.

This criticism of General Pryor’s deeply-held religious beliefs by extremists represents an unfair double standard. Senate Democrats gave a free pass to Tenth Circuit nominee Michael McConnell, who was especially strident in his personal opposition to abortion, confirming him by unanimous consent.¹¹² Judge McConnell had spent his entire career attacking *Roe v. Wade* and its progeny, and frequently expressed his personal view that abortion is morally repugnant. For example, Judge McConnell has stated, “We must never, never treat the taking of human life – even nascent human life – as a ‘private’ matter of no concern to the just society. . . . Abortion is an evil, all too frequently and casually employed for the destruction of life.”¹¹³

On issues related to religion, General Pryor has demonstrated, time and again, his commitment to the rule of law. He has stepped up to protect the religious liberties of others in a manner respectful of the Supreme Court, defying intense pressure from religious conservatives who wanted to challenge the Court’s authority. And, when it came to his own religious beliefs, he subordinated his views to the demands of the law by faithfully applying the Supreme Court’s rulings. It is clear that when General Pryor dons a black robe and takes the bench, he will set aside his own views and faithfully apply the law, just like he always has.

Committed to the Rights of Women

As Alabama’s chief law enforcement officer, General Pryor has dedicated himself to serving and furthering the interests of women. He supported and lobbied for legislation that created a state crime of domestic violence, and successfully championed a bill to increase penalties for repeat violations of protection from abuse orders. Another bill, which helps keep those arrested for domestic violence behind bars until a judge or magistrate can determine whether the defendant is a threat to the alleged victim or public safety, also became law with the support of General Pryor. He has also pushed to add the date rape drug, gamma hydroxybutyrate (“GHB”), to Alabama’s drug trafficking statute.

General Pryor’s Innovative Efforts to Advance Women’s Interests. General Pryor’s commitment to women’s interests has not been limited to his efforts at the state Capitol. He has helped create innovative programs that help women, and has been a stalwart supporter of organizations seeking to improve the lives of Alabama women. He worked to force New York shoe manufacturer Nine West Group, Inc. to pay \$34 million nationally to settle allegations of price-fixing by the company. General Pryor then used Alabama’s portion of the settlement to fund “Cut It Out,” a program that educates hair stylists and manicurists about domestic violence. Research has shown that battered women often confide in their hairdressers or manicurists.¹¹⁴

¹¹² See Lee Davidson, “Utahn confirmed as judge,” DESERET NEWS, Nov. 16, 2002 at A1.

¹¹³ M.E. Sprengelmeyer, “Battle Brewing over Bush Nominee; Conservative Scholar’s Lack of Experience on the Bench Priming Fight,” ROCKY MTN. NEWS, Sept. 17, 2002 at 4A.

¹¹⁴ See, e.g., Michelle Guido, “New Approach Against No. 1 Source of Violent Felony Arrests: Hairdressers Emerge as Help for Battered Women,” SAN JOSE MERCURY NEWS, May 1, 2000 at 1A.

In the “Cut It Out” program, hair stylists and manicurists are trained by the Alabama Coalition Against Domestic Violence to help clients whom they suspect are being abused, referring them to shelters or providing self-help pamphlets. “Cut it Out” is run by the Women’s Fund of Greater Birmingham, an organization that runs critical programs for women and girls through community-initiated grants. Dianne Mooney, a member of the Board of Directors of the Fund, has saluted General Pryor’s “focus on the plight of victims of domestic violence” and noted that he “treats issues on women and minorities with great care and respect.”¹¹⁵

He has also been a dedicated supporter of Penelope House, the first shelter designated for battered women and their children in the state of Alabama. Averaging forty-two women and children in shelter per day, Penelope House provides valuable help for families experiencing domestic violence. In 2000, General Pryor highlighted the work of the center in his annual Christmas card, designed by the children of Penelope House, which is sent to thousands of people. He assists Penelope House with its annual luncheon to honor and recognize the efforts of local and state law enforcement officials with whom it partners in its efforts to protect and serve victims of domestic violence. In 2002, General Pryor was inducted into the Penelope House Law Enforcement Hall of Fame in recognition of his support of programs like Penelope House and “Cut It Out” that take action against domestic violence.

Further Efforts to Distort General Pryor’s Record: *U.S. v. Morrison*. Even in light of his enviable record on women’s issues, General Pryor’s shrill detractors have nonetheless distorted the position he took in an amicus brief in the Supreme Court case of *United States v. Morrison*,¹¹⁶ where the Court held that the Violence Against Women Act’s (“VAWA”) civil remedy was beyond Congress’s Commerce Clause powers. General Pryor did not argue that the whole Act was unconstitutional, as some special interest groups have claimed. Rather, the central point of Alabama’s argument was that prohibiting violence against women was absolutely necessary – but that doing so historically has fallen within the domain of state and local governments. Alabama simply argued that state and local officials are better equipped than the federal government to solve the civil justice aspects of the problem of violence against women.

The very day the *Morrison* decision was handed down, General Pryor reiterated Alabama’s commitment to eradicating gender-motivated violence. He noted, “States have led the way in battling domestic abuse and rape. The safety of women – and men – is best protected by encouraging and strengthening state efforts, not by allowing the states to pass the buck to federal bureaucrats and judges.”¹¹⁷ Indeed, when VAWA initially was proposed, a number of

¹¹⁵ Letter from Diane Mooney to Senators Sessions and Shelby, Mar. 14, 2003.

¹¹⁶ 529 U.S. 598 (2000).

¹¹⁷ “Pryor Hails U.S. Supreme Court Ruling as Win for Federalism,” May 15, 2000, <<http://www.ago.state.al.us/news/051500.htm>>.

federal judges and their representative organizations opposed the law for the same reason: its tendency to displace traditional state adjudications. In 1991, the United States Judicial Conference objected to VAWA because it feared the legislation would “flood the federal courts with cases better handled in state courts.”¹¹⁸ The Judicial Conference is headed by the Chief Justice of the Supreme Court and includes the Chief Judges of thirteen federal appeals courts and a district judge from each of the nation’s twelve geographical federal circuits.¹¹⁹

Kathryn Coumanis, the Executive Director of Penelope House, knows the truth about General’s Pryor’s record on women’s issues. She had the following to say about him:

The entire Board of Directors of Penelope House Family Violence Center here in Mobile, AL, unanimously asked that I include them in support of this nomination. Attorney General Bill Pryor has been a long time supporter and advocate of Penelope House, and has worked tirelessly to protect women and children from the dangers of domestic violence. . . . When Bill Pryor raises his voice in support of our mission, it enables us to reach every member of our community. . . . Bill Pryor will bring to the Federal Bench the qualities that all Americans cherish. He is loyal to his State and his Country, is a man of princip[le] and integrity, is highly intelligent, and most of all is a man who has immense compassion and respect for his fellow human beings.¹²⁰

Confirm General Pryor Now!

General Pryor represents the very best in American political and legal life. He is a man of impeccable character and unimpeachable integrity. His dedication to upholding the Constitution is without compare. He has brought together people from across the ideological and political spectrum, and is supported by a legion of prominent Alabama Democrats, including many distinguished African-American leaders. And, most importantly, his record as Attorney General of Alabama is one of moderation and excellence: in protecting racial equality, defending his state’s interests, safeguarding religious liberties, and furthering the interests of women. In the words of one of the men who knows General Pryor best, Alabama Representative Alvin Holmes:

In 2000, I introduced a bill in the Alabama legislature to amend the Alabama Constitution repealing Alabama’s racist ban on interracial marriage. Every prominent white political leader in Alabama (both Republican and Democrat) opposed my bill or remained silent except Bill Pryor[,] who openly and publicly asked the white and black citizens of Alabama to vote [on] and repeal such [a] racist law.

. . . .

¹¹⁸ “Judicial Conference opposes Violence Against Women Act,” UNITED PRESS INTERNATIONAL, September 26, 1991.

¹¹⁹ *Id.*

¹²⁰ Letter from Kathryn Coumanis to Senators Sessions and Shelby, Mar. 14, 2003.

. . . [A]s one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member of Dr. Martin Luther King's [Southern Christian leadership Conference], as one who has been brutally beaten by vicious police officers for participating in civil rights demonstrations, as one who has had crosses burned in his front yard by the KKK and other hate groups, as one who has lived under constant threats day in and day out because of his stand fighting for the rights of blacks and other minorities, I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.¹²¹

The seat to which General Pryor has been nominated has stood vacant for over two years. We urge the Judiciary Committee and the full Senate to confirm this well-qualified nominee in an expeditious manner.

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¹²¹ Letter from Alvin Holmes to Senators Hatch and Leahy, June 5, 2003.

From: Mamo, Jeanie S.
To: <Snee, Ashley>;<Kavanaugh, Brett M.>;<Powell, Benjamin A.>
Sent: 6/10/2003 8:08:32 PM
Subject: Atlanta Journal-Constitution (6/10/03) COLUMN by Jim Wooten re: Nominees come under heavy fire (pryor)

Nominees come under heavy ire

COLUMN by Jim Wooten

Atlanta Journal-Constitution

Jun3e 10, 2003

Another conservative judicial nominee steps into the torture chamber this week, ready to be drawn and quartered in his quest to be seated on the Atlanta-based 11th U.S. Circuit Court of Appeals.

Interest groups on the left are in full frenzy, determined to prevent Alabama Attorney General Bill Pryor, from the 11th Circuit, which is one level below the U. S. Supreme Court. It has jurisdiction over federal civil and criminal cases arising from district courts in Georgia, Florida and Alabama. The vacancy came when Judge Emmett Ripley Cox of Mobile, Ala., took senior status in December 2000. By tradition, the new appointment would go to an Alabamian.

Activists who have summoned Democrats in the U.S. Senate to block President Bush's nominees have focused their efforts on nominees to the circuit courts. Those include Manuel Estrada to the D.C. Circuit, Priscilla Owen and Charles Pickering to the New Orleans-based 5th Circuit and Carolyn Kuhl to the San Francisco-based 9th Circuit. All have waited more than two years for confirmation. All are suspected of being conservative.

There's no doubt about Pryor. He is conservative and is further a reminder that presidents who stand for something can have influence far beyond their terms of office. As a boy, he rode to school with his father listening to President Reagan's speeches on tape; he keeps a bust of Reagan in his statehouse office.

Because he has been an active attorney general, Pryor's positions and utterances have provided the sound bites need by mobilized liberals. The legal director of the Alliance for Justice, a Washington-based umbrella group for liberal interest, vows to keep him off the bench. "We'll be doing everything possible," said Louis Bograd, the group's legal director.

At issue here, of course, is the ongoing national campaign by the left to make certain that any Bush nominee to the U.S. Supreme Court is at least a David Souter, the stealth appointee of George H.W. Bush. Souter, thought to be conservative, isn't. He came about because the left succeeded in defeating Judge Robert Bork, a brilliant jurist completely qualified for the U.S. Supreme Court.

With two rumored vacancies -- Chief Justice William Rehnquist and Justice Sandra Day O'Connor -- the slight 5-4 advantage conservatives have on some issues is at risk. Everything now is a proxy war for expected Supreme Court nominees. If activists can sufficiently smear nominees now, they hope to be able to keep President Bush from considering them for any future Supreme Court vacancy.

It's why, too, such exaggerations are made by groups under the Alliance for Justice umbrella. Pryor is, says Bograd, "an ideological zealot who has devoted his entire legal career to attempting to dismantle legal and constitutional protections for American rights and liberties."

Such hyperbole relies on a single phrase or case, interpreted pejoratively and expanded to a universe, usually to be followed by a warning that the nominee would "turn back the clock to a time when . . ."

The clash between the right and left usually involves one side's effort to expand the reach of government and the other's to limit it. Conservatives, thus, are easily subjected to "turn back the clock" rhetoric because of their efforts to limit the reach and scope of government. If they have made any rulings or have any writings at all, and if in fact they are conservative, most of Bush's judicial appointees should be easy pickings for the left. That has nothing to do with fairness.

The characterizations of nominees such as Estrada, Pickering, Owen, Kuhl and Pryor aren't fair. If they were in the slightest the legal troglodytes their liberal adversaries represent, they shouldn't be out of jail, much less on the bench.

A lot of good and capable folks are being trashed.

Bill Pryor's turn is here.

From: CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>;Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
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Subject: : Pryor information
Attachments: P_44J2H003_WHO.TXT_1.pdf

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:10-JUN-2003 20:17:42.00

SUBJECT:: Pryor information

TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ:UNKNOWN

TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

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TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])

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TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

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TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

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The Committee for Justice issued the attached pro-Pryor release.

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_44J2H003_WHO.TXT_1>



1275 PENNSYLVANIA AVENUE, NW
TENTH FLOOR
WASHINGTON, DC 20008
202.481.6850
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BILL PRYOR: A PUBLIC OFFICIAL DEDICATED TO FOLLOWING THE LAW

Americans have long expected qualified, intelligent, fair-minded jurists to preside in their federal courtrooms. These jurists should adhere faithfully to binding precedent issued by higher courts, defer to the policy choices made by the political branches of government, and faithfully follow the law wherever it leads them, even in the face of intense pressure from those who wish for the law to be ignored. Sadly, Americans have been faced with all-too-frequent reminders that the bench needs judges that adhere to these principles, most recently with a federal circuit court's decision to hold the pledge of allegiance unconstitutional because it mentions "God."¹

As citizens nationwide have been called on to reconsider what sort of judges should be on the federal bench, the people of Alabama have had the good fortune of having a man that embodies these principles as their chief law enforcement officer for over six years. William H. "Bill" Pryor, Jr., the Attorney General of Alabama, has earned a reputation as one of the nation's most experienced and esteemed public servants. Nominated by President Bush to the U.S. Court of Appeals for the Eleventh Circuit on April 10, 2003, General Pryor, at the age of 41, has already had a distinguished career as a public official, practicing attorney, and law professor that would be the envy of most lawyers twice his age. As "Alabama's lawyer," General Pryor has represented and advanced the state's interests in a vigorous style lacking in partisanship. He has steadfastly advanced the arguments he believes will best defend Alabama's interests – not necessarily the ones that reflect his personal views – with civility and intellectual honesty.

Washington's liberal special interest groups have undertaken an all-out effort to distort General Pryor's record, alleging that he "uses his position to remake the law in order to suit his extreme ideological beliefs."² Nothing could be further from the truth. In office, General Pryor has bucked intense political pressure, often from his own political party, in defense of the rule of law.

¹ See *Newdow v. U.S. Congress*, 321 F.3d 772 (9th Cir. 2003).

² Ralph G. Neas, "William Pryor: Ideology Over All," *MOBILE REGISTER*, May 11, 2003.

- Though pressured from within his own party to support very restrictive partial birth abortion bill, General Pryor **supported a more limited partial birth abortion ban** that he believed was consistent with U.S. Supreme Court precedent.
- Though pressured to support a Republican voting rights lawsuit, Pryor broke with Republicans to support the Democratic position in the case because **he believed that the Democrats' stance was consistent with U.S. Supreme Court precedent**, arguing this position all the way to the U.S. Supreme Court.
- Though pressured to support the position that teachers could lead public school students in prayer, General Pryor broke with the Republican Governor who appointed him Attorney General and **instructed school districts that U.S. Supreme Court precedents forbade teachers leading students in prayer**, but allowed voluntary, student-led prayer.

No wonder former Democratic Alabama Governor Don Siegelman, who served in that office for much of General Pryor's tenure as Attorney General, has stated, "Bill Pryor is an incredibly talented, intellectually honest attorney general. He calls them like he sees them. He's got a lot of courage, and he will stand up and fight when he believes he's right."³ We wholeheartedly agree, and enthusiastically join countless others, both in Alabama and nationwide, in calling on the United States Senate to expeditiously confirm General Pryor to the Eleventh Circuit, where he would fill a seat that has remained vacant for over two years.

An Illustrious Career

General Pryor's rapid ascent to prominence has been the product of outstanding legal training and plenty of old-fashioned hard work. The son of an elementary school teacher and school band director from Mobile, Alabama, General Pryor received his law degree from the Tulane University School of Law, where he graduated *magna cum laude* in 1987 and was editor-in-chief of the *Tulane Law Review*. Upon graduation, General Pryor began his legal career as a law clerk for a civil rights legend, the late Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit. Judge Wisdom achieved renown for his landmark decisions ordering and implementing desegregation in the wake of the Supreme Court's historic ruling in *Brown v. Board of Education*.

After his clerkship, General Pryor went into the private practice of law in Birmingham, Alabama at two of the state's finest law firms, specializing in commercial and complex federal litigation. He also taught for six years as an adjunct professor at the Cumberland School of Law of Samford University, earning a reputation as one of Alabama's brightest young lawyers in the process. That glowing reputation led Alabama's Attorney General, Jeff Sessions (now a U.S.

³ Tom Gordon, "GOP Leaders Find Pryor, Siegelman Too Friendly," BIRMINGHAM NEWS, May 7, 2001.

Senator), to hire General Pryor in 1995 as his chief Deputy Attorney General in charge of special civil and constitutional litigation.

General Pryor's brilliant intellect and superb work ethic quickly made him a rising star on the Alabama legal scene. His rise to prominence was capped on January 2, 1997, when Alabama's sitting governor appointed General Pryor as the Attorney General of Alabama. At the time of his appointment, General Pryor was the youngest Attorney General in the United States.

In the six-plus years since his appointment, General Pryor has gone from "up-and-comer" to national leader. As Attorney General, he has tried civil and criminal cases in state and federal courts and has argued before the Supreme Court of the United States, the Supreme Court of Alabama, and the U.S. Court of Appeals for the Eleventh Circuit. He has amassed a sterling record for prosecuting public corruption and white-collar crime, pursuing civil justice, and reforming both the juvenile justice system and criminal sentencing.

General Pryor is held in such high regard that President Bush selected him to be a member of the State and Local Senior Advisory Committee for the White House Office of Homeland Security. And it isn't just the President that thinks highly of General Pryor – the people of Alabama do as well. After being elected to a full four-year term in 1998, Alabamians overwhelmingly reelected General Pryor as Attorney General in 2002. He garnered 59% of the vote, the highest for any statewide officeholder.

He has also demonstrated an ability to work with people from across the ideological and political spectrum. On many occasions, General Pryor has withstood intense pressure from within his own party in order to apply the law in a fair, impartial manner and defend Alabama's interests. It should come as no surprise that a multitude of prominent Alabama Democrats, including many distinguished African-American leaders, have risen to praise General Pryor:

- Bill Baxley, a former Democratic Attorney General of Alabama, states that "Bill has done his duty and kept his oath to uphold the law as Attorney General. He will keep his oath to impartially uphold the law as a federal judge."⁴
- Dr. Joe Reed, the chairman of the Alabama Democratic Conference (the state party's African-American caucus), believes that General Pryor "has been fair to all people" and "will be a credit to the [j]udiciary and will be a guardian for justice."⁵
- Congressman Artur Davis, an African-American who represents the Seventh District of Alabama, states, "I have the utmost respect for my friend Attorney

⁴ Bill Baxley, "Bill Pryor's Duty to Defend the State's Budget," June 5, 2003.

⁵ Letter from Dr. Joe Reed to President Bush, Jan. 27, 2003.

General Pryor and I believe if he is selected, Alabama will be proud of his service.”⁶

- Cleo Thomas, an African-American attorney who currently serves as Secretary of the Alabama Democratic Party, indicates that General Pryor has “a breadth of legal experience and education and the right judicial temperament.”⁷

The acclaim for General Pryor’s nomination extends far beyond the borders of Alabama. He is especially admired by his peers: the Attorneys General of other states. Thurbert Baker, the Democratic Attorney General of Georgia, says that General Pryor “has always done what he thought was best for the people of Alabama,” and indicates that he “know[s] that [General Pryor’s] work on the bench will continue to serve as an example of how the public trust should be upheld.”⁸ Charlie Crist, the Attorney General of Florida, believes that “General Pryor is well qualified for such a position as he has had a distinguished career as a public servant, practicing attorney, and law professor.”⁹ Mark Earley, the former Attorney General of Virginia who now serves as President of Prison Fellowship Ministries, states: “I am very impressed with General Pryor’s abilities and his temperament. He seems ideally suited for a seat on the Court of Appeals, and I enthusiastically endorse him without reservation.”¹⁰

General Pryor’s training and experience, which are by any measure top-notch, have ideally prepared him for the federal bench. He represents all of the necessary attributes of a great judge: experience, intellect, compassion, an outstanding work ethic, and a proper respect for the judicial role in our constitutional structure. We eagerly look forward to the day that this straight-shooter from Alabama takes his seat on the Eleventh Circuit, where he will serve as an example to all Americans of the type of excellence our federal courts deserve.

Fighter for Racial Equality

General Pryor has improved racial relations and protected racial equality in Alabama. His commitment to civil rights and equal justice for persons of all races began early in his career. His first job out of law school was to work as a law clerk to the late Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit. Judge Wisdom achieved renown for his

⁶ Letter from Congressman Artur Davis to Senators Sessions and Shelby, Jan. 10, 2003.

⁷ Mary Orndorff, “Pryor’s Reputation Eyed Inquiries Standard for Judicial Nominees,” BIRMINGHAM NEWS, January 17, 2003.

⁸ Letter from Thurbert Baker to Senators Sessions and Shelby, Mar. 31, 2003.

⁹ Letter from Charlie Crist to Senators Sessions and Shelby, Apr. 15, 2003.

¹⁰ Letter from Mark Earley to Senators Sessions and Shelby, Apr. 1, 2003.

landmark decisions ordering and implementing desegregation in the wake of the Supreme Court's historic ruling in *Brown v. Board of Education*, and received the American Bar Association Medal, the ABA's highest honor. President Bill Clinton awarded Judge Wisdom the Medal of Freedom in 1993, which is the highest civilian honor the President can bestow on an American. President Clinton said of Judge Wisdom, "He was a son of the Old South who became an architect of the New South."¹¹

General Pryor's Record on Race. General Pryor has taken it upon himself to carry on Judge Wisdom's legacy into the new millennium. African-Americans in Alabama will surely never forget the day that they heard Governor George Wallace bellow, "Segregation today! Segregation tomorrow! Segregation Forever!" On the occasion of his first inauguration as Attorney General, General Pryor made it clear that he was a fighter for the legacy of Judge Wisdom and Martin Luther King, Jr., when he proclaimed, "Equal under law now! Equal under law tomorrow! Equal under law forever!"¹² He went on to issue a challenge to his fellow Alabamians by further declaring, "Any provision of the constitution of Alabama, or for that matter the code of Alabama, that classifies our citizens or any persons on the color of their skin, their race, should be stricken."¹³

With these words, General Pryor started the drive to rid the 1901 Alabama Constitution of its racist prohibition on interracial marriage. At a time when few politicians in Alabama would even deign to talk about the ban, yet alone take a courageous stand to end it, General Pryor was at the forefront of the effort to repeal the law. According to the NEW YORK TIMES, "few politicians . . . even mentioned the measure" in the run-up to the vote on the repeal.¹⁴ The ASSOCIATED PRESS described General Pryor as one of the "two most vocal supporters" for repealing the ban, along with Democratic state Representative Alvin Holmes.¹⁵ General Pryor persuaded the Alabama Legislature to allow a vote on repealing the ban, then, working with a coalition that included the NAACP, put all of his available energies towards repeal. Sixty percent of voters ultimately decided to repeal the ban in 2000, but before the vote was to take place, General Pryor had to overcome one last hurdle: the chairman of the Confederate Heritage Political Action Committee sued in an attempt to stop the vote. General Pryor successfully

¹¹ Rita Braver, "True Wisdom," CBS NEWS.COM, <<http://www.cbsnews.com/stories/1999/05/20/Sunday/main47855.shtml>>.

¹² "Inauguration Speech of Attorney General Bill Pryor," Jan. 18, 1999, <<http://www.ago.state.al.us/issue/inaugural99.htm>>.

¹³ "A.G. Lauds Dismissal of Challenge to Amendment Two; Vote to Remove Interracial Marriage Ban is Upheld," December 18, 2000, <<http://www.ago.state.al.us/news/121800b.htm>>.

¹⁴ Somini Sengupta, "Ideas & Trends: The Color of Love; Removing a Relic of the Old South," N.Y. TIMES, November 5, 2000 at (4)5.

¹⁵ Bob Johnson, "Alabama repeals century-old ban against interracial marriages," THE ASSOCIATED PRESS STATE & LOCAL WIRE, November 8, 2000.

convinced a state court to dismiss the complaint, a decision that was later affirmed by the Alabama Supreme Court.¹⁶

Another example of General Pryor's commitment to racial justice is his successful prosecution of former Ku Klux Klansmen Bobby Frank Cherry and Thomas Blanton Jr. for the 1963 bombing of the 16th Street Baptist Church in Birmingham, Alabama. Four young girls were killed in the bombing of the church, which was a center for civil rights advocates who protested Birmingham's segregation laws. General Pryor appointed Democratic U.S. Attorney Doug Jones to handle the trial stage of the case, and, just last month, personally argued before the Alabama Court of Criminal Appeals to keep Blanton behind bars for life. U.S. Attorney Jones believes that General Pryor's "personal involvement in our joint efforts was critical to the success . . . in the church bombing cases."¹⁷ The press has been equally laudatory of General Pryor's work: the BIRMINGHAM POST-HERALD saluted General Pryor as being one of the people whom "history . . . will note . . . worked to bring [the bombers] to justice."¹⁸

Recently, General Pryor stepped up to defend the efforts of state legislators to afford African-Americans an equal, fair, and reasonable chance of victory in elections. He has successfully defended several majority-minority voting districts from a challenge by a group of white Alabama Republican voters, who were residents of various majority-white voting districts. These plaintiffs had sued the state in federal court, claiming that the Alabama's voting districts were the product of unconstitutional racial gerrymandering. General Pryor, siding with the NAACP, personally defended the majority-minority districts all the way to the U.S. Supreme Court, which held that the white voters could not sue because they did not reside in the majority-minority districts and had not personally been denied equal treatment.¹⁹

General Pryor has made additional efforts to protect racial equality and advance racial justice in Alabama. He has successfully convinced the Alabama Supreme Court that a segregationist state constitutional amendment was an unconstitutional attempt to evade the *Brown v. Board of Education* decision.²⁰ He established an Alabama Sentencing Commission to recommend ways to eliminate racial disparities in sentencing, and designed the Commission to have an inclusive membership that includes all perspectives on the criminal justice system, from a crime victim to a defense lawyer. He has started a program to recruit positive adult role models for thousands of at-risk youth and, through the program, has worked every week as a reading tutor for African-American children in a Montgomery public school for the last three years.

¹⁶ See *Chappell v. State*, 810 So.2d 639 (Ala. 2001).

¹⁷ Letter from G. Douglas Jones to Senators Sessions and Shelby, Jan. 31, 2003.

¹⁸ "BC cycle," THE ASSOCIATED PRESS STATE & LOCAL WIRE, May 23, 2002.

¹⁹ See *Sinkfield v. Kelley*, 531 U.S. 28 (2000) (per curiam).

²⁰ See *Ex parte James*, 836 So.2d 813 (Ala. 2002).

Efforts to Distort General Pryor’s Record: *Alexander v. Sandoval*. Despite this superb record, special-interest groups have nonetheless tried to distort several actions General Pryor was obligated to take as Attorney General. Take, for example, the U.S. Supreme Court case of *Alexander v. Sandoval*.²¹ In that case, General Pryor simply defended the law of Alabama by arguing that a person who didn’t speak English shouldn’t be able to force Alabama to spend its money on printing driver’s license tests in foreign languages. He believed, and the Supreme Court agreed, that Congress never intended to waive states’ sovereign immunity to allow people to file lawsuits of this type under Title VI of the Civil Rights Act of 1964.

General Pryor personally made it clear that “[t]he issue in this case is not so much about ‘English only’ and foreign languages, but whether a private person can sue to enforce agency regulations that were not passed by Congress, but by federal bureaucrats.”²² Although other sections of the Civil Rights Act provide for private lawsuits, Title VI explicitly establishes procedures for enforcement by federal agencies only. These procedures are extremely protective of individuals’ civil rights: they direct that a federal agency may cut funding for state programs that are in violation of the regulations, and that any enforcement action is subject to judicial review.²³ The Supreme Court agreed with General Pryor, holding that “private rights of action to enforce federal law must be created by Congress. . . . Statutory intent on this latter point is determinative. . . . Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter or how compatible with the statute.”²⁴

Because Congress didn’t give people the private right to sue states under Title VI, General Pryor would have been derelict in his duty if he didn’t defend Alabama against this lawsuit. He simply did his job: to defend his state from judgments that would drain the state treasury. As Bill Baxley, a former Democratic Attorney General of Alabama, states, “[A]s the State’s lawyer [General Pryor] defends the State’s pocketbook. . . . It is Bill’s duty now to defend Alabama’s budget If he didn’t, he would be violating his oath of office.”²⁵ The special interest groups attacking General Pryor for doing his job should remember that if citizens wish for there to be private lawsuits under Title VI, they have a very simple remedy – to ask their Congressional representatives to amend Title VI to provide for such suits.

Section 5 of the Voting Rights Act. Special interest groups also have attempted to

²¹ 532 U.S. 275 (2001).

²² “Pryor Wins Another Federalism Victory in U.S. Supreme Court; High Court Rules for State in ‘English Only’ Drivers Testing Case,” April 24, 2001, <<http://www.ago.state.al.us/news/042401.htm>>.

²³ See 42 U.S.C.A. § 2000d-1.

²⁴ *Sandoval*, 532 U.S. at 286-87.

²⁵ Bill Baxley, “Bill Pryor’s Duty to Defend the State’s Budget,” June 5, 2003.

misrepresent some of General Pryor's statements about the Voting Rights Act of 1964. General Pryor has made it clear that "the Voting Rights Act is one of the greatest and most necessary laws in American history."²⁶ Because he believes so much in the Act, he has called for the amendment of Section 5 of the Act to ensure appropriate balance and state flexibility to ensure equal rights. He has criticized the "abuse of federal power" under Section 5, and has also taken to task federal courts that have "turned the Act on its head and wielded . . . power to deprive all voters of the right to select . . . public officers," even though the Act "was passed to empower minority voters in the exercise of the franchise."²⁷ Indeed, as it is currently interpreted by courts, Section 5 has forced states to create or maintain safe minority seats which actually dilute minority voting strength elsewhere by packing minority voters into certain districts.²⁸

General Pryor's concerns about Section 5 have been borne out in Georgia, where Section 5 has recently hampered the commonsense efforts of African-American state legislators to create a plan to maximize the number of voting districts that afford African-Americans a chance at electoral victory. A federal district court has found that Georgia's plan violates Section 5,²⁹ which has forced the state to appeal to the Supreme Court to have the plan approved.³⁰ In Georgia's brief to the Supreme Court, Thurbert Baker, the African-American Democratic Attorney General of Georgia, called Section 5 an "extraordinary transgression of the normal prerogatives of the states" and a "a grave intrusion into the authority of the states."³¹ General Baker added, "Section 5 was initially enacted as a 'temporary' measure to last five years precisely because it was so intrusive."³²

Section 5 has not only placed a burden on the states it covers, but also on the U.S. Justice Department, which has been forced to preclear a huge number of changes in voting practices that have nothing to do with minority voting rights. Section 5 requires covered states to preclear *any decision* to change "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting."³³ For example, if a covered state moved voting booths from

²⁶ "Statement Of Attorney General Bill Pryor Regarding His Record On Racial Fairness," May 8, 2003, <<http://www.ago.state.al.us/news.cfm>>.

²⁷ Testimony of Alabama Attorney General Bill Pryor, U.S. Senate Judiciary Committee Subcommittee on the Constitution, Federalism & Property Rights, July 15, 1997, <<http://www.ago.state.al.us/issue/testimony.htm>>.

²⁸ *See Georgia v. Ashcroft*, 204 F.Supp.2d 4 (D.D.C. 2002).

²⁹ *Id.*

³⁰ *See Georgia v. Ashcroft*, 123 S.Ct. 964 (2003) (granting certiorari).

³¹ Brief of Appellant, 2003 WL 554486 (Feb. 22, 2003).

³² *Id.*

³³ 42 U.S.C. §1973(c).

one side of a street to another, this action would have to be precleared by the Justice Department pursuant to Section 5.³⁴ From 2000-2002, the Justice Department received requests to preclear 49,567 voting changes.³⁵ In response to these requests, the Department issued only 28 letters interposing objections to proposed changes under Section 5.³⁶

Because of these problems, it should come as no surprise that some of the most revered Justices of the U.S. Supreme Court have criticized Section 5. The second Justice John Marshall Harlan wrote, “I find it especially difficult to believe that Congress would single out a handful of States as requiring stricter federal supervision concerning their treatment of a problem that may well be just as serious in parts of the North as it is in the South.”³⁷ Justice Lewis Powell stated that it is “a serious intrusion, incompatible with the basic structure of our system, for federal authorities to compel a State to submit its [reapportionment] legislation for advance review” under Section 5, and observed that he disagrees “with the unprecedented requirement of advance review of state or local legislative acts by federal authorities, rendered the more noxious by its selective application to only a few States.”³⁸

On the occasion of Justice Powell’s death, President Clinton saluted him as being “one of our most thoughtful and conscientious justices” and observed that he reviewed cases “without an ideological agenda.”³⁹ General Pryor should also be saluted for thoughtfully contributing to the public debate on how to best overcome America’s tragic legacy of racism and discrimination, just as these icons of American jurisprudence have.

Defender of Alabama’s Interests

Alabama’s Attorney General is obligated by law to defend his state’s interests. Alabama law makes it clear that the state Attorney General “*shall* appear in the courts of other states or of the United States, in any case in which the state may be interested in the result.”⁴⁰ General Pryor

³⁴ See 28 C.F.R. 51.13 (indicating that “any change in the boundaries of voting precincts or in the location of polling places” requires preclearance).

³⁵ See “Section 5 Changes by Type and Year,” <http://www.usdoj.gov/crt/voting/sec_5/changes.htm>.

³⁶ See “Section 5 Objection Determinations,” <http://www.usdoj.gov/crt/voting/sec_5/obj_activ.htm>.

³⁷ *Allen v. State Bd. of Elections*, 393 U.S. 544, 585-56(1969) (Harlan, J., concurring and dissenting).

³⁸ *Georgia v. U.S.*, 411 U.S. 526, 544 n. (1973) (Powell, J., dissenting) (footnotes and quotation marks omitted).

³⁹ “Former Supreme Court Justice Powell Dead At 90,” CNN.COM, Aug. 15, 1998, <<http://www.cnn.com/ALLPOLITICS/1998/08/25/obit.powell/>>.

⁴⁰ ALA. CODE § 36-15-1 (emphasis added).

has safeguarded Alabama's interests in three key ways: by defending Alabamians' right to civil justice, defending Alabama's laws against legal challenges, and protecting Alabama taxpayers against huge money judgments that drain the state treasury.

General Pryor's Commitment to Civil Justice. General Pryor has repeatedly demonstrated his commitment to civil justice and the protection of consumers. For example, he has led the fight to bring corporate wrongdoers to justice. Working both alone and with other states' Attorneys General, he has secured millions of dollars of relief for Alabamians: Joining over 30 states, General Pryor forced several contact lens manufacturers charged with collusion and conspiracy to limit the supply of replacement contact lenses to pay \$50 million in a nationwide settlement.⁴¹

- He helped force Ford Motor Company to pay \$51.5 million in a nationwide settlement related to its deceptive marketing of SUVs.⁴²
- He helped compel Bridgestone/Firestone, Inc. to enter into comprehensive settlement with 53 states and U.S. territories related to the company's August 2000 recall. Firestone agreed to review previously denied claims, provide a process for future review, provide a \$5 million tire maintenance consumer education campaign, and pay \$500,000 to each state and territory involved in the investigation.⁴³
- In 2001 (the last year for which statistics are available), General Pryor's office handled over 6,000 consumer inquiries, resolved over 3,000 consumer complaints, and pursued 18 multi-state actions.⁴⁴

The Tobacco Settlement: Alabama Wins. General Pryor also ensured that Alabama collected from the nationwide tobacco settlement, while making sure that the award paid by tobacco companies went to the state, not trial attorneys. This has understandably upset some liberal groups and trial lawyers, especially because General Pryor didn't agree with some of their legal theories and believed the lawsuit was a litigation solution to a legislative problem. He instead agreed with numerous federal appellate judges appointed by Democratic presidents that

⁴¹ See "Pryor Announces Benefits to Alabama Consumers in Concluding Settlement of Contact Lens Lawsuits," <<http://www.ago.state.al.us/news/053101.htm>> (undated).

⁴² See "Attorneys General Announce Settlement with the Ford Motor Company," December 20, 2002, <<http://www.ago.state.al.us/news/122002.htm>>.

⁴³ See "Pryor Announces New Initiatives in Tire Recall," Aug. 18, 2000, <<http://www.ago.state.al.us/news/081800.htm>>.

⁴⁴ See Office of the Attorney General, "2000 Year in Review," <<http://www.ago.state.al.us/documents/2001YIR.pdf>>, at 29.

when a person is hurt by tobacco smoke, he, not his health provider, can sue the tobacco company. For example, the Ninth Circuit, which even U.S. Senator Charles Schumer has called “way out of the mainstream on the left side,” found no legal basis for plaintiffs to sue the tobacco industry.⁴⁵ The court ruled that there was no basis for a number of Oregon labor union funds to sue the tobacco industry because the union funds had not suffered any direct harm. The other circuit courts that have addressed the issue have ruled similarly.⁴⁶

Despite his misgivings about the tobacco lawsuit, General Pryor promised Alabama taxpayers that he would ensure that the state received its fair share of the proceeds of any settlement. General Pryor did just that, securing \$3.16 billion dollars for Alabamians in settling the case. This payout was the largest civil recovery ever by the state of Alabama. Alabama’s award was dictated by a formula (based on the smoking-related Medicaid expenditures and smoking-related non-Medicaid health care costs of each state), and was proportional to the amounts recovered by the other 45 states participating in the settlement.⁴⁷

Harvard Law School professor Kip Viscusi, a nationally-recognized expert on tobacco policy, concluded that Alabama got \$1.08 for every \$1 it should have received based on its share of cigarette-related medical expenses. This was a better deal than twenty-four of the other forty-five states obtained in the national settlement.⁴⁸ And Alabama’s money has since been allocated responsibly. Except for monies paid to debt service on industrial development bonds for the state and Medicaid and seniors’ services programs, all of Alabama’s tobacco settlement funds are paid into the into the Children’s First Trust Fund. The Fund, which received \$70 million in 2002, has used these proceeds to implement a wide variety of programs to help youth succeed and to reduce juvenile crime, including foster care, alternative schools, and drug and alcohol treatment programs.⁴⁹

⁴⁵ See *Oregon Laborers-Employers Health & Welfare Trust Fund v. Philip Morris Inc.*, 185 F.3d 957 (9th Cir. 1999).

⁴⁶ See *Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229 (2d Cir. 1999); *Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.*, 171 F.3d 912 (3d Cir. 1999) (dismissing RICO and fraud claims); *Texas Carpenters Health Benefit Fund v. Philip Morris, Inc.*, 199 F.3d 788 (5th Cir. 2000) (dismissing RICO and antitrust claims); *International Brotherhood of Teamsters, Local 734 Health & Welfare Fund v. Philip Morris, Inc.*, 196 F.3d 818 (7th Cir. 1999) (dismissing RICO, antitrust, and various state law claims); *United Food and Commercial Workers Unions, Employers Health and Welfare Fund v. Philip Morris, Inc.*, 223 F.3d 1271 (11th Cir. 2000).

⁴⁷ See, e.g., General Accounting Office, “States’ Use of Master Settlement Agreement Payments,” No. 01-851, June 2001, at 11.

⁴⁸ See W. Kip Viscusi, “A Postmortem on the Cigarette Settlement,” 29 CUMB. L. REV. 523, 541 (1999).

⁴⁹ See State of Alabama, “Children First Trust Fund: FY 02 Annual Report,” <<http://www.dca.state.al.us/cpc/Children%20First%202002-2003.pdf>>.

After securing a huge award for Alabamians, General Pryor next set his sights on making sure that fees paid by tobacco companies to the state were not diverted to trial lawyers. He personally argued that lawyers involved with Alabama's lawsuit were not entitled to collect any legal fees, and they ultimately received only \$125,000.⁵⁰ The fee reduction obtained by General Pryor went in part to pay for health insurance for children and the poor.⁵¹

General Pryor has also been a key figure in the effective enforcement of Alabama's laws against sale of tobacco products to minors. In 1997 he strongly supported legislation to increase the penalties for such sales. After the legislation was passed, giving the primary responsibility for enforcement to the state Alcoholic Beverage Control ("ABC") Board, General Pryor was very active in designing and implementing a program to educate retail businesses about how to comply with the new law. Since then, attorneys from his office have worked with the ABC Board in several capacities, including tobacco education projects for young people.

The Texas Sodomy Case. Washington-based special interest groups have made much hay over the fact that General Pryor fulfilled his obligation to defend his state's laws in court by filing an amicus brief in the Supreme Court case of *Lawrence v. Texas*,⁵² often referred to as the "Texas sodomy case." Like Texas, Alabama has a law prohibiting sodomy (called "sexual misconduct" under the Alabama Code).⁵³ Unlike the law at issue in *Lawrence*, however, Alabama's law does not single out gays and lesbians for disparate treatment. As Attorney General, General Pryor has a duty to defend his state's laws against attack, pursuant to § 36-15-1 of the Alabama Code. Indeed, both federal and state law anticipate that the Alabama Attorney General will defend any state law whose constitutionality is challenged. Because of this duty, General Pryor has been called upon to defend some laws he might not personally have voted for. His critics have unfairly criticized him for strenuously defending the legislature's statutes, even though it is his sworn obligation to do so as the state's top lawyer.

General Pryor has defended the law pursuant to his obligations under § 36-15-1 of the Alabama Code, for a simple reason – if the Supreme Court were to agree with the petitioners in *Lawrence* that the act of sodomy is constitutionally protected and reverse its decision in *Bowers v. Hardwick*,⁵⁴ Alabama's sodomy ban would be effectively struck down. His argument was a narrow one: that a constitutional protection for effectively any type of sexual conduct whatsoever has no logical stopping point. This course of reasoning is nothing new; it was first voiced by the late Justice Byron White of the U.S. Supreme Court, who stated in *Bowers v.*

⁵⁰ See *State v. American Tobacco Co.*, 772 So. 2d 417, 422-23 (Ala. 2000).

⁵¹ See "Children First Trust Fund: FY 02 Annual Report."

⁵² 123 S. Ct. 661 (2002) (granting certiorari).

⁵³ See ALA. CODE § 13A-6-65.

⁵⁴ 478 U.S. 186 (1986).

Hardwick, “If respondent’s submission is limited to the voluntary sexual conduct between consenting adults, it would be difficult, except by fiat, to limit the claimed right to homosexual conduct while leaving exposed to prosecution adultery, incest and other sexual crimes even though they are committed in the home.”⁵⁵

The inclusion of homosexuality with polygamy and bigamy is not some sort of spurious charge, but has rather been the American Civil Liberties Union’s actual litigation strategy. For instance, the argument that there exists such an expansive constitutional right to privacy has been used by the ACLU to challenge the state of Utah’s ban on polygamy.⁵⁶ The ACLU’s Utah legal director has commented that “[t]alking to [Utah’s polygamists] is like talking to gays and lesbians who really want the right to live their lives, and not live in fear because of whom they love. So certainly that kind of privacy expectation is something the ACLU is committed to protecting.”⁵⁷ The ACLU has a national policy stating that it “believes that criminal and civil laws prohibiting or penalizing the practice of plural marriage violate constitutional protections of freedom of expression and association, freedom of religion, and privacy for personal relationships among consenting adults.”⁵⁸ It has even contended that the Child Pornography Prevention Act of 1996, which prohibits virtual depictions of children in sex acts, is unconstitutional, noting, “[P]eople’s thoughts are their private thoughts.”⁵⁹

In fact, the expansive privacy argument criticized by General Pryor has been used to argue that bans on prostitution are unconstitutional, by none other than a U.S. Supreme Court Justice. In a 1977 ACLU report, Ruth Bader Ginsburg, now an Associate Justice, asserted that “prostitution as a consensual act between adults is arguably within the zone of privacy protected by recent constitutional decisions.”⁶⁰ Justice Ginsburg’s assertion was used in court by a former Florida prostitute who, with the help of the ACLU, filed suit alleging that Florida’s laws against prostitution violate “her fundamental right of privacy, and pursuant to that right, the right to control her own reproductive organs whether in a private or a commercial transaction.”⁶¹ Whether one may ultimately agree or disagree with General Pryor’s argument about the right to privacy, the actions by the ACLU and other groups make it clear that Alabama’s stance is eminently reasonable.

⁵⁵ *Id.* at 195-96.

⁵⁶ See Greg Burton, “ACLU to Join Polygamists in Bigamy Fight,” SALT LAKE TRIBUNE, July 16, 1999.

⁵⁷ *Id.*

⁵⁸ Policy #91, National ACLU Policy on Polygamy, April 1991.

⁵⁹ “Thought Police Recruited in New Child Porn Law,” ACLU Press Release, Oct. 3, 1996.

⁶⁰ Jameson Taylor, “Prostitution as Political Philosophy,” HLI REPORTS, April 2002.

⁶¹ *Id.*

Sovereign Immunity. General Pryor has also been obligated to defend Alabama taxpayers from huge money judgments that drain the state treasury. One of the key tools that any state Attorney General would employ to mount such a defense is enshrined in the Eleventh Amendment to the U.S. Constitution. Under the doctrine of sovereign immunity, suits against a state for damages that must be paid from the public fisc are barred, absent a sufficient showing under the Fourteenth Amendment that Congress intended to abrogate state sovereign immunity. The Supreme Court's seminal case recognizing the sovereign immunity protection for state budgets is *Seminole Tribe v. Florida*,⁶² in which Democratic Attorney General Bob Butterworth of Florida fought for and won protection for state treasuries against lawsuits. Keying off General Butterworth's victory, General Pryor, like Attorneys General from around the country, asserted *Seminole Tribe*'s interpretation of sovereign immunity to protect their state budgets from lawsuits.

The use of sovereign immunity by states as a defense against lawsuits is in no way groundbreaking or controversial. Indeed, numerous Democratic Attorneys General have asserted the exact same position as General Pryor. New York Attorney General Eliot Spitzer, a liberal Democrat, recently asserted sovereign immunity as a defense for a suit against a state hospital, and successfully argued that sovereign immunity barred an age discrimination claim.⁶³ Vermont Attorney General William Sorrell, a Democrat, successfully asserted the sovereign immunity defense against a plaintiff who sued Vermont's Office of Child Support claiming that it had not adequately pursued her ex-husband for child support.⁶⁴ And Wisconsin's Attorney General, Jim Doyle, another Democrat, unsuccessfully asserted sovereign immunity against the EEOC, which had sued the University of Wisconsin on behalf of four terminated employees, arguing that they were fired because of their age.⁶⁵

Liberal critics have distorted General Pryor's involvement with the U.S. Supreme Court case of *Kimel v. Florida Board of Regents*,⁶⁶ where he, along with General Butterworth, argued that one small portion of the Age Discrimination in Employment Act ("ADEA") – its abrogation of state sovereign immunity – was unconstitutional. Alabama's brief in that case stressed that the ADEA was a desirable piece of legislation: "The States of Florida and Alabama do not make this claim lightly. The ADEA advances a commendable policy – non-discrimination against the elderly – and does so at the end of a lawmaking process that is . . . deserving of respect."⁶⁷

⁶² 517 U.S. 44 (1996).

⁶³ See *Leiman v. New York*, 2000 WL 1364365 (S.D.N.Y. Sep. 21, 2000).

⁶⁴ See *Powers v. Office of Child Support*, 795 A.2d 1259 (Vt. 2002).

⁶⁵ See *EEOC v. Bd. of Regents of the Univ. of Wis. System*, 288 F.3d 296 (E.D. Wis. 2002).

⁶⁶ 528 U.S. 62 (2000).

⁶⁷ Brief for Respondents, 1999 WL 631661 at *1.

Alabama's argument in *Kimel* was that it was not necessary for Congress to abrogate state sovereign immunity because the states were already protecting their senior citizens against discrimination. In fact, the ADEA's legislative history indicates that Congress looked to the states for guidance on how to prevent discrimination against the elderly. The ADEA Congress "found that strong State laws, when actively administered, reduce arbitrary discrimination against middle-aged and older people, enabling them to be considered more frequently for vacant positions."⁶⁸ Several Senators even explained that "State experience with statutes prohibiting discrimination in employment on the basis of age indicates that such practice can be reduced by a well-administered and well-enforced statute, coupled with an educational program."⁶⁹

Twenty-three state Attorneys General signed a brief in *Kimel* in support of Alabama. Fifteen of those Attorneys General were Democrats. They agreed with Generals Pryor and Butterworth because they understood that the elderly have a number of alternative methods of redressing unlawful state discrimination. They can sue for money damages under state law in state court, can file suit for injunctive relief in federal court, and may be able to seek back pay in federal court. Moreover, the federal government can file suit on their behalf in federal court for money damages or injunctive relief.

General Pryor took the same mainstream stance in *University of Alabama v. Garrett*,⁷⁰ a U.S. Supreme Court case where he contended that the Americans With Disabilities Act's ("ADA") abrogation of state sovereign immunity was similarly unconstitutional. Again, the state of Alabama had no quarrel with the ADA's policy objectives, as General Pryor's brief explicitly stated that Alabama shared the ADA's goal of increasing opportunity for, and prohibiting discrimination against, the disabled. General Pryor simply argued in *Garrett* that it was not necessary for Congress to authorize lawsuits against the states because they were already protecting their disabled citizens against discrimination.

Indeed, during the debate over the ADA, Congress repeatedly praised the states for their efforts to combat disability-based discrimination. One member stated: "This is probably one of the few times where the states are so far out in front of the federal government, it's not funny."⁷¹ Another legislator took Congress to task for failing to do what the states already had done by stating, "It is a sad commentary on the Congress of the United States when you see so many

⁶⁸ "Senate Special Comm. on Aging, Improving the Age Discrimination Act: A Working Paper," 93d Cong. 9 (1973).

⁶⁹ S. REP. NO. 89-1487, at 47 (1966) (Sens. Javits, Prouty, Murphy, and Griffin).

⁷⁰ 531 U.S. 356 (2001).

⁷¹ Hearing Before the House Subcomm. on Employment Opportunities and Select Education, 101 Cong. 5 (Oct. 6, 1989) (Rep. Moakley).

states in the vanguard, who long since have established more humane policy in this area.”⁷² In fact, many states offer stronger protections to the disabled than the ADA contains. For example, Alabama has enacted affirmative-action policies that grant preferential treatment to the disabled, whereas the ADA requires neutrality.⁷³

As with *Kimel*, General Pryor’s peers rallied to his side to support his argument. A number of state attorneys general signed a brief in *Garrett* supporting Alabama’s position, including three Democrats. One of those Democrats was U.S. Senator Mark Pryor, then Arkansas’s Attorney General. Needless to say, the Supreme Court agreed with General Pryor’s commonsense arguments in *Kimel* and *Garrett*, holding in both cases that Alabama could not be subject to suit because of sovereign immunity.⁷⁴

The Restraining Bar Case. Pursuant to his obligations to defend Alabama against lawsuits, General Pryor raised another immunity-related defense – the defense of qualified immunity – in the U.S. Supreme Court case of *Hope v. Pelzer*.⁷⁵ According to the Supreme Court, qualified immunity protects government officials sued in their individual capacities as long as their conduct does not violate “clearly established statutory or constitutional rights of which a reasonable person would have known.”⁷⁶ The Eleventh Circuit has made it clear that the purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation,⁷⁷ by ensuring that only the plainly incompetent or those who knowingly violate the law are subjected to liability.⁷⁸

For a time in Alabama, prisoners who would not work or who fought with other prisoners on work detail were handcuffed to a restraining bar by Alabama Department of Corrections prison guards until they decided to work with the other prisoners or the work day ended.⁷⁹ Under the regulation ordering use of the restraining bar, officers were required to provide

⁷² Hearing Before the House Subcomm. on Employment Opportunities and Select Education, 101 Cong. 7 (June 17, 1989) (Rep. Biaggi).

⁷³ See, e.g., ALA. CODE §§ 21-7-8, 36-26-16.

⁷⁴ See *Kimel*, 528 U.S. at 79; *Garrett*, 531 U.S. at 360.

⁷⁵ 536 U.S. 730, 733 (2002).

⁷⁶ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

⁷⁷ See *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002).

⁷⁸ See *Chesser v. Sparks*, 248 F.3d 1117, 1123 (11th Cir. 2001).

⁷⁹ See *Hope*, 536 U.S. at 733.

prisoners with food, water, bathroom breaks, and medical attention.⁸⁰

The plaintiff in the case, a prisoner convicted of rape, filed suit against three prison guards who allegedly placed him on the restraining bar. The prisoner never alleged that the three guards he was suing in any way failed to provide him with food, water, bathroom breaks, or everything else required by the regulation. Instead, the convicted rapist was seeking money damages for the allegedly unconstitutional actions of the guards.⁸¹ This is despite the fact that, by the time the prisoner's case was litigated in court, the Alabama Department of Corrections had ceased using the restraining bar.⁸²

General Pryor's argument was simply that the three defendant guards should not be sued for money damages, because the relevant case law at the time did not come close to establishing a clear rule that the restraining bar was unconstitutional. Under established Supreme Court precedent, state officials are entitled to qualified immunity unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known."⁸³ One year before the conduct at issue in *Hope* took place, the United States District Court for the Northern District of Alabama rejected the Eighth Amendment claim of an Alabama prisoner who was attached to a restraining bar for five hours after he refused to work and scuffled with guards.⁸⁴ In fact, federal district courts in five other Alabama cases decided before the conduct at issue in *Hope* took place also rejected claims that handcuffing a prisoner to a restraining bar or other stationary object violated the Eighth Amendment.⁸⁵ Because of the lack of clear guidance from federal courts, General Pryor believed the guards had no idea that their actions, which were ordered by then-Governor Fob James and the former prisons commissioner, were in any way illegal. The Eleventh Circuit agreed with General Pryor in 2001, dismissing the prisoner's suit on qualified immunity grounds.⁸⁶

Because the convicted rapist appealed to the Supreme Court, General Pryor had no choice but to ask the Court to uphold the Eleventh Circuit's decision. Although a bitterly

⁸⁰ See *Respondents' Brief*, 2002 WL 481135 at *21-22.

⁸¹ See *Petitioner's Brief*, 2002 WL 313546.

⁸² See *Petitioner's Brief*, 2002 WL 313546 at *1 n.2.

⁸³ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

⁸⁴ See *Lane v. Findley*, No. CV-93-C-1741-S (Aug. 4, 1994).

⁸⁵ See, e.g., *Ashby v. Dees*, No. CV-94-U-0605-NE (N.D. Ala., Dec. 27, 1994); *Vinson v. Thompson*, No. CV-94-A-268-N (M.D. Ala., Dec. 9, 1994); *Hollis v. Folsom*, No. CV-94-T-0052-N (M.D. Ala., Nov. 4, 1994); *Williamson v. Anderson*, No. CV-92-H-675-N (M.D. Ala., Aug. 18, 1993); *Dale v. Murphy*, No. CV-85-1091-H (S.D. Ala., Feb. 4, 1986).

⁸⁶ See *Hope v. Pelzer*, 240 F.3d 975, 981 (11th Cir. 2001).

divided Supreme Court held 5-4 that the three prison guards were not entitled to qualified immunity,⁸⁷ General Pryor's colleagues once again rallied to his side. Fifteen state Attorneys General filed an amicus brief in support of General Pryor's position in the case, including ten Democrats.⁸⁸ The Attorneys General fully agreed with General Pryor's mainstream argument, noting: "It would not be appropriate to expect lay state officers to anticipate what was not grasped by several contemporary federal courts – and to hold those officers personally liable for this lack of prescience."⁸⁹

Champion of Religious Liberties

During his six-plus years in office, General Pryor has been a tireless defender of religious liberties and freedoms. A devout Catholic himself, General Pryor fully appreciates the need for lawmakers to remain faithful to the rule of law yet remain committed to the protection of citizens' right to free expression of their religious beliefs. He has gone about defending religious liberties in a fair, responsible manner, while at the same time rebuffing the unconstitutional efforts of powerful lawmakers to use the government to promote religion.

General Pryor's Record on Religion. A prime example of General Pryor's commitment to religious liberties was his tireless work to promote the passage of the Alabama Religious Freedom Amendment ("ARFA") to the Alabama Constitution, which helps protect the religious freedom of political and religious minorities such as Native Americans and prisoners. The Amendment was enacted in response to the U.S. Supreme Court's decision in *Employment Division v. Smith*,⁹⁰ authored by Justice Antonin Scalia. *Smith* held that the Constitution does not forbid the enforcement of generally applicable criminal laws against those who are engaged in good faith exercise of their religious convictions. General Pryor was motivated to draft ARFA because he felt "a lot of people were alarmed at the way the [C]ourt radically changed the standard for dealing with religious freedom [in *Smith*]."⁹¹ The campaign he led advocating passage of the Amendment was a success, as Alabama voters approved ARFA by an overwhelming margin.

The protections for religious liberties that ARFA secured for Alabamians have recently been put to use by General Pryor in his efforts to protect the religious liberties of a Jewish congregation, Temple B'nai Sholom in Huntsville, Alabama. Members of the congregation have

⁸⁷ See *Hope*, 536 U.S. at 741-42.

⁸⁸ See *Brief of the States of Missouri, Nebraska, Nevada, et. al.*, 2000 WL 471808.

⁸⁹ *Id.* at *28 (citation omitted).

⁹⁰ 494 U.S. 972 (1990).

⁹¹ "Religious freedom amendment worries some preservationists," THE ASSOCIATED PRESS STATE & LOCAL WIRE, August 1, 1998.

worshiped at the temple since 1899. The congregation wanted to demolish a dilapidated house on nearby property for future expansion of its sanctuary. The city's preservation commission refused permission. The congregation, which did not have enough money to restore the house, sued in federal court. General Pryor's office intervened in the case on the side of the temple, contending that the denial of permission constituted an infringement on religious liberty. The case is pending.⁹²

Many states have considered exempting prisoners from the coverage of religious liberties protections, despite vocal criticism by prisoners rights groups. But not Alabama: General Pryor successfully prevented ARFA from including a "prison exemption." His defense of prisoners' religious liberties stood in contrast to the stance of twenty-three other states' Attorneys General, who signed a letter advocating the inclusion of a prison exemption in federal legislation similar to ARFA.⁹³

In recognition for his efforts to promote the passage of the ARFA and include protections for prisoners within its ambit, General Pryor was honored with the 1999 Guardian of Religious Freedom Award by Prison Fellowship Ministries, the Justice Fellowship, and Neighbors Who Care. His nomination has also been strongly endorsed by some of America's most prominent advocates for prisoners' rights, including Charles Colson, the founder of Prison Fellowship Ministries, and Pat Nolan, the president of the Justice Fellowship.

General Pryor has also stood up to defend the religious liberties of schoolchildren by successfully convincing the Eleventh Circuit to reverse a district court injunction in a school prayer case.⁹⁴ The injunction not only prohibited public school officials from organizing religious activities, but also impermissibly required school officials to censor the religious speech and prayers of students, even if the prayers were student-initiated and not the product of any school policy which actively or surreptitiously encouraged them.⁹⁵

During litigation of the case, General Pryor successfully rebuffed former Alabama Governor Fob James, who tried to pressure him into arguing that the First Amendment does not apply to the states on issues such as religious freedom. While General Pryor believed that only students could initiate prayer, Governor James wanted teachers to lead prayer. Governor James actually wrote to the district court judge that had issued the injunction, asking him to reverse his decision and arguing that the U.S. Constitution's Bill of Rights does not apply to the states.

⁹² See "Pryor sides with Huntsville synagogue in city dispute," THE ASSOCIATED PRESS STATE & LOCAL WIRE, February 10, 2002.

⁹³ See Abbott Cooper, "Dam the RFRA at the Prison Gate: the Religious Freedom Restoration Act's Impact on Correctional Litigation," 56 MONT. L. REV. 325, 336 (1995).

⁹⁴ See *Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000).

⁹⁵ See *id.* at 1316.

Then, when the case was on appeal, Governor James filed his own brief before the Eleventh Circuit, making the same argument. General Pryor repudiated Governor James's stance by filing a separate brief on behalf of the state and declaring that Governor James's views "d[id] not state the legal position of the state of Alabama."⁹⁶

Because of the confusion surrounding the district court judge's injunction (later found to itself be unconstitutional), General Pryor distributed guidelines to school superintendents concerning student-initiated prayer in schools. The guidelines were praised by the ATLANTA JOURNAL AND CONSTITUTION in an editorial as bringing "a little light" to the "heat . . . over the issue of separation of church and state."⁹⁷ The editorial went on to note that the guidelines were based "on the most recent rulings from the U.S. Supreme Court and federal district courts," unlike Governor James's brief, which "jeopardize[d] the rule of law and d[id] a disservice to religious people"⁹⁸

The Ten Commandments Case. The usual Washington special interests have also attempted to misrepresent General Pryor's efforts to defend Alabama Supreme Court Justice Roy Moore's courthouse display of the Ten Commandments. Justice Moore's display is, of course, far from the only display of the Ten Commandments in a public courtroom or courthouse. For instance, the courtroom of the U.S. Supreme Court has three depictions of the Ten Commandments: carvings on the front doors, a representation directly above the seat of the chief justice, and a depiction of Moses holding tablets on a sidewall.⁹⁹ The courtrooms of the Supreme Court of Pennsylvania contain large murals depicting Moses and the Ten Commandments, Jesus preaching the Beatitudes, and Jesus walking on water.¹⁰⁰

Although obligated to defend the display, General Pryor has refused to follow the lead of others who sought to turn the case into a referendum on the power of the federal government. He pointedly rejected the views of former Alabama Governor Fob James, who had threatened to use the National Guard or state troopers if necessary to defend Justice Moore's display. Governor James believed that the First Amendment does not apply to the states on issues such as religious freedom. General Pryor has indicated that the dispute over the Commandments had the potential to rock the foundations of the judiciary, and publicly repudiated Governor James's

⁹⁶ Kevin Sack, "Alabama's leader has ornery streak," CHATTANOOGA TIMES, Sept. 8, 1997 at A1.

⁹⁷ "Editorial: A way for church, state to coexist," ATLANTA JOURNAL AND CONSTITUTION, Dec. 11, 1997 at 22A.

⁹⁸ *Id.*

⁹⁹ *See, e.g.*, "The Constitution's commands," CHICAGO TRIBUNE, November 25, 2002 at 18.

¹⁰⁰ *See, e.g.*, Jonathan Gelb, "Fight over plaque returns to court," PHILA. INQUIRER, April 4, 2003 at B1.

stance regarding the inapplicability of the First Amendment to the states.¹⁰¹ General Pryor has also been by no means a supporter of Justice Moore's – he even endorsed one of Justice Moore's opponents, Justice Harold See, in the 2000 election for Chief Justice of the Alabama Supreme Court.

General Pryor's argument about the display – that, within reason, the government may acknowledge and accommodate religion as being an important part of our nation's heritage – is squarely within the legal mainstream. It is also consistent with recent federal court decisions on the issue. Just last October, a federal district court judge ruled that a Ten Commandments monument on the northwest side of the Texas Capitol grounds did not violate the Establishment Clause.¹⁰² The judge, United States District Judge Harry Lee Hudspeth, was a 1979 appointee of President Carter.

General Pryor Puts Aside His Personal Views on Abortion. The same extremist special interest groups that have misrepresented General Pryor's defense of Justice Moore have also condemned his personal opposition to abortion, which is rooted in his devout Catholicism and the teachings of his Church. To suggest that General Pryor is unfit for judicial office because of his religious convictions threatens to violate the Constitution's Religious Test Clause, which specifically forbids disqualifying candidates for office on the ground of their religious convictions.¹⁰³

This unfair attack on General Pryor is all the more galling in light of the fact he has a proven record of subordinating his personal views to the demands of the law. For instance, as Attorney General, he has faithfully applied the Supreme Court's rulings regarding partial-birth abortion. He specifically instructed Alabama officials that they could not enforce the state's partial-birth abortion ban in a way that would violate the Supreme Court's decision in *Planned Parenthood of Southeastern Pa. v. Casey*.¹⁰⁴ In particular, he ordered that the law could be applied to ban such procedures only on viable fetuses. The ACLU even praised General Pryor's instructions, emphasizing that his order has “[s]everely [l]imited” Alabama's ban.¹⁰⁵

¹⁰¹ See Bill Poovey, “Gov. James Backs Judge On 10 Commandments,” THE ASSOCIATED PRESS STATE & LOCAL WIRE, February 15, 1997.

¹⁰² See Brandi Grissom, “Commandments displays embroiled in court battle,” THE DAILY TEXAN, Nov. 20, 2002.

¹⁰³ See U.S. CONST. art. VI. (“no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States”).

¹⁰⁴ 505 U.S. 833, 879 (1992).

¹⁰⁵ “Alabama Partial-Birth Abortion Ban Act,” Oct. 14, 1999, <<http://archive.aclu.org/congress/1101499b.html>>.

In the wake of the Supreme Court's decision in *Stenberg v. Carhart*,¹⁰⁶ which further limited state partial-birth abortion laws, General Pryor called on the Alabama legislature to amend the statute to ensure that it conformed with the Supreme Court's rulings, declaring: "In all likelihood, the Alabama law will have to be amended to conform to [*Stenberg*]."¹⁰⁷ He also made it a point to release a statement telling state officials that they "are obligated to obey [the *Stenberg* ruling] until it is overruled or otherwise set aside."¹⁰⁸ General Pryor took these steps despite intense pressure from the pro-life community to ignore the decision and enforce the state law as originally written.

The Catholic Church is unambiguous in its opposition to abortion. The Catechism of the Catholic Church specifically instructs that "[h]uman life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person – among which is the inviolable right of every innocent being to life."¹⁰⁹ Pope John Paul II's encyclical *Evangelium Vitae* states, "Among all the crimes which can be committed against life, procured abortion has characteristics making it particularly serious and deplorable. The Second Vatican Council defines abortion, together with infanticide, as an 'unspeakable crime.'"¹¹⁰ General Pryor should not be disqualified for a seat on the federal bench simply because he faithfully adheres to this religious teaching.

Under the new litmus test proposed by these special interests, the late Justice Byron White – a Kennedy appointee who dissented in *Roe* – never would have been confirmed. General Pryor's criticism of *Roe* is almost identical to Justice White's. Justice White wrote: "I find nothing in the language or history of the Constitution to support the Court's judgments. The Court simply fashions and announces a new constitutional right for pregnant women . . . with scarcely any reason or authority for its action." President Clinton has said that Justice White "led a truly remarkable life and served on the Court as he lived—with distinction, intelligence, and honor."¹¹¹

¹⁰⁶ 530 U.S. 914 (2000).

¹⁰⁷ Ashley Estes, "State partial-birth abortion law may require change," ASSOCIATED PRESS STATE & LOCAL WIRE, June 30, 2002.

¹⁰⁸ "Pryor Announces Dismissal of Challenge to State Law Banning Late-Term Abortions," Oct. 30, 2000, <<http://www.ago.state.al.us/news/103100.htm>>.

¹⁰⁹ CATECHISM ¶ 2270.

¹¹⁰ EVANGELIUM VITAE ¶ 58 (1995).

¹¹¹ Charles Lane and Bart Barnes, "Longtime Justice Byron White Dies," WASH. POST, Apr. 16, 2002 at A1.

This criticism of General Pryor’s deeply-held religious beliefs by extremists represents an unfair double standard. Senate Democrats gave a free pass to Tenth Circuit nominee Michael McConnell, who was especially strident in his personal opposition to abortion, confirming him by unanimous consent.¹¹² Judge McConnell had spent his entire career attacking *Roe v. Wade* and its progeny, and frequently expressed his personal view that abortion is morally repugnant. For example, Judge McConnell has stated, “We must never, never treat the taking of human life – even nascent human life – as a ‘private’ matter of no concern to the just society. . . . Abortion is an evil, all too frequently and casually employed for the destruction of life.”¹¹³

On issues related to religion, General Pryor has demonstrated, time and again, his commitment to the rule of law. He has stepped up to protect the religious liberties of others in a manner respectful of the Supreme Court, defying intense pressure from religious conservatives who wanted to challenge the Court’s authority. And, when it came to his own religious beliefs, he subordinated his views to the demands of the law by faithfully applying the Supreme Court’s rulings. It is clear that when General Pryor dons a black robe and takes the bench, he will set aside his own views and faithfully apply the law, just like he always has.

Committed to the Rights of Women

As Alabama’s chief law enforcement officer, General Pryor has dedicated himself to serving and furthering the interests of women. He supported and lobbied for legislation that created a state crime of domestic violence, and successfully championed a bill to increase penalties for repeat violations of protection from abuse orders. Another bill, which helps keep those arrested for domestic violence behind bars until a judge or magistrate can determine whether the defendant is a threat to the alleged victim or public safety, also became law with the support of General Pryor. He has also pushed to add the date rape drug, gamma hydroxybutyrate (“GHB”), to Alabama’s drug trafficking statute.

General Pryor’s Innovative Efforts to Advance Women’s Interests. General Pryor’s commitment to women’s interests has not been limited to his efforts at the state Capitol. He has helped create innovative programs that help women, and has been a stalwart supporter of organizations seeking to improve the lives of Alabama women. He worked to force New York shoe manufacturer Nine West Group, Inc. to pay \$34 million nationally to settle allegations of price-fixing by the company. General Pryor then used Alabama’s portion of the settlement to fund “Cut It Out,” a program that educates hair stylists and manicurists about domestic violence. Research has shown that battered women often confide in their hairdressers or manicurists.¹¹⁴

¹¹² See Lee Davidson, “Utahn confirmed as judge,” DESERET NEWS, Nov. 16, 2002 at A1.

¹¹³ M.E. Sprengelmeyer, “Battle Brewing over Bush Nominee; Conservative Scholar’s Lack of Experience on the Bench Priming Fight,” ROCKY MTN. NEWS, Sept. 17, 2002 at 4A.

¹¹⁴ See, e.g., Michelle Guido, “New Approach Against No. 1 Source of Violent Felony Arrests: Hairdressers Emerge as Help for Battered Women,” SAN JOSE MERCURY NEWS, May 1, 2000 at 1A.

In the “Cut It Out” program, hair stylists and manicurists are trained by the Alabama Coalition Against Domestic Violence to help clients whom they suspect are being abused, referring them to shelters or providing self-help pamphlets. “Cut it Out” is run by the Women’s Fund of Greater Birmingham, an organization that runs critical programs for women and girls through community-initiated grants. Dianne Mooney, a member of the Board of Directors of the Fund, has saluted General Pryor’s “focus on the plight of victims of domestic violence” and noted that he “treats issues on women and minorities with great care and respect.”¹¹⁵

He has also been a dedicated supporter of Penelope House, the first shelter designated for battered women and their children in the state of Alabama. Averaging forty-two women and children in shelter per day, Penelope House provides valuable help for families experiencing domestic violence. In 2000, General Pryor highlighted the work of the center in his annual Christmas card, designed by the children of Penelope House, which is sent to thousands of people. He assists Penelope House with its annual luncheon to honor and recognize the efforts of local and state law enforcement officials with whom it partners in its efforts to protect and serve victims of domestic violence. In 2002, General Pryor was inducted into the Penelope House Law Enforcement Hall of Fame in recognition of his support of programs like Penelope House and “Cut It Out” that take action against domestic violence.

Further Efforts to Distort General Pryor’s Record: *U.S. v. Morrison*. Even in light of his enviable record on women’s issues, General Pryor’s shrill detractors have nonetheless distorted the position he took in an amicus brief in the Supreme Court case of *United States v. Morrison*,¹¹⁶ where the Court held that the Violence Against Women Act’s (“VAWA”) civil remedy was beyond Congress’s Commerce Clause powers. General Pryor did not argue that the whole Act was unconstitutional, as some special interest groups have claimed. Rather, the central point of Alabama’s argument was that prohibiting violence against women was absolutely necessary – but that doing so historically has fallen within the domain of state and local governments. Alabama simply argued that state and local officials are better equipped than the federal government to solve the civil justice aspects of the problem of violence against women.

The very day the *Morrison* decision was handed down, General Pryor reiterated Alabama’s commitment to eradicating gender-motivated violence. He noted, “States have led the way in battling domestic abuse and rape. The safety of women – and men – is best protected by encouraging and strengthening state efforts, not by allowing the states to pass the buck to federal bureaucrats and judges.”¹¹⁷ Indeed, when VAWA initially was proposed, a number of

¹¹⁵ Letter from Diane Mooney to Senators Sessions and Shelby, Mar. 14, 2003.

¹¹⁶ 529 U.S. 598 (2000).

¹¹⁷ “Pryor Hails U.S. Supreme Court Ruling as Win for Federalism,” May 15, 2000, <<http://www.ago.state.al.us/news/051500.htm>>.

federal judges and their representative organizations opposed the law for the same reason: its tendency to displace traditional state adjudications. In 1991, the United States Judicial Conference objected to VAWA because it feared the legislation would “flood the federal courts with cases better handled in state courts.”¹¹⁸ The Judicial Conference is headed by the Chief Justice of the Supreme Court and includes the Chief Judges of thirteen federal appeals courts and a district judge from each of the nation’s twelve geographical federal circuits.¹¹⁹

Kathryn Coumanis, the Executive Director of Penelope House, knows the truth about General’s Pryor’s record on women’s issues. She had the following to say about him:

The entire Board of Directors of Penelope House Family Violence Center here in Mobile, AL, unanimously asked that I include them in support of this nomination. Attorney General Bill Pryor has been a long time supporter and advocate of Penelope House, and has worked tirelessly to protect women and children from the dangers of domestic violence. . . . When Bill Pryor raises his voice in support of our mission, it enables us to reach every member of our community. . . . Bill Pryor will bring to the Federal Bench the qualities that all Americans cherish. He is loyal to his State and his Country, is a man of princip[le] and integrity, is highly intelligent, and most of all is a man who has immense compassion and respect for his fellow human beings.¹²⁰

Confirm General Pryor Now!

General Pryor represents the very best in American political and legal life. He is a man of impeccable character and unimpeachable integrity. His dedication to upholding the Constitution is without compare. He has brought together people from across the ideological and political spectrum, and is supported by a legion of prominent Alabama Democrats, including many distinguished African-American leaders. And, most importantly, his record as Attorney General of Alabama is one of moderation and excellence: in protecting racial equality, defending his state’s interests, safeguarding religious liberties, and furthering the interests of women. In the words of one of the men who knows General Pryor best, Alabama Representative Alvin Holmes:

In 2000, I introduced a bill in the Alabama legislature to amend the Alabama Constitution repealing Alabama’s racist ban on interracial marriage. Every prominent white political leader in Alabama (both Republican and Democrat) opposed my bill or remained silent except Bill Pryor[,] who openly and publicly asked the white and black citizens of Alabama to vote [on] and repeal such [a] racist law.

. . . .

¹¹⁸ “Judicial Conference opposes Violence Against Women Act,” UNITED PRESS INTERNATIONAL, September 26, 1991.

¹¹⁹ *Id.*

¹²⁰ Letter from Kathryn Coumanis to Senators Sessions and Shelby, Mar. 14, 2003.

. . . [A]s one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member of Dr. Martin Luther King's [Southern Christian leadership Conference], as one who has been brutally beaten by vicious police officers for participating in civil rights demonstrations, as one who has had crosses burned in his front yard by the KKK and other hate groups, as one who has lived under constant threats day in and day out because of his stand fighting for the rights of blacks and other minorities, I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.¹²¹

The seat to which General Pryor has been nominated has stood vacant for over two years. We urge the Judiciary Committee and the full Senate to confirm this well-qualified nominee in an expeditious manner.

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¹²¹ Letter from Alvin Holmes to Senators Hatch and Leahy, June 5, 2003.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/10/2003 4:17:42 PM
Subject: : Atlanta Journal-Constitution (6/10/03) COLUMN by Jim Wooten re: Nominees come under heavy fire (pryor)

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 10-JUN-2003 20:17:42.00
SUBJECT: : Atlanta Journal-Constitution (6/10/03) COLUMN by Jim Wooten re: Nominees come under heavy fire (pryor)
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
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Nominees come under heavy ire
COLUMN by Jim Wooten
Atlanta Journal-Constitution
Jun3e 10, 2003

Another conservative judicial nominee steps into the torture chamber this week, ready to be drawn and quartered in his quest to be seated on the Atlanta-based 11th U.S. Circuit Court of Appeals.

Interest groups on the left are in full frenzy, determined to prevent Alabama Attorney General Bill Pryor, from the 11th Circuit, which is one level below the U. S. Supreme Court. It has jurisdiction over federal civil and criminal cases arising from district courts in Georgia, Florida and Alabama. The vacancy came when Judge Emmett Ripley Cox of Mobile, Ala., took senior status in December 2000. By tradition, the new appointment would go to an Alabamian.

Activists who have summoned Democrats in the U.S. Senate to block President Bush's nominees have focused their efforts on nominees to the circuit courts. Those include Manuel Estrada to the D.C. Circuit, Priscilla Owen and Charles Pickering to the New Orleans-based 5th Circuit and Carolyn Kuhl to the San Francisco-based 9th Circuit. All have waited more than two years for confirmation. All are suspected of being conservative.

There's no doubt about Pryor. He is conservative and is further a reminder that presidents who stand for something can have influence far beyond their terms of office. As a boy, he rode to school with his father listening to President Reagan's speeches on tape; he keeps a bust of Reagan in his statehouse office.

Because he has been an active attorney general, Pryor's positions and utterances have provided the sound bites need by mobilized liberals. The legal director of the Alliance for Justice, a Washington-based umbrella group for liberal interest, vows to keep him off the bench. "We'll be doing everything possible," said Louis Bograd, the group's legal director. At issue here, of course, is the ongoing national campaign by the left to make certain that any Bush nominee to the U.S. Supreme Court is at least a David Souter, the stealth appointee of George H.W. Bush. Souter, thought to be conservative, isn't. He came about because the left succeeded in defeating Judge Robert Bork, a brilliant jurist completely qualified for

the U.S. Supreme Court.

With two rumored vacancies -- Chief Justice William Rehnquist and Justice Sandra Day O'Connor -- the slight 5-4 advantage conservatives have on some issues is at risk. Everything now is a proxy war for expected Supreme Court nominees. If activists can sufficiently smear nominees now, they hope to be able to keep President Bush from considering them for any future Supreme Court vacancy.

It's why, too, such exaggerations are made by groups under the Alliance for Justice umbrella. Pryor is, says Bograd, "an ideological zealot who has devoted his entire legal career to attempting to dismantle legal and constitutional protections for American rights and liberties."

Such hyperbole relies on a single phrase or case, interpreted pejoratively and expanded to a universe, usually to be followed by a warning that the nominee would "turn back the clock to a time when . . ."

The clash between the right and left usually involves one side's effort to expand the reach of government and the other's to limit it. Conservatives, thus, are easily subjected to "turn back the clock" rhetoric because of their efforts to limit the reach and scope of government. If they have made any rulings or have any writings at all, and if in fact they are conservative, most of Bush's judicial appointments should be easy pickings for the left. That has nothing to do with fairness.

The characterizations of nominees such as Estrada, Pickering, Owen, Kuhl and Pryor aren't fair. If they were in the slightest the legal troglodytes their liberal adversaries represent, they shouldn't be out of jail, much less on the bench.

A lot of good and capable folks are being trashed.

Bill Pryor's turn is here.

From: Sampson, Kyle
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Newstead, Jennifer G.>;<Kavanaugh, Brett M.>
Sent: 6/10/2003 8:55:34 PM
Subject: Wesley

Floor vote set for tomorrow at 11:30am.

From: Sampson, Kyle
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Newstead, Jennifer G.>;<Kavanaugh, Brett M.>
Sent: 6/10/2003 8:55:20 PM
Subject: Wesley

Floor vote set for tomorrow at 11:30am.

From: Leitch, David G.
To: <Kavanaugh, Brett M.>
Sent: 6/10/2003 10:22:38 PM
Subject: Re: draft memo to depts and agencies

You're working too hard. Sure Reg can't pitch in?

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

From: Kavanaugh, Brett M.
To: Gonzales, Alberto R. ; Leitch, David G.
CC: Addington, David S. ; Nelson, Carolyn
Sent: Tue Jun 10 21:38:05 2003
Subject: draft memo to depts and agencies

I propose that we also send a written memo to the GC's of the depts and agencies to underscore the importance of the issue and to complement oral briefings. Draft is below.

<

From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
Sent: 6/11/2003 7:08:36 AM
Subject:

This correction appears in today's New York Times -- perhaps someone talked to Lewis at the DOJ party for Viet? Interesting that the correction loops back to an error made nearly six months ago.

A grouping of thumbnail sketches on Sunday with a front-page article about efforts by interest groups to influence the selection of the next Supreme Court justice included an erroneous reference to the background of a potential nominee, Judge Samuel A. Alito Jr. of the United States Court of Appeals for the Third Circuit. (The error also occurred in a front-page article on Dec. 27.) Judge Alito is not a former clerk for Justice Antonin Scalia.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 6/11/2003 7:28:17 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:11-JUN-2003 11:28:17.00
SUBJECT::
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
End Original ARMS Header

Pickering's nomination effort slows

* Judge's son says White House shifting concern to Supreme Court vacancy

By Ana Radelat
Clarion-Ledger Washington Bureau

WASHINGTON * The Bush administration is slowing down its push to elevate Hattiesburg Judge Charles Pickering to a federal appellate court in case the White House needs to fill a Supreme Court vacancy this summer, a spokesman for the judge's son said Tuesday.

The judge's nomination may not come up for consideration in the Senate until the fall, said Brian Perry, press secretary for Rep. Chip Pickering, the judge's son.

"It could be this month, it could be next month and it could be next fall," Perry said.

Supporters hoped Judge Pickering's nomination for the 5th U.S. Circuit Court of Appeals would be taken up by the Senate Judiciary Committee last month. Democrats, who controlled the committee last year, rejected Pickering's nomination over concerns about his record on civil rights and women's rights. Bush renominated the judge again at the beginning of the year after the GOP retook the Senate.

But now the White House is concerned there may be a retirement on the Supreme Court, Perry said. Speculation has been high since President Bush took office that one of the 12 justices will retire during his term, and that kind of talk usually grows as the high court finishes its work each July. Bush is thought to have a better chance of appointing a justice because several are aged or have had health problems.

Perry said the younger Pickering gets the sense that the White House doesn't want to exacerbate an ongoing fight with Senate Democrats over judges if the administration is concerned with getting confirmation of a Supreme Court nominee at the same time.

Marty Wiseman, the head of the Stennis Institute for Government at Mississippi State University, said it was logical for the White House to try to avoid a "tit for tat" on nominations.

"You certainly don't want lesser judicial nominees held hostage to bigger stakes," Wiseman said.

Tensions between the White House and Senate Democrats have escalated in the last few weeks with a rapid push to confirm conservative Alabama Attorney General Bill Pryor for an appellate court judgeship. Pryor, who was nominated in April, is scheduled to testify before the Senate Judiciary Committee today.

Senate Democrats also are angry that Sen. Trent Lott, R-Miss., and other Republican senators are trying to change the rules for the filibuster, a procedure that allows the minority party to block nominations and legislation by extending debate. It takes 60 votes to break a filibuster and Republicans have only been able to muster 55 when the procedure was used by Democrats to block votes on Miguel Estrada and Priscilla Owen.

The Justice Department helps the White House with judicial nominees. Justice Department spokeswoman Monica Goodling said she had no indication that the White House was slowing Judge Pickering's nomination. "The administration continues to stand behind all its judicial nominations," Goodling said.

From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 6/11/2003 8:11:34 AM
Subject: FW: MESSAGE MEETING REMINDER

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

From: Ritacco, Krista L.

Sent: Wednesday, June 11, 2003 8:10 AM

To: Yunker, Jacob H.; Allgood, Lauren K.; Ball, Andrea G.; Barrales, Ruben S.; Bennett, Melissa S.; Besanceney, Brian R.; Buchan, Claire ; Burkhart, Shannon; Burks, Jonathan W.; Campbell, Anne E.; Christie, Ronald I.; Ciafardini, Andrew D.; Conde, Roberta L.; Cooper, Rory S.; DeFrancis, Suzy; Devenish, Nicolle; Douglas, Penny G.; Duffy, Trent D.; Ellison, Kimberly; Eskew, Tucker A.; Figg, Kara G.; Gerdelman, Sue H.; Gillmor, Eleanor L.; Goergen, Barbara J.; Grant, Britt; Gray, Adrian G.; Gray, Ann ; Healy, Erin E.; Hennessey, Keith; Hernandez, Israel; Hughes, Taylor A.; Ingle, Edward; Jackson, Barry S.; Jucas, Tracy; Kaplan, Joel; Kozberg, Lindsey C.; Kupfer, Jeffrey F.; Kyle, Ross M.; Lawrimore, Emily A.; Lefkowitz, Jay P.; Lineberry, Stephen M.; Litkenhaus, Colleen; Mallea, Jose; Mamo, Jeanie S.; Martin, Catherine J.; McClellan, Scott ; McCord, Lauren; McDonald, Rebekah; McQuade, Vickie A.; Middlemas, A. Morgan; Millerwise, Jennifer; Millison, Cathy L.; Montiel, Charlotte L.; Nelson, Carolyn; Nipper, Wendy L.; Parell, Christie; Pelletier, Eric C.; Perez, Anna M.; Ralston, Susan B.; Reese, Shelley; Riepenhoff, Allison L.; Rodriguez, Noelia ; Rogers, Edwina C.; Rust, Kathryn E.; Ryun, Catharine A.; Schlapp, Matthew A.; Schulte, Gregory L.; Sforza, Scott N.; Smith, Heidi M.; Snee, Ashley; Steele, Sara M.; Torgerson, Karin B.; Towey, Jim; Vestewig, Lauren J.; Wehner, Peter H.; Westine, Lezlee J.; Williams, Mary C.; Wozniak, Natalie S.

Subject: MESSAGE MEETING REMINDER

There will be a message meeting today at noon in the Roosevelt Room.

From: Snee, Ashley
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Kavanaugh, Brett M.>;<Powell, Benjamin A.>;<Mamo, Jeanie S.>
Sent: 6/11/2003 8:13:30 AM
Subject: Court Stories and Op-eds today

Supreme Court Vacancy Looks Less Likely This Year (WTimes)

By Frank J. Murray

The Washington Times, June 11, 2003

Any prospects for a partisan fight this summer over confirming President Bush's first Supreme Court nominee appeared to dim recently after justices agreed to hear a contentious case in September, signaling that the bench will remain unchanged at least until then.

Despite the court's decision Thursday to consider campaign-finance reform, the Senate Judiciary Committee is forging ahead with contingency plans based on what a Senate Republican leadership staff member called "the 100-percent expectation a vacancy will occur."

The Senate's preparation and much of the speculation over which of the three eldest Supreme Court justices might retire this month are driven by groups such as People for the American Way, which have opposed Mr. Bush's judicial nominations.

Since before the 2000 election, groups such as PFAW have raised money by annually predicting doom for the Constitution if Mr. Bush were allowed to install judges on the Supreme Court. PFAW President Ralph Neas declared last week that at least one justice will resign, creating "the first of three or four openings" in coming years.

Such activists have sounded the alarms even though several factors indicate that the most stable nine-justice high court in history will remain unchanged for two more years.

Most analysts expecting a retirement consider Chief Justice William H. Rehnquist, 78, or Justice Sandra Day O'Connor, 73, the most likely to depart, even though each plays a key role in the most sharply split cases and both still write books and pursue activities outside the court.

The true dark horse is Justice John Paul Stevens, who at 83 is an avid tennis player said to abhor letting a conservative Republican choose his replacement.

Sources who have contacts with Chief Justice Rehnquist said they doubt he plans to quit, and he bandies words with those brash enough to raise the question. After the chief justice visited Mr. Bush at the White House in December, both parties let it be known his mission was a hunt for allies to raise judicial salaries.

Skeptics of that account consider the visit a pretext for a nominating-strategy session.

Mr. Bush announced May 9 that Justice O'Connor would lead a team of judges to Bahrain in September to help improve Middle East court systems, but a White House spokesman couldn't confirm yesterday whether the president and Justice O'Connor had spoken.

Justice O'Connor's only public comment about her position on the court was to dampen speculation she might be elevated to chief justice. When asked, she replied, "I'm too old," the Christian Science Monitor reported.

"It's very possible that they won't retire," said Artemus Ward, author of "Deciding to Leave: The Politics of Retirement From the United States Supreme Court."

"Why retire when you're at the top of your game?" he said.

He considers the chief justice the most likely candidate - ending his 32-year tenure on the court - although Mr. Rehnquist often mentions future projects and recently extended for a fourth year the appointment of administrative assistant Sally M. Rider.

Washington lawyer James C. Duff, her predecessor in that post, remains involved with the chief justice's efforts to win pay raises for federal judges but refused to discuss departures and scoffed at reports that imply inside knowledge.

"When I took the job in 1996, I remember reading an article which said that the winner of the Clinton-Dole presidential election would have four nominees to the court. Of course there have been none since then," Mr. Duff said.

During a presidential debate in 2000, Mr. Gore said, "The next president is going to appoint three, maybe even four justices of the Supreme Court."

Because no one expects a vacancy during next year's presidential campaign year - absent death or disability - the next two weeks would be the last real chance for an appointment until June 2005.

Mr. Ward questioned reports that more than one justice could retire now.

"That's never happened in the history of the court," he said. The closest exception were retirements of Justices Hugo Black and John Harlan a week apart in September 1971, shortly before both died.

Mr. Ward estimated that the life expectancy for today's Supreme Court justices is 87, about 15 years longer than the average for white men in America.

"To remain a Supreme Court justice keeps you alive, to some extent," Mr. Ward said.

Justices traditionally guard retirement plans until announced from the bench at term's end.

"Even other members of the court are sort of the last to know. It is kept very secret," said Mr. Ward, who is on leave from Northern Illinois University for a one-year American Political Science Association fellowship at the House Judiciary Committee.

"The justices are concerned with minimizing the politicization of the succession process to protect the institution," he said.

Because the Supreme Court put the Bipartisan Campaign Reform Act case on a fast track, justices must review the mountain of legal briefs filed through the summer. They have slated an extraordinary four-hour hearing for Sept. 8, a month before the next term begins.

"I would be very pleased if no one resigned," Mr. Neas said. "If President George W. Bush nominates someone in the mold of Antonin Scalia and Clarence Thomas, as he has certainly said he intended to do, then there would be one of the most intense confirmation battles in the nation's history."

The median age for court retirees is 78. The chief justice marks his 79th birthday in October, and Justice O'Connor turned 73 on May 26. Only Justice Stevens exceeds that median; he turned 83 on April 20.

Five justices were older than Justice Stevens when they retired, and four of them did so since 1971, when Justice Black quit at age 85, followed in 1990 by William Brennan, 84, a year later by Thurgood Marshall, three months past his 83rd birthday, and in 1994 by Harry Blackmun, 85.

Between June 19, 1811, and March 18, 1823, the seven-member court remained intact. The current cast has not changed since Aug. 3, 1994, the longest period without a vacancy since Congress created the eighth and ninth seats in 1837.

Supreme War Looms (Roll Call)

Liberals Line Up \$5.5 Million to Battle Potential High Court Pick

By Paul Kane

Roll Call, June 11, 2003

With the inaugural Supreme Court battle of the 21st century unofficially under way, abortion-rights activists have stockpiled a multimillion-dollar war chest, positioning themselves to be on air within days - or hours - of a nomination to the highest court in the land.

Expecting a vacancy on the Supreme Court, nine abortion-rights groups have formed a 501(c)(3) off-shoot devoted specifically to judicial issues and initially seeded the new group with a \$5.5 million down payment, according to lead participants, including NARAL Pro-Choice America and the Planned Parenthood Federation of America.

At the same time, groups on the right, most prominently the Committee for Justice, are aggressively raising money for a counter-campaign that has the tacit blessing of President Bush. On June 27 first nephew George P. Bush will headline a small-dollar fundraiser in Washington for the Committee for Justice, designed with an eye toward generating support for the expected Supreme Court nomination battle among young conservative activists.

This comes on the heels of an April fundraiser in Houston headlined by former President George H.W. Bush, which netted the Committee for Justice a reported \$250,000, and a February event at the home of C. Boyden Gray, the committee's founder, headlined by Senate Majority Leader Bill Frist (R-Tenn.) and Karen Hughes, the president's closest communications adviser. Meanwhile, longtime veterans of the liberal coalition on judicial advocacy, led by the Alliance for Justice and People for the American Way, are furiously researching the records of potential nominees and raising funds for a multimedia campaign that will likely be similar in tone to the epic struggles of the late 1980s and early 1990s but markedly different in terms of rapid-response technology.

All of the political commotion could be for naught, should none of the nine justices decide to retire when the current term expires at the end of the month. But with an aging bench and a nine-year span since the last retirement, the outside groups have decided to leave nothing to chance.

"We refuse to be the generation that won and lost the battle for reproductive rights," said Gloria Feldt, president of Planned Parenthood.

"I worry about the work we're doing to get ready, but we can't afford to not be ready," added Kate Michelman, president of NARAL Pro-Choice America.

Michelman decided not to wait for a vacancy to occur, and her group this week launched an ad campaign designed to

generate more supporters across the country, with one strategist putting the ad buy at \$3 million. While the current ads don't mention the court, future ads will.

In addition to the NARAL-specific ads, Michelman and eight of her allies in the reproductive rights community formed their own joint non-profit with the specific eye toward mounting opposition to a Supreme Court nomination solely on the issue of abortion rights. Officially called the Joint Emergency Campaign, the group refers to itself as the "G-9."

Feldt said the G-9 was initially formed about 18 months ago with an eye toward a potential Supreme Court vacancy, one that didn't immediately materialize, so some of the initial \$5.5 million was spent on advocacy regarding controversial circuit court nominations of the past 16 months. "It gave us the opportunity to highlight the rest of the federal bench," Feldt said.

The fund has been replenished, according to liberal strategists, and abortion-rights advocates expect the G-9 to be able to mount a nearly \$5 million media campaign once a vacancy occurs.

The idea is to mount a quick, broad strike at whoever the nominee is, with the abortion-rights groups hitting the television airwaves and groups like the Alliance for Justice and People for the American Way providing a massive, research-driven campaign to shape the mainstream media's portrayal of the nominee.

"Our goal is to be ready when the announcement is made, so we've been collecting information all along," said Nan Aaron, president of the Alliance for Justice.

Gray, the White House counsel under the first President Bush, said his committee would take a more measured response in terms of a nomination announcement, vowing a vigorous defense of the nominee but suggesting that taking to the airwaves immediately could be foolhardy.

"We can turn it around pretty quickly," he said, but added, "There will be time before the first Judiciary Committee vote. I think it's somewhat risky to try to define the candidate before the hearings. You could be wasting your money."

Gray repeatedly declined to say how much he had raised and what his goals were. "Do we have enough money? We need more and we are continuing to raise money as we speak," he said.

Each of the potential nominees to replace any of the sitting justices, those names most often mentioned in the media, is met with open disdain by the liberal coalition leaders, particularly White House Counsel Alberto Gonzales.

Often portrayed by the mainstream media as a potentially moderate justice, Gonzales is pilloried by liberals such as Michelman and Aaron, who contend he has operated a highly partisan office that has promoted very conservative judicial nominees.

"That office has been exceptionally controversial," said People for the American Way President Ralph Neas.

Neas and Aaron operate as a sort of nerve center for the liberal groups in the nomination fights, with two decades of experience in the issue. The steering committee of their liberal coalition meets weekly, usually in the K Street offices of People for the American Way or the Alliance for Justice office overlooking Dupont Circle.

In addition, the coalition has formed four task forces that also meet weekly, focusing on research, grassroots efforts, lobbying and communication strategies.

And the groups say they need to be better prepared, noting how much has changed since the 1987 and 1991 fights over rejected nominee Robert Bork and now-Justice Clarence Thomas, respectively. Back then, there was no e-mail in widespread use, talk radio was just starting to emerge as a force and there was only one 24-hour national cable news channel.

"Now, you have to be able to respond immediately, you have to be able to get in the first news cycle," said Neas.

GOP aides and strategists suggested that the conservatives' biggest weapon would be talk radio, particularly the show run by James Dobson, the founder of Focus on the Family, a Colorado-based Christian organization.

In addition, the Bush administration is likely to focus on a trio of media-savvy surrogates to speak on the nominee's behalf on the cable outlets, according to one senior GOP aide. Those would likely be Gray and two former Republican attorneys general, Dick Thornburgh and Ed Meese.

Three other conservative organizations will play critical roles as well. The Family Research Council is known among conservatives to operate one of the best e-mail lists on the right, enabling instant communications to the base, and the Concerned Women for America is known for its vast membership list. Meanwhile, the Free Congress Foundation has operated a judicial monitoring project longer than most of the groups on the right.

These conservative groups have been holding their own meetings, almost weekly, with a "core group" of about a dozen organizations at the table, according to a conservative strategist.

Fundraising among conservatives for the Supreme Court battle has so far been like "drinking from a stream," the strategist said, noting that once there is a vacancy, "We're going to be drinking from a fire hydrant."

Conservatives often complain that the liberal coalition is better funded and better organized on the issue of judicial nominations, but Neas said one study of resources after the Thomas fight showed a neutral bout. "The money and the troops matched up pretty well," he said.

Regardless, the presidency of George W. Bush has been good business for the liberal groups, although they contend they would gladly trade in the extra resources for a Democratic president.

Neas, president of his group since 2000, has seen annual 30 percent to 40 percent gains in his budget, now pushing the \$15 million mark. He spent the last week in May in California on a fundraising trek with the group's founder, television producer Norman Lear.

He has expanded his work force from 60 to 90 people, including a half-dozen lawyers, 20 national field coordinators and about eight communications employees in the K Street office. Aaron has up to 10 researchers in her office, including lawyers and law school students.

NARAL now has offices in 27 states, with 750,000 people on their e-mail distribution list. Planned Parenthood, which operates nearly 900 health centers nationwide, has made a very aggressive political turn, increasing their spending on political advocacy five-fold in the past two years, according to Feldt.

In addition, Planned Parenthood went from five field coordinators in its national office to 26 in the past three years.

Pryor, Another Contentious Bush Nominee, Faces Hearing (AJC)

By BILL RANKIN

The Atlanta Journal-Constitution, June 11, 2003

President Bush's nominee for the federal appeals court in Atlanta is expected to be grilled Wednesday for his outspoken views on abortion, religion and civil rights.

Alabama Attorney General Bill Pryor was chosen by Bush in April to fill a 2 1/2-year-old vacancy at the 11th U.S. Circuit Court of Appeals. Ever since, opposition has mounted against him from liberal interest groups.

At his confirmation hearing Wednesday before the Senate Judiciary Committee, Pryor is expected to be reminded of many of his past positions. These include his resolute opposition to abortion rights and his ardent support for federalism. This legal principle defers to states' rights and, critics say, severely limits the enforcement of federal civil rights laws.

The Judiciary Committee is not expected to vote on Pryor's nomination for another few weeks.

So far, Senate Democrats have blocked two Bush appellate court nominees: Texas Supreme Court Judge Priscilla Owen, a candidate for the 5th Circuit in New Orleans, and Miguel Estrada, a nominee for the appeals court in Washington.

Pryor received a setback Tuesday when the American Bar Association declined to give him its highest rating for judicial nominees. A substantial majority on an ABA committee that investigated Pryor gave him a "qualified" rating. A minority of panel members found him "not qualified."

Most of Bush's judicial nominees have received "well qualified" ratings.

Also Tuesday, a number of interest groups held an anti-Pryor news conference in Washington. Among those opposing Pryor's nomination were the Alliance for Justice, NAACP, Americans United for Separation of Church and State, People for the American Way, Sierra Club and the Leadership Conference on Civil Rights.

Alliance for Justice President Nan Aron said groups contesting Pryor's nomination include "tens of millions of Americans who care deeply about civil rights, women's rights, reproductive rights, labor, environmental protection, disability rights, separation of church-state, and gun safety."

Said the Rev. Barry W. Lynn of Americans United for Separation of Church and State, "Bill Pryor has waged an unrelenting crusade in the courts against church-state separation. . . . It's hard to think of any nominee less suited for a seat on the federal appeals court."

In past speeches, Pryor has called the Roe v. Wade decision legalizing abortion "the worst abomination of constitutional law in our history." He supported the placement of a 5,280-pound Ten Commandments monument in Alabama's state Judicial Building in Montgomery.

Pryor also has disparaged sitting U.S. Supreme Court justices. In a 2000 speech before the Federalist Society, Pryor called on Bush to nominate conservative judges and for "no more Souters," a reference to Justice David Souter, who often dissents to pro-federalism rulings.

In Pryor's favor is widespread, bipartisan support in his home state. Many of his friends and colleagues insist he can put aside his personal feelings and follow the law.

"He is extremely bright, experienced and committed to ensuring that the Constitution and the rule of law will be protected and faithfully applied," said Jay Sekulow, chief counsel of the American Center for Law and Justice.

Hoping to shepherd Pryor's nomination through the Senate is Sen. Jeff Sessions (R-Ala.), a former Alabama attorney general who hired Pryor in 1995.

"Bill's not ambiguous about his views, which I think is refreshing in this day and age," Sessions said in a recent interview. "But the thing he's most committed to is the rule of law. That's more important to him than his political views."

Senate Judicial Panel To Weigh Another Contentious Nomination (NYTimes)

By NEIL A. LEWIS

The New York Times, June 11, 2003

WASHINGTON, June 10 - The bitter ideological fight about judicial nominations pitting Senate Democrats against the White House and Senate Republicans is expected to escalate on Wednesday, when the Judiciary Committee takes up the nomination of Bill Pryor, Alabama's attorney general.

Democrats are already using filibusters to block consideration of two of President Bush's appeals court nominees and lining up a third candidate for the same treatment. Mr. Pryor, an outspoken conservative who has inveighed against the Supreme Court on many issues, notably its enforcement of separation of church and state, has stirred deep and broad opposition from many liberal advocacy groups that would like to see him the fourth candidate blocked by a filibuster.

Mr. Pryor, who has been nominated to the United States Court of Appeals for the 11th Circuit, in Atlanta, is no stealth nominee with a scant record. He has written and spoken forcefully on many issues and has become a favorite of organized social conservatives and Christian political groups.

In a 1997 rally in Alabama sponsored by the Christian Coalition, he used emotional language to criticize *Roe v. Wade*, the court's landmark 1973 case finding a constitutional right to abortion. He called the ruling "the day seven members of our high court ripped the Constitution and ripped out the life of millions of unborn children."

In a brief filed with the Supreme Court, which is considering a challenge to a Texas sodomy law, Mr. Pryor wrote that a legal right to engage in homosexual relations would imply approval of "activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography and even incest and pedophilia."

But he may be best known for his consistent defense of an Alabama state judge's right to post the Ten Commandments in his courtroom. The judge, Roy Moore, now of the state Supreme Court, has since had a two-ton monument to the Ten Commandments placed in the rotunda of the Alabama Supreme Court; the appeals court to which Mr. Pryor has been nominated is considering a challenge to that action.

The confirmation hearing will be a vivid display of the debate concerning how important a candidate's personal views are in assessing fitness to be a judge.

Many of President Bush's nominees have records of taking vigorous conservative views. When Democrats challenge them at confirmation hearings, the candidates and their defenders invariably say that they will follow the law and Supreme Court precedent, and that their individual views are irrelevant.

Democrats have increasingly complained that such a response is a dodge and that the nominees would never have been picked by the Bush White House without holding such views.

Mr. Pryor, 41, is a protégé of Senator Jeff Sessions, an Alabama Republican who preceded him as state attorney general. Mr. Sessions said today that "Bill is a brilliant lawyer who has won the respect of people of all political stripes in Alabama."

Ralph G. Neas, president of the People for the American Way, a advocacy group in Washington that is part of a broad coalition opposing the nomination, said today: "Mr. Pryor has amassed a staggering record of hostility to the rights and interests of ordinary Americans, with his attacks on church and state, reproductive freedom and the ability of Congress to protect the environment and outlaw discrimination."

Judging By Where You Sit (NYTimes)

Op-ed by DAVID A. SCHKADE and CASS R. SUNSTEIN

The New York Times, June 11, 2003

Ideology matters when choosing judges - perhaps too much, as the battles between President Bush and Senate Democrats show. But how much does ideology matter once judges are on the bench?

As it turns out, it matters a lot. We have studied thousands of votes by federal appellate judges, who are randomly assigned to three-judge panels, which then make decisions by majority vote. According to our research, judges appointed by Republican presidents show more conservative voting patterns, while Democratic appointees are more liberal.

These findings may not be surprising. The most striking lesson of our research, however, is the influence of what might be called the majority ideology. For both Democratic and Republican appointees, the likelihood of a liberal vote jumps when the two other panel members are Democrats, and drops when the two other panel members are Republicans.

The effect of ideology on panel decisions is clear. Consider, for example, a case in which a woman has complained of sex

discrimination. In front of an appellate panel of three Democratic appointees, she wins 75 percent of the time. But if the panel has fewer Democratic appointees, her chances decline. With two Democratic and one Republican appointee, she wins 49 percent of the time; with one Democratic and two Republican appointees, she wins 38 percent of the time. And with a panel of three Republican appointees, she wins just 31 percent of the time.

Or consider cases in which a company has claimed that an environmental regulation is unlawful. Before an all-Democratic panel, the company wins about a quarter of the time. But before an all-Republican panel, the company wins about three-quarters of the time. Or consider a case in which white people are challenging an affirmative action program; they win two times out of three before three Republican appointees - but only one time in six before three Democratic appointees. The same pattern can be found in many other areas of the law.

Of course, judges are not politicians or ideologists. If the facts and the law argue strongly for one side, it will prevail, regardless of the political affiliation of the president who appointed the judges. But in the hardest cases that make their way to the federal appellate courts, the evidence is clear: Republican-appointed judges tend to vote like Republicans and Democratic-appointed judges tend to vote like Democrats.

There are some interesting exceptions. In criminal appeals, Republican and Democratic appointees do not differ. Contrary to the stereotype, Democratic appointees are not "softer on crime." And in cases involving abortion and capital punishment, judges appear not to be influenced by their colleagues. No matter what the composition of the panel, Republican appointees are much more likely to vote to uphold restrictions on abortion and to permit executions to go forward.

Ideology also has a more subtle effect on individual judges: in general, both Republican and Democratic appointees are affected by their panel colleagues. A Republican appointee sitting with two other Republicans votes far more conservatively than when the same judge sits with at least one Democratic appointee. A Democratic appointee, meanwhile, shows the same tendency in the opposite ideological direction.

For example, on an all-Republican panel, Republican judges are far more likely than not to vote to strike down affirmative action and campaign finance reform - and also to rule against people claiming that they have been discriminated against on the basis of sex or disability. But in the very same areas, Republican appointees show a much more moderate pattern of votes when there is at least one Democrat on the panel. The same holds true for Democratic appointees, who show extremely liberal voting patterns when sitting with fellow Democratic appointees, a tendency that shifts in the conservative direction when they sit with one or more Republican appointees.

These findings explain what the current battle is all about. Even on the lower federal courts, judicial ideology matters, and in a way that is crucial to the development of the law. The ideology of a judge is important not only because of how that judge will vote, but also because of the judge's effect on his or her colleagues.

Thus the fight over judicial nominations is no symbolic battle. The debate between President Bush and Democratic senators, between the executive and the legislative branches, is about more than politics. It is about the future shape of the law.

David A. Schkade is professor of business at the University of Texas at Austin. Cass R. Sunstein is professor of law at the University of Chicago.

Make A List (NYTimes)

Op-ed by STEPHEN GILLERS

The New York Times, June 11, 2003

Politics and ideology are often blamed for giving us poor judges. But neither can be removed from the judicial selection process. The trick is to devise a system that limits their influence.

Discontent with the current system is evident nationally and locally. In the Senate, Democrats have accused President Bush of choosing nominees with right-wing views at odds with fair judging. In Brooklyn, the Democratic Party's near total control over ballot access is said to have led to the election of mediocre state judges of suspect integrity but undoubted party loyalty - and the exclusion of capable but politically unconnected lawyers.

Courts are not free of ideology. In exercising their discretion, judges must make choices based on their beliefs about the law, which is another way of saying ideology. Just last year the Supreme Court recognized the relevance of ideology to judging when it ruled that candidates for elective judicial office have a First Amendment right to tell voters their views on disputed legal or political issues.

Politics, too, plays a role in judging. Politics must never influence a judge's decision, but it cannot be removed from the process that selects judges. Instead, we should encourage the right kind of politics. Lawyers who are engaged in their communities will be better judges for the experience. On the other hand, political activity that is merely party fealty, like fund-raising, is no qualification at all.

But neither ideology nor political activity should be the sole, or even the main, criterion in choosing judges. Otherwise, men and women will serve on the bench who may be ideologically or politically acceptable to those who choose them. Yet they may lack other attributes - like independence, intelligence, energy, an open mind and recognition of the importance of the position and public confidence in it.

Do these qualities seem abstract? Perhaps they are, unless you happen to be in court on a case that can change your life. Then the last thing you want to hear is that the judge got appointed as a reward for political loyalty.

Luckily, there is a better model for judicial selection. Although the Constitution gives the president the power to pick all federal judges, senators have long had great influence in the choice of the federal trial judges who sit in their states. For decades, New York's Republican and Democratic senators have appointed judicial screening panels, composed of members of the community, not limited to lawyers, and charged them to recommend candidates for the federal trial courts in the state. Any lawyer can apply for a judgeship.

For each vacancy, the panels compile a list from which the senator can then recommend a nominee to the president. This tradition has given New York an excellent federal trial bench. Lawyers who would be excluded from consideration in a world that demanded political loyalty or ideological devotion have been willing to submit their names.

With some modification, the same system can work for selecting appeals court nominees and a political party's candidates for elected judgeships. Working with the Senate, the president could convene a screening panel of lawyers and community leaders for each appellate vacancy and choose a nominee from among the recommendations. Governors who appoint state judges, and political parties that nominate judicial candidates, could do the same. The idea could even work for Supreme Court openings.

True, even a system that overvalues a particular ideology or party service can produce some good judges through plain luck. But luck is not good enough. The system should be designed to create the best chance of getting the best judges. An inclusive plan that promises all lawyers fair consideration by a credible screening panel is much more likely to reach that goal. Certainly, candidates who emerge from this process will inspire greater confidence on the Senate floor and in the voting booth.

Stephen Gillers is vice dean and professor at New York University School of Law.

Supermajority Rule (NYTimes)

Op-ed by JUDITH RESNIK

The New York Times, June 11, 2003

NEW HAVEN - The appointment of judges with life tenure is a unique event in the American democratic system. Members of Congress and the president stay in power only if they convince voters to re-elect them - and even popular presidents have to quit after two terms. But life-tenured federal judges serve for decades.

Partly for this reason - and because of the federal judiciary's ever-growing importance in American life - the Senate should strive for more agreement, not less, in approving judicial appointments. How many senators should it take to approve a judicial nominee? The Senate majority leader, Bill Frist, is urging the Senate to revisit its filibuster rules to make it easier for a bare majority to install a judge for life. Instead, the Senate should leave those rules in place and add a requirement that 60 votes are needed for life-tenured appointments to the federal courts.

We have become accustomed to protracted debates about who should serve on the Supreme Court. Appointments to the lower federal courts deserve comparable attention. For most people in the United States, federal judges in the lower courts are the only federal judicial officials they will see. More than 340,000 cases were filed last year in federal trial courts, and almost 60,000 appeals brought. In contrast, the Supreme Court issued 76 signed opinions in its most recent term. The volume is small compared to the millions of cases decided by the states, but large compared to the federal dockets of only a few decades ago. The Constitution says relatively little about the federal court system - providing directly for the Supreme Court and giving Congress the power to "ordain and establish" such lower courts as it deems necessary. While the lower federal courts are almost as old as the Constitution, in the last 100 years the number of judgeships has grown substantially.

In 1901, only about 100 people held federal judgeships, from the trial courts through the Supreme Court. Sometimes, one district judge served a whole state. There were fewer than 30 intermediate appellate judges. In contrast, almost 800 people hold life-tenured judgeships today, and a few hundred serve as senior judges.

Moreover, life-tenured judges are not the only judicial officers in the more than 500 federal courthouses across the United States. Congress has given judges the power to appoint two other sets of judges, magistrate and bankruptcy judges, who serve for fixed, renewable terms and who add another 800 judges to the ranks. These judges in turn hear the cases of yet other Americans - including the more than 1.5 million people and companies who filed for bankruptcy protection last year. Still more federal judicial officers serve outside courts as administrative law judges in federal agencies.

The growth of judgeships reflects the growth of federal jurisdiction. In the last century, Congress has created securities law, environmental law, civil rights law, consumer law. We all now have federal rights that affect our lives in many ways - from taxes and pensions to the water we drink and our personal security.

Congress and the courts, working together, have done a remarkable job creating a substantial, important judicial system. At the top of this hierarchy sit life-tenured judges. Careful deliberation over nominees to these judgeships is crucial. Especially when the Senate is almost evenly divided, a supermajority requirement is one good way for the Senate to fulfill its constitutional duty to give advice and consent on judicial appointments.

This approach is not likely to be popular with the party in power, since supermajority requirements empower minorities. But given the large number of federal judgeships, the minority party will be reluctant to expend political energy or capital too often. When it does - when 41 senators say a particular person is ill suited for an appointment to the bench - it is time to pause. By constitutional design, Congress is periodically reauthorized through elections. It ought to take a supermajority of the Senate to confer power on judges who will exercise it for their rest of their lives.

Judith Resnik is a professor at Yale Law School

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 6/11/2003 4:14:34 AM
Subject: : Court Stories and Op-eds today

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Supreme Court Vacancy Looks Less Likely This Year (WTimes)

By Frank J. Murray

The Washington Times, June 11, 2003

;Any prospects for a partisan fight this summer over confirming President Bush's first Supreme Court nominee appeared to dim recently after justices agreed to hear a contentious case in September, signaling that the bench will remain unchanged at least until then.

;Despite the court's decision Thursday to consider campaign-finance reform, the Senate Judiciary Committee is forging ahead with contingency plans based on what a Senate Republican leadership staff member called "the 100-percent expectation a vacancy will occur."

;The Senate's preparation and much of the speculation over which of the three eldest Supreme Court justices might retire this month are driven by groups such as People for the American Way, which have opposed Mr. Bush's judicial nominations.

;Since before the 2000 election, groups such as PFAW have raised money by annually predicting doom for the Constitution if Mr. Bush were allowed to install judges on the Supreme Court. PFAW President Ralph Neas declared last week that at least one justice will resign, creating "the first of three or four openings" in coming years.

;Such activists have sounded the alarms even though several factors indicate that the most stable nine-justice high court in history will remain unchanged for two more years.

;Most analysts expecting a retirement consider Chief Justice William H. Rehnquist, 78, or Justice Sandra Day O'Connor, 73, the most likely to depart, even though each plays a key role in the most sharply split cases and both still write books and pursue activities outside the court.

;The true dark horse is Justice John Paul Stevens, who at 83 is an avid tennis player said to abhor letting a conservative Republican choose his replacement.

;Sources who have contacts with Chief Justice Rehnquist said they doubt he plans to quit, and he bandies words with those brash enough to raise the question. After the chief justice visited Mr. Bush at the White House in December, both parties let it be known his mission was a hunt for allies to raise judicial salaries.

;Skeptics of that account consider the visit a pretext for a nominating-strategy session.

;Mr. Bush announced May 9 that Justice O'Connor would lead a team of judges to Bahrain in September to help improve Middle East court systems, but a White House spokesman couldn't confirm yesterday whether the president and Justice O'Connor had spoken.

;Justice O'Connor's only public comment about her position on the court was to dampen speculation she might be elevated to chief justice. When asked, she replied, "I'm too old," the Christian Science Monitor reported.

;"It's very possible that they won't retire," said Artemus Ward, author of "Deciding to Leave: The Politics of Retirement From the United States Supreme Court."

;"Why retire when you're at the top of your game?" he said.

;He considers the chief justice the most likely candidate - ending his 32-year tenure on the court - although Mr. Rehnquist often mentions future projects and recently extended for a fourth year the appointment of administrative assistant Sally M. Rider.

;Washington lawyer James C. Duff, her predecessor in that post, remains involved with the chief justice's efforts to win pay raises for federal judges but refused to discuss departures and scoffed at reports that imply inside knowledge.

;"When I took the job in 1996, I remember reading an article which said that the winner of the Clinton-Dole presidential election would have four nominees to the court. Of course there have been none since then," Mr. Duff said.

;During a presidential debate in 2000, Mr. Gore said, "The next president is going to appoint three, maybe even four justices of the Supreme Court."

;Because no one expects a vacancy during next year's presidential campaign year - absent death or disability - the next two weeks would be the last real chance for an appointment until June 2005.

;Mr. Ward questioned reports that more than one justice could retire now.

;"That's never happened in the history of the court," he said. The closest exception were retirements of Justices Hugo Black and John Harlan a week apart in September 1971, shortly before both died.

;Mr. Ward estimated that the life expectancy for today's Supreme Court justices is 87, about 15 years longer than the average for white men in America.

;"To remain a Supreme Court justice keeps you alive, to some extent," Mr. Ward said.

;Justices traditionally guard retirement plans until announced from the bench at term's end.

;"Even other members of the court are sort of the last to know. It is kept very secret," said Mr. Ward, who is on leave from Northern Illinois University for a one-year American Political Science Association fellowship at the House Judiciary Committee.

;"The justices are concerned with minimizing the politicization of the

succession process to protect the institution," he said.

;Because the Supreme Court put the Bipartisan Campaign Reform Act case on a fast track, justices must review the mountain of legal briefs filed through the summer. They have slated an extraordinary four-hour hearing for Sept. 8, a month before the next term begins.

;"I would be very pleased if no one resigned," Mr. Neas said. "If President George W. Bush nominates someone in the mold of Antonin Scalia and Clarence Thomas, as he has certainly said he intended to do, then there would be one of the most intense confirmation battles in the nation's history."

;The median age for court retirees is 78. The chief justice marks his 79th birthday in October, and Justice O'Connor turned 73 on May 26. Only Justice Stevens exceeds that median; he turned 83 on April 20.

;Five justices were older than Justice Stevens when they retired, and four of them did so since 1971, when Justice Black quit at age 85, followed in 1990 by William Brennan, 84, a year later by Thurgood Marshall, three months past his 83rd birthday, and in 1994 by Harry Blackmun, 85.

;Between June 19, 1811, and March 18, 1823, the seven-member court remained intact. The current cast has not changed since Aug. 3, 1994, the longest period without a vacancy since Congress created the eighth and ninth seats in 1837.

Supreme War Looms (Roll Call)

Liberals Line Up \$5.5 Million to Battle Potential High Court Pick

By Paul Kane

Roll Call, June 11, 2003

With the inaugural Supreme Court battle of the 21st century unofficially under way, abortion-rights activists have stockpiled a multimillion-dollar war chest, positioning themselves to be on air within days - or hours - of a nomination to the highest court in the land.

Expecting a vacancy on the Supreme Court, nine abortion-rights groups have formed a 501(c)(3) off-shoot devoted specifically to judicial issues and initially seeded the new group with a \$5.5 million down payment, according to lead participants, including NARAL Pro-Choice America and the Planned Parenthood Federation of America.

At the same time, groups on the right, most prominently the Committee for Justice, are aggressively raising money for a counter-campaign that has the tacit blessing of President Bush. On June 27 first nephew George P. Bush will headline a small-dollar fundraiser in Washington for the Committee for Justice, designed with an eye toward generating support for the expected Supreme Court nomination battle among young conservative activists.

This comes on the heels of an April fundraiser in Houston headlined by former President George H.W. Bush, which netted the Committee for Justice a reported \$250,000, and a February event at the home of C. Boyden Gray, the committee's founder, headlined by Senate Majority Leader Bill Frist (R-Tenn.) and Karen Hughes, the president's closest communications adviser.

Meanwhile, longtime veterans of the liberal coalition on judicial advocacy, led by the Alliance for Justice and People for the American Way, are furiously researching the records of potential nominees and raising funds for a multimedia campaign that will likely be similar in tone to the epic struggles of the late 1980s and early 1990s but markedly different in terms of rapid-response technology.

All of the political commotion could be for naught, should none of the nine justices decide to retire when the current term expires at the end of the month. But with an aging bench and a nine-year span since the last retirement, the outside groups have decided to leave nothing to chance.

"We refuse to be the generation that won and lost the battle for reproductive rights," said Gloria Feldt, president of Planned Parenthood.

"I worry about the work we're doing to get ready, but we can't afford to not be ready," added Kate Michelman, president of NARAL Pro-Choice America.

Michelman decided not to wait for a vacancy to occur, and her group this week launched an ad campaign designed to generate more supporters across the country, with one strategist putting the ad buy at \$3 million. While the current ads don't mention the court, future ads will.

In addition to the NARAL-specific ads, Michelman and eight of her allies in the reproductive rights community formed their own joint non-profit with the specific eye toward mounting opposition to a Supreme Court nomination solely on the issue of abortion rights. Officially called the Joint Emergency Campaign, the group refers to itself as the "G-9."

Feldt said the G-9 was initially formed about 18 months ago with an eye toward a potential Supreme Court vacancy, one that didn't immediately materialize, so some of the initial \$5.5 million was spent on advocacy regarding controversial circuit court nominations of the past 16 months. "It gave us the opportunity to highlight the rest of the federal bench," Feldt said.

The fund has been replenished, according to liberal strategists, and abortion-rights advocates expect the G-9 to be able to mount a nearly \$5 million media campaign once a vacancy occurs.

The idea is to mount a quick, broad strike at whoever the nominee is, with the abortion-rights groups hitting the television airwaves and groups like the Alliance for Justice and People for the American Way providing a massive, research-driven campaign to shape the mainstream media's portrayal of the nominee.

"Our goal is to be ready when the announcement is made, so we've been collecting information all along," said Nan Aaron, president of the Alliance for Justice.

Gray, the White House counsel under the first President Bush, said his committee would take a more measured response in terms of a nomination announcement, vowing a vigorous defense of the nominee but suggesting that taking to the airwaves immediately could be foolhardy.

"We can turn it around pretty quickly," he said, but added, "There will be time before the first Judiciary Committee vote. I think it's somewhat risky to try to define the candidate before the hearings. You could be wasting your money."

Gray repeatedly declined to say how much he had raised and what his goals were. "Do we have enough money? We need more and we are continuing to raise money as we speak," he said.

Each of the potential nominees to replace any of the sitting justices, those names most often mentioned in the media, is met with open disdain by the liberal coalition leaders, particularly White House Counsel Alberto Gonzales.

Often portrayed by the mainstream media as a potentially moderate justice, Gonzales is pilloried by liberals such as Michelman and Aaron, who contend he has operated a highly partisan office that has promoted very conservative judicial nominees.

"That office has been exceptionally controversial," said People for the American Way President Ralph Neas.

Neas and Aaron operate as a sort of nerve center for the liberal groups in the nomination fights, with two decades of experience in the issue. The steering committee of their liberal coalition meets weekly, usually in the K Street offices of People for the American Way or the Alliance for Justice office overlooking Dupont Circle.

In addition, the coalition has formed four task forces that also meet weekly, focusing on research, grassroots efforts, lobbying and communication strategies.

And the groups say they need to be better prepared, noting how much has changed since the 1987 and 1991 fights over rejected nominee Robert Bork and now-Justice Clarence Thomas, respectively. Back then, there was no e-mail in widespread use, talk radio was just starting to emerge as a force and there was only one 24-hour national cable news channel.

"Now, you have to be able to respond immediately, you have to be able to get in the first news cycle," said Neas.

GOP aides and strategists suggested that the conservatives' biggest weapon would be talk radio, particularly the show run by James Dobson, the founder of Focus on the Family, a Colorado-based Christian organization.

In addition, the Bush administration is likely to focus on a trio of media-savvy surrogates to speak on the nominee's behalf on the cable outlets, according to one senior GOP aide. Those would likely be Gray and two former Republican attorneys general, Dick Thornburgh and Ed Meese.

Three other conservative organizations will play critical roles as well. The Family Research Council is known among conservatives to operate one of the best e-mail lists on the right, enabling instant communications to the base, and the Concerned Women for America is known for its vast membership list. Meanwhile, the Free Congress Foundation has operated a judicial monitoring project longer than most of the groups on the right.

These conservative groups have been holding their own meetings, almost weekly, with a "core group" of about a dozen organizations at the table, according to a conservative strategist.

Fundraising among conservatives for the Supreme Court battle has so far been like "drinking from a stream," the strategist said, noting that once there is a vacancy, "We're going to be drinking from a fire hydrant."

Conservatives often complain that the liberal coalition is better funded and better organized on the issue of judicial nominations, but Neas said one study of resources after the Thomas fight showed a neutral bout. "The money and the troops matched up pretty well," he said.

Regardless, the presidency of George W. Bush has been good business for the liberal groups, although they contend they would gladly trade in the extra resources for a Democratic president.

Neas, president of his group since 2000, has seen annual 30 percent to 40 percent gains in his budget, now pushing the \$15 million mark. He spent the last week in May in California on a fundraising trek with the group's founder, television producer Norman Lear.

He has expanded his work force from 60 to 90 people, including a half-dozen lawyers, 20 national field coordinators and about eight communications employees in the K Street office. Aaron has up to 10 researchers in her office, including lawyers and law school students.

NARAL now has offices in 27 states, with 750,000 people on their e-mail distribution list. Planned Parenthood, which operates nearly 900 health centers nationwide, has made a very aggressive political turn, increasing

their spending on political advocacy five-fold in the past two years, according to Feldt.

In addition, Planned Parenthood went from five field coordinators in its national office to 26 in the past three years.

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Pryor, Another Contentious Bush Nominee, Faces Hearing (AJC)

By BILL RANKIN

The Atlanta Journal-Constitution, June 11, 2003

President Bush's nominee for the federal appeals court in Atlanta is expected to be grilled Wednesday for his outspoken views on abortion, religion and civil rights.

Alabama Attorney General Bill Pryor was chosen by Bush in April to fill a 2 1/2-year-old vacancy at the 11th U.S. Circuit Court of Appeals. Ever since, opposition has mounted against him from liberal interest groups.

At his confirmation hearing Wednesday before the Senate Judiciary Committee, Pryor is expected to be reminded of many of his past positions. These include his resolute opposition to abortion rights and his ardent support for federalism. This legal principle defers to states' rights and, critics say, severely limits the enforcement of federal civil rights laws.

The Judiciary Committee is not expected to vote on Pryor's nomination for another few weeks.

So far, Senate Democrats have blocked two Bush appellate court nominees: Texas Supreme Court Judge Priscilla Owen, a candidate for the 5th Circuit in New Orleans, and Miguel Estrada, a nominee for the appeals court in Washington.

Pryor received a setback Tuesday when the American Bar Association declined to give him its highest rating for judicial nominees. A substantial majority on an ABA committee that investigated Pryor gave him a "qualified" rating. A minority of panel members found him "not qualified."

Most of Bush's judicial nominees have received "well qualified" ratings.

Also Tuesday, a number of interest groups held an anti-Pryor news conference in Washington. Among those opposing Pryor's nomination were the Alliance for Justice, NAACP, Americans United for Separation of Church and State, People for the American Way, Sierra Club and the Leadership Conference on Civil Rights.

Alliance for Justice President Nan Aron said groups contesting Pryor's nomination include "tens of millions of Americans who care deeply about civil rights, women's rights, reproductive rights, labor, environmental protection, disability rights, separation of church-state, and gun safety."

Said the Rev. Barry W. Lynn of Americans United for Separation of Church and State, "Bill Pryor has waged an unrelenting crusade in the courts against church-state separation. . . . It's hard to think of any nominee less suited for a seat on the federal appeals court."

In past speeches, Pryor has called the Roe v. Wade decision legalizing abortion "the worst abomination of constitutional law in our history." He supported the placement of a 5,280-pound Ten Commandments monument in Alabama's state Judicial Building in Montgomery.

Pryor also has disparaged sitting U.S. Supreme Court justices. In a 2000 speech before the Federalist Society, Pryor called on Bush to nominate

conservative judges and for "no more Souters," a reference to Justice David Souter, who often dissents to pro-federalism rulings.

In Pryor's favor is widespread, bipartisan support in his home state. Many of his friends and colleagues insist he can put aside his personal feelings and follow the law.

"He is extremely bright, experienced and committed to ensuring that the Constitution and the rule of law will be protected and faithfully applied," said Jay Sekulow, chief counsel of the American Center for Law and Justice.

Hoping to shepherd Pryor's nomination through the Senate is Sen. Jeff Sessions (R-Ala.), a former Alabama attorney general who hired Pryor in 1995.

"Bill's not ambiguous about his views, which I think is refreshing in this day and age," Sessions said in a recent interview. "But the thing he's most committed to is the rule of law. That's more important to him than his political views."

Senate Judicial Panel To Weigh Another Contentious Nomination (NYTimes)

By NEIL A. LEWIS

The New York Times, June 11, 2003

WASHINGTON, June 10 - The bitter ideological fight about judicial nominations pitting Senate Democrats against the White House and Senate Republicans is expected to escalate on Wednesday, when the Judiciary Committee takes up the nomination of Bill Pryor, Alabama's attorney general.

Democrats are already using filibusters to block consideration of two of President Bush's appeals court nominees and lining up a third candidate for the same treatment. Mr. Pryor, an outspoken conservative who has inveighed against the Supreme Court on many issues, notably its enforcement of separation of church and state, has stirred deep and broad opposition from many liberal advocacy groups that would like to see him the fourth candidate blocked by a filibuster.

Mr. Pryor, who has been nominated to the United States Court of Appeals for the 11th Circuit, in Atlanta, is no stealth nominee with a scant record. He has written and spoken forcefully on many issues and has become a favorite of organized social conservatives and Christian political groups.

In a 1997 rally in Alabama sponsored by the Christian Coalition, he used emotional language to criticize *Roe v. Wade*, the court's landmark 1973 case finding a constitutional right to abortion. He called the ruling "the day seven members of our high court ripped the Constitution and ripped out the life of millions of unborn children."

In a brief filed with the Supreme Court, which is considering a challenge to a Texas sodomy law, Mr. Pryor wrote that a legal right to engage in homosexual relations would imply approval of "activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography and even incest and pedophilia."

But he may be best known for his consistent defense of an Alabama state judge's right to post the Ten Commandments in his courtroom. The judge, Roy Moore, now of the state Supreme Court, has since had a two-ton monument to the Ten Commandments placed in the rotunda of the Alabama Supreme Court; the appeals court to which Mr. Pryor has been nominated is considering a challenge to that action.

The confirmation hearing will be a vivid display of the debate concerning how important a candidate's personal views are in assessing fitness to be

a judge.

Many of President Bush's nominees have records of taking vigorous conservative views. When Democrats challenge them at confirmation hearings, the candidates and their defenders invariably say that they will follow the law and Supreme Court precedent, and that their individual views are irrelevant.

Democrats have increasingly complained that such a response is a dodge and that the nominees would never have been picked by the Bush White House without holding such views.

Mr. Pryor, 41, is a protégé of Senator Jeff Sessions, an Alabama Republican who preceded him as state attorney general. Mr. Sessions said today that "Bill is a brilliant lawyer who has won the respect of people of all political stripes in Alabama."

Ralph G. Neas, president of the People for the American Way, a advocacy group in Washington that is part of a broad coalition opposing the nomination, said today: "Mr. Pryor has amassed a staggering record of hostility to the rights and interests of ordinary Americans, with his attacks on church and state, reproductive freedom and the ability of Congress to protect the environment and outlaw discrimination."

Judging By Where You Sit (NYTimes)

;Op-ed by DAVID A. SCHKADE and CASS R. SUNSTEIN

The New York Times, June 11, 2003

ideology matters when choosing judges - perhaps too much, as the battles between President Bush and Senate Democrats show. But how much does ideology matter once judges are on the bench?

As it turns out, it matters a lot. We have studied thousands of votes by federal appellate judges, who are randomly assigned to three-judge panels, which then make decisions by majority vote. According to our research, judges appointed by Republican presidents show more conservative voting patterns, while Democratic appointees are more liberal.

These findings may not be surprising. The most striking lesson of our research, however, is the influence of what might be called the majority ideology. For both Democratic and Republican appointees, the likelihood of a liberal vote jumps when the two other panel members are Democrats, and drops when the two other panel members are Republicans.

The effect of ideology on panel decisions is clear. Consider, for example, a case in which a woman has complained of sex discrimination. In front of an appellate panel of three Democratic appointees, she wins 75 percent of the time. But if the panel has fewer Democratic appointees, her chances decline. With two Democratic and one Republican appointee, she wins 49 percent of the time; with one Democratic and two Republican appointees, she wins 38 percent of the time. And with a panel of three Republican appointees, she wins just 31 percent of the time.

Or consider cases in which a company has claimed that an environmental regulation is unlawful. Before an all-Democratic panel, the company wins about a quarter of the time. But before an all-Republican panel, the company wins about three-quarters of the time. Or consider a case in which white people are challenging an affirmative action program; they win two times out of three before three Republican appointees - but only one time in six before three Democratic appointees. The same pattern can be found in many other areas of the law.

Of course, judges are not politicians or ideologues. If the facts and the law argue strongly for one side, it will prevail, regardless of the political affiliation of the president who appointed the judges. But in the hardest cases that make their way to the federal appellate courts, the

evidence is clear: Republican-appointed judges tend to vote like Republicans and Democratic-appointed judges tend to vote like Democrats.

There are some interesting exceptions. In criminal appeals, Republican and Democratic appointees do not differ. Contrary to the stereotype, Democratic appointees are not "softer on crime." And in cases involving abortion and capital punishment, judges appear not to be influenced by their colleagues. No matter what the composition of the panel, Republican appointees are much more likely to vote to uphold restrictions on abortion and to permit executions to go forward.

Ideology also has a more subtle effect on individual judges: in general, both Republican and Democratic appointees are affected by their panel colleagues. A Republican appointee sitting with two other Republicans votes far more conservatively than when the same judge sits with at least one Democratic appointee. A Democratic appointee, meanwhile, shows the same tendency in the opposite ideological direction.

For example, on an all-Republican panel, Republican judges are far more likely than not to vote to strike down affirmative action and campaign finance reform - and also to rule against people claiming that they have been discriminated against on the basis of sex or disability. But in the very same areas, Republican appointees show a much more moderate pattern of votes when there is at least one Democrat on the panel. The same holds true for Democratic appointees, who show extremely liberal voting patterns when sitting with fellow Democratic appointees, a tendency that shifts in the conservative direction when they sit with one or more Republican appointees.

These findings explain what the current battle is all about. Even on the lower federal courts, judicial ideology matters, and in a way that is crucial to the development of the law. The ideology of a judge is important not only because of how that judge will vote, but also because of the judge's effect on his or her colleagues.

Thus the fight over judicial nominations is no symbolic battle. The debate between President Bush and Democratic senators, between the executive and the legislative branches, is about more than politics. It is about the future shape of the law.

David A. Schkade is professor of business at the University of Texas at Austin. Cass R. Sunstein is professor of law at the University of Chicago.

Make A List (NYTimes)

Op-ed by STEPHEN GILLERS

The New York Times, June 11, 2003

Politics and ideology are often blamed for giving us poor judges. But neither can be removed from the judicial selection process. The trick is to devise a system that limits their influence.

Discontent with the current system is evident nationally and locally. In the Senate, Democrats have accused President Bush of choosing nominees with right-wing views at odds with fair judging. In Brooklyn, the Democratic Party's near total control over ballot access is said to have led to the election of mediocre state judges of suspect integrity but undoubted party loyalty - and the exclusion of capable but politically unconnected lawyers.

Courts are not free of ideology. In exercising their discretion, judges must make choices based on their beliefs about the law, which is another way of saying ideology. Just last year the Supreme Court recognized the relevance of ideology to judging when it ruled that candidates for elective judicial office have a First Amendment right to tell voters their views on disputed legal or political issues.

Politics, too, plays a role in judging. Politics must never influence a judge's decision, but it cannot be removed from the process that selects judges. Instead, we should encourage the right kind of politics. Lawyers who are engaged in their communities will be better judges for the experience. On the other hand, political activity that is merely party fealty, like fund-raising, is no qualification at all.

But neither ideology nor political activity should be the sole, or even the main, criterion in choosing judges. Otherwise, men and women will serve on the bench who may be ideologically or politically acceptable to those who choose them. Yet they may lack other attributes - like independence, intelligence, energy, an open mind and recognition of the importance of the position and public confidence in it.

Do these qualities seem abstract? Perhaps they are, unless you happen to be in court on a case that can change your life. Then the last thing you want to hear is that the judge got appointed as a reward for political loyalty.

Luckily, there is a better model for judicial selection. Although the Constitution gives the president the power to pick all federal judges, senators have long had great influence in the choice of the federal trial judges who sit in their states. For decades, New York's Republican and Democratic senators have appointed judicial screening panels, composed of members of the community, not limited to lawyers, and charged them to recommend candidates for the federal trial courts in the state. Any lawyer can apply for a judgeship.

For each vacancy, the panels compile a list from which the senator can then recommend a nominee to the president. This tradition has given New York an excellent federal trial bench. Lawyers who would be excluded from consideration in a world that demanded political loyalty or ideological devotion have been willing to submit their names.

With some modification, the same system can work for selecting appeals court nominees and a political party's candidates for elected judgeships. Working with the Senate, the president could convene a screening panel of lawyers and community leaders for each appellate vacancy and choose a nominee from among the recommendations. Governors who appoint state judges, and political parties that nominate judicial candidates, could do the same. The idea could even work for Supreme Court openings.

True, even a system that overvalues a particular ideology or party service can produce some good judges through plain luck. But luck is not good enough. The system should be designed to create the best chance of getting the best judges. An inclusive plan that promises all lawyers fair consideration by a credible screening panel is much more likely to reach that goal. Certainly, candidates who emerge from this process will inspire greater confidence on the Senate floor and in the voting booth.

Stephen Gillers is vice dean and professor at New York University School of Law.

Supermajority Rule (NYTimes)

Op-ed by JUDITH RESNIK

The New York Times, June 11, 2003

NEW HAVEN - The appointment of judges with life tenure is a unique event in the American democratic system. Members of Congress and the president stay in power only if they convince voters to re-elect them - and even popular presidents have to quit after two terms. But life-tenured federal judges serve for decades.

Partly for this reason - and because of the federal judiciary's ever-growing importance in American life - the Senate should strive for more agreement, not less, in approving judicial appointments. How many

senators should it take to approve a judicial nominee? The Senate majority leader, Bill Frist, is urging the Senate to revisit its filibuster rules to make it easier for a bare majority to install a judge for life. Instead, the Senate should leave those rules in place and add a requirement that 60 votes are needed for life-tenured appointments to the federal courts.

We have become accustomed to protracted debates about who should serve on the Supreme Court. Appointments to the lower federal courts deserve comparable attention. For most people in the United States, federal judges in the lower courts are the only federal judicial officials they will see. More than 340,000 cases were filed last year in federal trial courts, and almost 60,000 appeals brought. In contrast, the Supreme Court issued 76 signed opinions in its most recent term. The volume is small compared to the millions of cases decided by the states, but large compared to the federal dockets of only a few decades ago.

The Constitution says relatively little about the federal court system - providing directly for the Supreme Court and giving Congress the power to "ordain and establish" such lower courts as it deems necessary. While the lower federal courts are almost as old as the Constitution, in the last 100 years the number of judgeships has grown substantially.

In 1901, only about 100 people held federal judgeships, from the trial courts through the Supreme Court. Sometimes, one district judge served a whole state. There were fewer than 30 intermediate appellate judges. In contrast, almost 800 people hold life-tenured judgeships today, and a few hundred serve as senior judges.

Moreover, life-tenured judges are not the only judicial officers in the more than 500 federal courthouses across the United States. Congress has given judges the power to appoint two other sets of judges, magistrate and bankruptcy judges, who serve for fixed, renewable terms and who add another 800 judges to the ranks. These judges in turn hear the cases of yet other Americans - including the more than 1.5 million people and companies who filed for bankruptcy protection last year. Still more federal judicial officers serve outside courts as administrative law judges in federal agencies.

The growth of judgeships reflects the growth of federal jurisdiction. In the last century, Congress has created securities law, environmental law, civil rights law, consumer law. We all now have federal rights that affect our lives in many ways - from taxes and pensions to the water we drink and our personal security.

Congress and the courts, working together, have done a remarkable job creating a substantial, important judicial system. At the top of this hierarchy sit life-tenured judges. Careful deliberation over nominees to these judgeships is crucial. Especially when the Senate is almost evenly divided, a supermajority requirement is one good way for the Senate to fulfill its constitutional duty to give advice and consent on judicial appointments.

This approach is not likely to be popular with the party in power, since supermajority requirements empower minorities. But given the large number of federal judgeships, the minority party will be reluctant to expend political energy or capital too often. When it does - when 41 senators say a particular person is ill suited for an appointment to the bench - it is time to pause.

By constitutional design, Congress is periodically reauthorized through elections. It ought to take a supermajority of the Senate to confer power on judges who will exercise it for their rest of their lives.

Judith Resnik is a professor at Yale Law School

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Fulton County Daily Report

June 10, 2003, Tuesday

SECTION: NEWS; Vol. 6; No. 10

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HEADLINE: State Dodges \$105M Tab in DeKalb Busing Case

BYLINE: Jonathan Ringel

BODY:
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As the clock ticks down to a possible retirement on the Supreme Court, partisans on all sides are gearing up for what promises to be the bloodiest confirmation battle in a dozen years.

Republicans have met in the conference room of a Washington law firm to brainstorm a campaign on behalf of any nominee. Senate Judiciary Committee staffers are at the ready. And leaders of liberal groups are canceling vacations and charting plans for the opposition fight.

"We've been preparing for this moment, really, since the day Bush was elected, or chosen," said Kate Michelman, president of NARAL Pro-Choice America and a veteran of battles over Robert H. Bork in 1987 and Clarence Thomas in 1991.

When the Supreme Court term ends later this month, it is still highly possible that neither Chief Justice William H. Rehnquist nor Justice Sandra Day O'Connor—the subjects of most retirement rumors—will step down. But that has not stopped the speculation, nor has it slowed the preparation throughout Washington if President George W. Bush gets to fill the first Supreme Court vacancy in nine years.

"We have a fully staffed nominations unit and are preparing for a potential retirement in addition to working on filling the empty spaces on the federal bench," said Margarita Tapia, spokesperson for Judiciary Committee Chairman Orrin G. Hatch, R-Utah. Other senators say they have not beefed up their staffs yet, but some vacancies have been filled with veterans of past nomination wars—such as Sen. Edward M. Kennedy's, D-Mass., new committee counsel Jim Flug, who first worked with Kennedy in the 1960s.

May 22 Meeting

Outside government, the first tangible sign that war councils are convening came on May 22, when about two dozen highly placed Republicans

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gathered at the offices of Jones Day overlooking the Capitol.

The three-hour session brought together in one room GOP executive-branch veterans of earlier nomination wars over Bork and Thomas, as well as key point people who hold the same positions today. Several Republican Senate staffers also were present.

"It was a collective sharing of memories about what happened then," said attendee C. Boyden Gray, a partner at Wilmer, Cutler & Pickering who was White House counsel when the first President Bush nominated Thomas.

Gray heads the Committee for Justice, a group that presses for confirmation of Bush judicial nominees. "The purpose was to inform the current people so they don't have to reinvent the wheel," he said.

According to several who were present, Gray was joined at the meeting by Charles Cooper, former assistant attorney general for legal counsel; Michael Carvin, former deputy assistant attorney general for legal counsel, and Lee Liberman Otis, former assistant White House counsel and a founder of the Federalist Society who was a key player in Thomas' confirmation fight in 1991.

Cooper is now a partner at Cooper & Kirk, Carvin is a partner at Jones Day, and Otis is general counsel of the Department of Energy.

"This was a meeting of a group of conservatives engaged in nomination fights in the past or the present who are concerned that we don't have another Borking," said a GOP Senate aide who was not present but said he heard about the meeting in detail.

Gray said ideological issues and the makeup of the Supreme Court didn't come up at the session, which was devoted to practical nitty-gritty issues.

"We told them, 'Here's what to do if there is a vacancy,' " Gray said. "Where to have the war room, things like that."

Said another lawyer who was present but requested anonymity: "No specific decisions were made at the meeting. It was simply about what to expect and how to prepare yourselves for it. An older generation of experienced hands were passing on their insights to the current generation in the executive branch and on the Hill."

Among the topics that participants said were discussed were the importance of developing a press strategy and the need to respond quickly to themes and issues raised by Democrats about a nominee.

Several sources confirmed that Associate White House Counsel Brett M. Kavanaugh, who has been working on judicial nominations since the start of the administration, was at the meeting. Kavanaugh declines comment, as do Cooper and Carvin. Otis was traveling and unavailable for comment.

One lawyer who was at the May meeting said a follow-up session has not been scheduled, but the GOP Senate aide said he wouldn't be surprised if one is held later this month.

John Nowacki, a conservative strategist who declined to say whether he attended the meeting, said Bush supporters are anticipating all-out war. "No matter who is nominated, what we've seen so far with the lower court nominees will pale in comparison," said Nowacki, director of legal policy at the Free Congress Foundation, whose predecessors were active during the Bork and Thomas battles.

Nowacki said his group will defend Bush nominees and also hopes to win public support in the debate over the role of filibusters in blocking judicial nominations. That issue, currently the subject of Senate maneuvering, could come to the fore if Democrats threaten to filibuster a high court nominee.

"Americans have a sense of fairness, and they will want to know why the Democrats don't want an up or down vote," said Nowacki.

Itching for a Fight

For their part, liberal groups that are likely to oppose a Bush nominee have yet to convene a mass meeting on Supreme Court nomination strategy, but work is under way researching the backgrounds of potential nominees.

Nan Aron, longtime president of the umbrella group Alliance for Justice, still holds out hope that no vacancy will occur.

"Does the administration really want a big fight a year before the election?" asked Aron, whose group is the lead liberal umbrella organization on judicial nominations. "It certainly didn't help the first President Bush that Clarence Thomas was fought over the year before his re-election campaign."

Aron also said that if there is a vacancy, liberal opposition to a Bush nominee is not automatic. "I'm very serious about that," she said.

But when asked about White House counsel Alberto R. Gonzales—usually viewed as the most politically palatable possibility for Democrats—Aron answers without hesitation.

"We would mount a fight on Gonzales," Aron said. The target would not be Gonzales' record on the Texas Supreme Court, but rather his work as White House counsel and his advocacy of administration policies on civil liberties, judicial nominations, and other issues.

"We can and will prevail" against Gonzales or any other nominee that is opposed by a broad coalition, Aron said.

A grass-roots campaign on a Bush nominee will look substantially different from the ones mounted against Bork and Thomas, said NARAL's Michelman.

Through its e-mail network, Michelman said, her organization can quickly contact 750,000 people.

"This capacity to mobilize, to educate, to inform, and to activate, is enormously powerful," she noted.

Abortion Issue

Michelman said she has already laid the groundwork with senators who favor the right to choose.

"We have made it clear we expect pro-choice senators to filibuster any nominee who does not view the right to choose as a fundamental constitutional right," said Michelman. "Merely stating that Roe v. Wade is settled law is not good enough."

Ralph G. Neas, president of People for the American Way, also said the filibuster option is part of the arsenal that opponents might use. Since 60 votes are needed to end a filibuster, opponents would need only 41 senators to block a nominee.

"But we have a good shot at 51 votes too," said Neas, who was a key player in prior battles as head of the Leadership Conference on Civil Rights. Neas said he and his family took a vacation in January in anticipation of the time demands a nomination battle will create for him this summer. Grass-roots mobilization will be crucial to win, Neas said, and his 600,000 members are ready to form the core of a "progressive army" of millions.

Environmentalists Recruited

Not all the leaders of the likely opposition are veterans of the Bork and Thomas battles. Aron expects that labor and disabilities rights groups will be more visible. Most of all, Aron predicted that environmental groups-minor players in the confirmation battles over Bork and Thomas-will be important new combatants.

"There's a level of awareness in the environmental community about the threat involved in judicial nominations that was not there even two years ago," said Douglas T. Kendall, executive director of the Community Rights Counsel, an environmental and land use group that has focused on judicial nominees for years.

Environmental issues are the subject of only a few Supreme Court cases per term, and the Court's track record is mixed. But the potency of environmental laws can rise or fall on a wide range of Supreme Court rulings on issues of standing, the commerce clause, takings, 11th Amendment, and the separation of powers, Kendall noted.

Kendall's group and Earthjustice-formerly the Sierra Club Legal Defense Fund-have formed an alliance to beef up environmental groups' research and advocacy in anticipation of a Supreme Court vacancy.

They, like others, are building files on the most-mentioned potential nominees, and they have been active on lower court nominees. A substantial number of senators opposing Miguel Estrada for the U.S. Court of Appeals for the D.C. Circuit have cited environmental concerns among others. Estrada's nomination, approved by the Senate Judiciary Committee, has been shut down by a months-long filibuster.

"We generated tens of thousands of messages into senators" on Estrada and other nominees, said Glenn P. Sugameli, senior legislative counsel with Earthjustice. For a Supreme Court nominee, he said, "We're talking about research, media, education, lobbying, outreach, networking, all of it. It will be a very high-profile issue for the national environmental community."

At least one other familiar face from past nomination battles has not become energized yet. Harvard Law School professor Laurence H. Tribe, who advised Senate Democrats on constitutional issues before the Bork and Thomas hearings, said in an e-mail last week, "I'm thinking as little about this as I can manage and am resisting requests to become involved. When the time comes, I suspect the force will become irresistible and I will get drawn in. But not without protest. For some reason, I'm feeling fatalistic about things this time around."

LOAD-DATE: June 10, 2003

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Let,s solve the asbestos litigation crisis now
By Sen. Orrin G. Hatch (R-Utah)

There is an asbestos litigation crisis in this country; there can be no doubt of that. Hundreds of thousands of victims of asbestos exposure currently get pennies on the dollar in compensation. Jobs and pensions are in serious jeopardy as more and more companies continue to file for bankruptcy as a result of forum-shopped lawsuits resulting in outrageous verdicts for people who are exposed to asbestos, but are not sick.

[IMAGE]

KERI RASMUSSEN

Hatch: We need to ensure that the truly sick get compensated first.

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To solve this problem, we will all have to dig deep, face the realities of the alternatives and work together in a bipartisan manner to come up with the best solution possible. Our solution must be fair to the claimants and recognize the limitations of our economy. I firmly believe that S. 1125, the bipartisan Fairness in Asbestos Injury Resolution (FAIR) Act of 2003, is a step in the right direction. ý

Support across the country for the FAIR Act has been overwhelming. Many recognize that it may not be the perfect solution, but it is close to being one of the best workable solutions. It establishes a system to pay victims faster, ensures that it is the truly sick getting paid and provides the business community with the stability it needs to protect jobs and pensions.

I continue to be open to constructive suggestions because I recognize that this bi-partisan legislation is not without flaws, and we have sought expert advice on how best to improve it. I have heard many suggestions from outside affected parties and from my colleagues. That has been very positive, and I think the legislative process is working and working well. We will look to address as many concerns as possible. ý

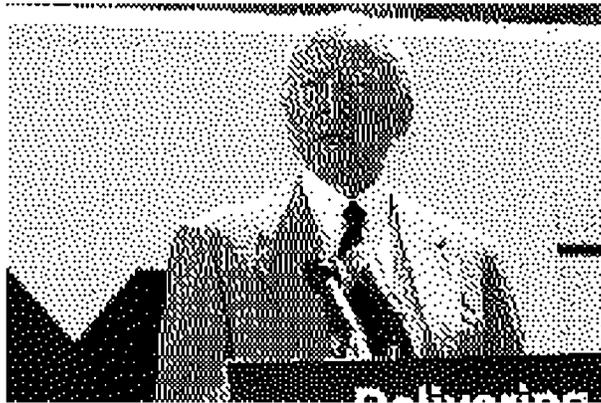
However, there are special interest groups that benefit handsomely from the current broken system and have every incentive to stop our efforts on behalf of victims. I hope their efforts will not succeed and we can do what is best for the country. We need to recognize where we will be if we don,t get this done. I want to help those who are sick * and this group includes many union members * who are either being shortchanged in the tort system due to the flood of claims and dwindling resources or those who may receive nothing at all, as well as members whose jobs and pensions have suffered as a result of the skyrocketing bankruptcies.

I hope that this third hearing we just held on this issue will be fruitful and the fact that we have a bill to work from will encourage the interested parties to work with us to support a workable solution that will benefit the common good. We need to ensure that the truly sick get compensated first and foremost. But we can do that without bankrupting companies, so that jobs and pensions will not suffer needlessly.ýý

Hatch is chairman of the Senate Judiciary Committee and is the author of S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003 (FAIR Act).

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Sent: 6/11/2003 10:10:57 AM
Subject: FYI - S. 1125 (asbestos) markup scheduled for Thursday 6/12
Attachments: S 1125 Introduced.doc

Asbestos Bill Slated For Markup

A bill creating a separate court system and a pool for compensation for asbestos-related litigation is tentatively scheduled for a Senate Judiciary Committee markup Thursday.

The bill has been in development for months in a process that has involved meetings among senators, industry lobbyists and workers' groups.

The "Fairness in Asbestos Injury Resolution Act" is sponsored by **Judiciary Chairman Hatch** and Sens. **Mike DeWine**, R-Ohio, and **Saxby Chambliss**, R-Ga. Hatch had held off offering the bill until he could build consensus behind it. But consensus has proven elusive as Democrats and labor group sought assurances of available money for damages in the event an industry fund runs dry. *(from 6/11 CongressDaily AM)*

FYI - Introduced text: <>

S 1125 IS

108th CONGRESS
1st Session
S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 22, 2003

Mr. Hatch (for himself, Mr. Nelson of Nebraska, Mr. DeWine, Mr. Miller, Mr. Voinovich, Mr. Allen, and Mr. Chambliss) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Fairness in Asbestos Injury Resolution Act of 2003' or the 'FAIR Act of 2003'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.

TITLE I--ASBESTOS CLAIMS RESOLUTION

Subtitle A--United States Court of Asbestos Claims

Sec. 101. Establishment of Asbestos Court.

Subtitle B--Asbestos Injury Claims Resolution Procedures

- Sec. 111. Filing of claims.
- Sec. 112. General rule concerning no-fault compensation.
- Sec. 113. Essential elements of eligible asbestos claim.

- Sec. 114. Eligibility determinations and claim awards.
- Sec. 115. Medical evidence auditing procedures.
- Sec. 116. Claimant assistance program.

Subtitle C--Medical Criteria

- Sec. 121. Essential elements of eligible asbestos claim.
- Sec. 122. Diagnostic criteria requirements.
- Sec. 123. Latency criteria requirements.
- Sec. 124. Medical criteria requirements.
- Sec. 125. Exposure criteria requirements.

Subtitle D--Awards

- Sec. 131. Amount.
- Sec. 132. Medical monitoring.
- Sec. 133. Payments.
- Sec. 134. Reduction in benefit payments for collateral sources.

Subtitle E--En Banc Review

- Sec. 141. En banc review.

TITLE II--ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A--Asbestos Defendants Funding Allocation

- Sec. 201. Definitions.
- Sec. 202. Authority and tiers.
- Sec. 203. Subtier assessments.
- Sec. 204. Assessment administration.

Subtitle B--Asbestos Insurers Commission

- Sec. 211. Establishment of Asbestos Insurers Commission.
- Sec. 212. Duties of Asbestos Insurers Commission.
- Sec. 213. Powers of Asbestos Insurers Commission.
- Sec. 214. Personnel matters.
- Sec. 215. Nonapplication of FOIA and confidentiality of information.
- Sec. 216. Termination of Asbestos Insurers Commission.
- Sec. 217. Authorization of appropriations.

Subtitle C--Office of Asbestos Injury Claims Resolution

- Sec. 221. Establishment of the Office of Asbestos Injury Claims Resolution.
- Sec. 222. Powers of the Administrator and management of the Fund.
- Sec. 223. Asbestos Injury Claims Resolution Fund.
- Sec. 224. Enforcement of contributions.
- Sec. 225. Additional contributing participants.

TITLE III--JUDICIAL REVIEW

- Sec. 301. Judicial review of decisions of the Asbestos Court.
- Sec. 302. Judicial review of final determinations of the Administrator and of the Asbestos Insurers Commission.
- Sec. 303. Exclusive review.
- Sec. 304. Private right of action against reinsurers.

TITLE IV--MISCELLANEOUS PROVISIONS

- Sec. 401. False information.
- Sec. 402. Effect on bankruptcy laws.
- Sec. 403. Effect on other laws and existing claims.

SEC. 2. PURPOSE.

The purpose of this Act is to create a privately funded, publicly administered fund to provide the necessary resources for an asbestos injury claims resolution program.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

- (1) ADMINISTRATOR- The term `Administrator' means the Administrator of the Office of Asbestos Injury Claims Resolution appointed under section 221(c).
- (2) ASBESTOS- The term `asbestos' includes--
 - (A) asbestos chrysotile;
 - (B) asbestos amosite;
 - (C) asbestos crocidolite;
 - (D) asbestos tremolite;
 - (E) asbestos winchite;
 - (F) asbestos richterite;
 - (G) asbestos anthophyllite;
 - (H) asbestos actinolite;
 - (I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(J) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM-

(A) IN GENERAL- The term 'asbestos claim' means any personal injury claim for damages or other relief presented in a civil action or bankruptcy proceeding, arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child or other relative of any exposed person.

(B) EXCLUSION- The term does not include claims for benefits under a workers' compensation law or veterans' benefits program, or claims brought by any person as a subrogee by virtue of the payment of benefits under a workers' compensation law.

(4) ASBESTOS CLAIMANT- The term 'asbestos claimant' means an individual who files an asbestos claim under section 111.

(5) ASBESTOS COURT; COURT- The terms 'Asbestos Court' or 'Court' means the United States Court of Asbestos Claims established under section 101.

(6) CIVIL ACTION- The term 'civil action' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(7) COLLATERAL SOURCE- The term 'collateral source'--

(A) means all collateral sources, including--

- (i) disability insurance;
- (ii) health insurance;
- (iii) medicare;
- (iv) medicaid;
- (v) death benefit programs;
- (vi) defendants;
- (vii) insurers of defendants; and
- (viii) compensation trusts; and

(B) shall not include life insurance.

(8) ELIGIBLE DISEASE OR CONDITION- The term 'eligible disease or condition' means, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis/pleural disease, severe asbestosis disease, mesothelioma, lung cancer I, lung cancer II, other cancers, and qualifying nonmalignant asbestos-related diseases.

(9) FUND- The term 'Fund' means the Asbestos Injury Claims Resolution Fund established under section 223.

- (10) LAW- The term `law' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.
- (11) PARTICIPANT- The term `participant' means any person subject to the funding requirements of title II, including--
- (A) any defendant participant subject to an assessment for contribution under subtitle A of that title; and
 - (B) any insurer participant subject to an assessment for contribution under subtitle B of that title.
- (12) PERSON- The term `person'--
- (A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and
 - (B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.
- (13) STATE- The term `State' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.
- (14) VETERANS' BENEFITS PROGRAM- The term `veterans' benefits program' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.
- (15) WORKER'S COMPENSATION LAW- The term `worker's compensation law'--
- (A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;
 - (B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. sections 901 et seq.) and chapter 81 of title 5, United States Code; and
 - (C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

TITLE I--ASBESTOS CLAIMS RESOLUTION

Subtitle A--United States Court of Asbestos Claims

SEC. 101. ESTABLISHMENT OF ASBESTOS COURT.

(a) IN GENERAL- Part I of title 28, United States Code, is amended by inserting after chapter 7 the following:

CHAPTER 9--UNITED STATES COURT OF ASBESTOS CLAIMS

Sec.

201. Establishment of the United States Court of Asbestos Claims.

202. Magistrates.

203. Retirement of judges of the United States Court of Asbestos Claims.

Sec. 201. Establishment of the United States Court of Asbestos Claims

(a) ESTABLISHMENT AND APPOINTMENT OF JUDGES-

(1) IN GENERAL- The President shall appoint, by and with the advice and consent of the Senate, 5 judges, who shall constitute a court of record known as the United States Court of Asbestos Claims.

(2) ARTICLE I COURT- The Court of Asbestos Claims is declared to be a court established under article I of the Constitution of the United States.

(b) TERM; REMOVAL; COMPENSATION-

(1) TERM- Each judge appointed under subsection (a) shall serve for a term of 15 years, except that judges initially appointed shall serve for staggered terms as the President shall determine appropriate to assure continuity.

(2) REMOVAL- Judges may be removed by the President only for good cause.

(3) COMPENSATION- Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.

(c) CHIEF JUDGE-

(1) IN GENERAL- The President shall designate 1 of the judges appointed under subsection (b)(1), who is less than 70 years of age, to serve as chief judge.

(2) TERM- The chief judge may continue to serve as such until--

(A) he or she reaches the age of 70 years;

(B) another judge is designated as chief judge by the President; or

(C) the expiration of his or her term under subsection (b)(1).

(3) CONTINUITY OF SERVICE- Upon the designation by the President of another judge to serve as chief judge, the former chief judge may continue

to serve as a judge of the Court of Asbestos Claims for the balance of the term to which he or she was appointed.

(4) POWERS OF CHIEF JUDGE- The chief judge is authorized to--

- `(A) prescribe rules and procedures for hearings and appeals of the Court of Asbestos Claims and its magistrates;
- `(B) appoint magistrates;
- `(C) appoint or contract for the services of such personnel as may be necessary and appropriate to carry out the responsibilities of the Court of Asbestos Claims; and
- `(D) make such expenditures as may be necessary and appropriate in the administration of the responsibilities of the Court of Asbestos Claims and the chief judge under this chapter and the Fairness in Asbestos Injury Resolution Act of 2003.

`(d) TIME AND PLACES OF HOLDING COURT-

`(1) IN GENERAL- The principal office of the Court of Asbestos Claims shall be in the District of Columbia, but the Court of Asbestos Claims may hold court at such times and in such places as the chief judge may prescribe by rule.

`(2) LIMITATION- The times and places of the sessions of the Court of Asbestos Claims shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Court of Asbestos Claims.

`(e) OFFICIAL DUTY STATION; RESIDENCE-

`(1) DUTY STATION- The official duty station of each judge of the Court of Asbestos Claims is the District of Columbia.

`(2) RESIDENCE- After appointment and while in active service, each judge of the Court of Asbestos Claims shall reside within 50 miles of the District of Columbia.

`Sec. 202. Magistrates

`(a) APPOINTMENT- The chief judge shall appoint such magistrates as necessary to facilitate the expeditious processing of claims.

`(b) COMPENSATION- The compensation of magistrates shall be determined by the chief judge, but shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316 of title 5.

`(c) RETIREMENT- For purposes of Federal laws relating to retirement, including chapters 83 and 84 of title 5, magistrates appointed under this section shall be deemed to be appointed under section 631 of this title.

`(d) REGULATIONS- Except as provided under subsection (c), chapter 43 shall not apply to magistrates appointed under this chapter, except the chief judge may prescribe rules similar to the provisions of chapter 43 to apply to magistrates.

`Sec. 203. Retirement of judges of the United States Court of Asbestos Claims

`(a) IN GENERAL- For purposes of Federal laws relating to retirement, judges of the Court of Asbestos Claims shall be treated in the same manner and to the same extent as judges of the Court of Federal Claims.

`(b) REGULATIONS- In carrying out this section--

`(1) the Director of the Administrative Office of the United States Courts shall promulgate regulations to apply provisions similar to section 178 of this title (including the establishment of a Court of Asbestos Claims Judges Retirement Fund) to judges of the Court of Asbestos Claims; and
` (2) the Director of the Office of Personnel Management shall promulgate regulations to apply chapters 83 and 84 of title 5 to judges of the Court of Asbestos Claims.'.

(b) TECHNICAL AND CONFORMING AMENDMENT- The table of chapters for part I of title 28, United States Code, is amended by striking the item relating to chapter 9, and inserting after the item relating to chapter 7 the following:

`9. United States Court of Asbestos Claims.'.

Subtitle B--Asbestos Injury Claims Resolution Procedures

SEC. 111. FILING OF CLAIMS.

(a) WHO MAY SUBMIT-

(1) GENERAL RULE- Any individual who has suffered from an eligible disease or condition that is believed to meet the requirements established under subtitle C (or the spouse, parent, child, or other relative of such individual in a representative capacity, or the executor of the estate of such individual) may file a claim with the Asbestos Court for an award with respect to such injury.

(2) RULES- The Asbestos Court may issue procedural rules to specify individuals who may file an asbestos claim as a representative of another individual.

(3) LIMITATION- An asbestos claim may not be filed by any person seeking contribution or indemnity.

(b) REQUIRED INFORMATION- To be valid, an asbestos claim filed under subsection (a) shall be notarized and include--

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a detailed description of the work history of the claimant, including social security records or a signed release permitting access to such records;

(4) a detailed description of the asbestos exposure of the claimant, including information on the identity of any product or manufacturer, site, or location of exposure, plant name, and duration and intensity of exposure;

(5) a detailed description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases of the claimant, including a written report by the claimant's physician with

medical diagnoses and test results necessary to make a determination of medical eligibility that complies

with the applicable requirements of this subtitle and subtitle C;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) any other information that is required to be included under procedural rules issued by the Court.

(c) STATUTE OF LIMITATIONS-

(1) IN GENERAL- Except as provided in paragraphs (2) and (3), if an individual fails to file an asbestos claim with the Asbestos Court under this section within 2 years after the date on which the individual first--

(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition,

any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EFFECT ON PENDING CLAIMS- If an asbestos claimant has any timely filed claim for an asbestos-related injury that is pending in a Federal or State court or with a trust established under title 11, United States Code, on the date of enactment of this Act, such claimant shall file an asbestos claim under this section within 2 years after such date of enactment or be barred from receiving any award under this title.

(3) EFFECT OF MULTIPLE INJURIES- An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(4) RULE OF CONSTRUCTION- Paragraph (2) shall be interpreted as a statute of limitations and be construed to the benefit of the Fund and of any person who might otherwise have been made subject to an asbestos claim to which such paragraph is applied.

**SEC. 112. GENERAL RULE CONCERNING NO-FAULT
COMPENSATION.**

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.

To be eligible for an award under this subtitle for an asbestos-related injury, an individual shall--

- (1) file an asbestos claim in a timely manner in accordance with section 111; and
- (2) prove, by a preponderance of the evidence that--
 - (A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the medical criteria requirements and diagnostic criteria requirements established under subtitle C; and
 - (B) the claimant meets the latency criteria requirements and the exposure criteria requirements established under subtitle C.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) CLAIMS EXAMINERS-

- (1) IN GENERAL- The Asbestos Court shall appoint, or contract for the services of, qualified individuals to assist magistrates by conducting eligibility reviews of asbestos claims filed with the Court.
- (2) CRITERIA- The Asbestos Court shall establish criteria with respect to the qualifications of individuals who are eligible to serve as claims examiners and, in developing such criteria, shall consult with such experts as the Court determines appropriate.

(b) REFERRAL OF ASBESTOS CLAIM- Not later than 20 days after the filing of an asbestos claim with the Asbestos Court, the Court shall refer such claim to a magistrate.

(c) INITIAL REVIEW-

- (1) IN GENERAL- Under the direction of a magistrate, a claims examiner shall make an initial review of an asbestos claim to determine whether all required information has been submitted by the claimant.
- (2) NOTICE OF INCOMPLETE CLAIM- If the claims examiner determines that all required information has not been submitted, the examiner--
 - (A) shall notify the claimant of such determination and require the submission of additional information necessary for a determination of eligibility;
 - (B) may compel the submission of any additional information;
 - (C) may request that the claimant undergo additional medical examinations and tests if information from such examinations or

tests is necessary to enable the examiner to make a determination of medical eligibility; and

(D) may require any releases necessary to enable the examiner to obtain medical or other information relevant to the determination of eligibility.

(d) EXPEDITIOUS DETERMINATIONS- The Asbestos Court shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES- The Asbestos Court shall establish audit and

personnel review procedures for evaluating the accuracy of eligibility recommendations of magistrates.

(f) ELIGIBILITY DETERMINATIONS-

(1) IN GENERAL- Not later than 60 days after the receipt by a magistrate of all required information and requested medical advice with respect to an asbestos claim, the magistrate shall transmit a recommendation of the amount of any award to which the claimant is entitled and findings of fact to a judge of the Asbestos Court.

(2) ADMISSIBILITY OF FINDINGS OF FACT- A determination under paragraph (1) shall include relevant findings of fact and shall be admissible as evidence in any judicial review.

(g) DECISION OF JUDGE-

(1) IN GENERAL- Not later than 30 days after receipt of a recommendation of a magistrate, a judge of the Asbestos Court shall make a final decision of any award to which the claimant is entitled.

(2) WAIVER OF JUDICIAL REVIEW- The final decision under paragraph (1) shall include an acceptance form by which the claimant may waive the right to judicial review and expedite payment of an award from the Fund.

(h) AWARDING OF COMPENSATION-

(1) IN GENERAL- If a judge of the Asbestos Court determines that an asbestos claimant is entitled to an award, the Court shall notify the Administrator to award the claimant an amount of the judge's decision from the Fund.

(2) CLAIM EXTINGUISHED- The acceptance of a payment under this Act shall extinguish all claims related to such payment.

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) DEVELOPMENT- The Asbestos Court shall develop methods for auditing the medical evidence submitted as part of an asbestos claim, including methods to ensure the independent reading of x-rays and results of pulmonary function tests. The Court may develop additional methods for auditing other types of evidence or information received by the Court.

(b) REFUSAL TO CONSIDER CERTAIN EVIDENCE-

(1) IN GENERAL- If the Asbestos Court determines that an audit conducted in accordance with the methods developed under subsection (a) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, the Court shall notify claims examiners and the magistrates that any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(2) NOTIFICATION- Upon a determination by the Asbestos Court under paragraph (1), the Court shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal the determination of the Court under procedures issued by the Court.

SEC. 116. CLAIMANT ASSISTANCE PROGRAM.

(a) ESTABLISHMENT- The Asbestos Court shall establish an asbestos claimant assistance program to provide assistance to claimants in preparing and submitting asbestos claim applications and in responding to claimant inquiries.

(b) LEGAL ASSISTANCE-

(1) IN GENERAL- As part of the program established under subsection (a), the Asbestos Court shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS- As part of the program, the Court shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Court. The claimants shall not be required to use the attorneys listed on such roster.

Subtitle C--Medical Criteria

SEC. 121. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.

To be eligible for an award under this title for an asbestos-related injury, an individual shall--

(1) file an asbestos claim under this title in a timely manner; and

(2) prove, by a preponderance of the evidence that--

(A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the diagnostic criteria requirements described in section 122 and the medical criteria requirements described in section 124; and
(B) the claimant meets the latency criteria requirements described in section 123 and the exposure criteria requirements described in section 125.

SEC. 122. DIAGNOSTIC CRITERIA REQUIREMENTS.

- (a) **IN GENERAL-** To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate a medical diagnosis that meets the requirements of this section.
- (b) **DIAGNOSIS-** A medical diagnosis meets the requirements of this section if the diagnosis--
- (1) is made by a physician who--
 - (A) treated, or is treating, the claimant;
 - (B) conducted an in-person medical examination of the claimant; and
 - (C) is licensed to practice medicine in the State in which the examination occurred and in which the diagnosis is rendered;
 - (2) includes a review by the physician of the work history, asbestos exposure pattern, and smoking history of the claimant, or other factors determined appropriate by the Asbestos Court;
 - (3) is independently verified with respect to the duration, proximity, regularity, and intensity of the asbestos exposure involved; and
 - (4) has excluded other more likely causes of the injury of the claimant.
- (c) **RESULTS OF MEDICAL EXAMINATIONS AND TESTS-**
- (1) **IN GENERAL-** In making the demonstration required under subsection (a), an asbestos claimant shall submit--
 - (A) x-rays (including both films and B-reader reports);
 - (B) detailed results of pulmonary function tests (including spirometric tracings);
 - (C) laboratory tests; and
 - (D) the results of medical examination or reviews of other medical evidence.
 - (2) **PROCEDURAL REQUIREMENTS-** A submission under paragraph (1) shall comply with the requirements of this Act and recognized medical standards regarding equipment, testing methods, and procedures to ensure that such medical evidence is reliable.
- (d) **SUFFICIENCY OF MEDICAL EVIDENCE-** In making determinations under this section, a magistrate shall not make a determination unless the medical evidence provided in support of the asbestos claim is credible and consistent with this section, the medical criteria described in section 124, and recognized medical standards.
- (e) **ATTORNEY RETENTION AGREEMENTS-** An attorney retention agreement shall not be required as a prerequisite to a medical examination or medical screening for purposes of obtaining a medical diagnosis or other medical information under this section.
- (f) **RULES-** The Asbestos Court shall prescribe rules to implement the diagnostic criteria requirements to be used in applying this section.

SEC. 123. LATENCY CRITERIA REQUIREMENTS.

- (a) IN GENERAL- To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate that the claimant was exposed to asbestos--
- (1) in a manner that meets the exposure requirements of sections 124 and 125;
 - (2) within the United States or its territories or possessions; and
 - (3) for at least 10 years before the initial diagnosis of any asbestos-related injury.
- (b) CONSISTENCY WITH MEDICAL CRITERIA- An asbestos claimant shall be required to demonstrate that any delay between asbestos exposure and the asbestos-related injury is consistent with medical criteria concerning the latency periods typically associated with the disease category for which the claim is being made.
- (c) VARIATIONS IN LATENCY PERIODS- Latency periods under this section may vary based on the eligible disease or condition involved.
- (d) RULES- The Asbestos Court shall prescribe rules, based on the medical literature or other appropriate medical evidence concerning latency periods, for the purpose of implementing the criteria used in applying this section.

SEC. 124. MEDICAL CRITERIA REQUIREMENTS.

- (a) DEFINITIONS- In this section, the following definitions shall apply:
- (1) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE- The term 'bilateral asbestos-related nonmalignant disease' means a diagnosis of bilateral asbestos-related nonmalignant disease based on--
 - (A) an x-ray reading of 1/0 or higher on the ILO scale; or
 - (B) an x-ray showing bilateral pleural plaques or pleural thickening, bilateral interstitial fibrosis, or bilateral interstitial markings.
 - (2) BILATERAL PLEURAL DISEASE OF B2- The term 'bilateral pleural disease of B2' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least 1/4 of the projection of the lateral chest wall.
 - (3) FEV1- The term 'FEV1' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.
 - (4) FVC- The term 'FVC' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.
 - (5) ILO GRADE- The term 'ILO grade' means the radiological ratings for the presence of lung or pleural changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.
 - (6) PATHOLOGICAL EVIDENCE OF ASBESTOSIS- The term 'pathological evidence of asbestosis' means proof of asbestosis based on

the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, 'Asbestos-associated Diseases', Vol. 106, No. 11, App. 3 (October 8, 1982).

(7) PULMONARY FUNCTION TESTING- The term 'pulmonary function testing' means spirometry testing that is in compliance with the quality criteria established from time to time by the American Thoracic Society and is performed on equipment which is in compliance with the standards of the American Thoracic Society for technical quality and calibration.

(8) SIGNIFICANT OCCUPATIONAL EXPOSURE- The term 'significant occupational exposure' means employment for a cumulative period of at least 5 years, in an industry and an occupation in which the claimant--

- (A) handled raw asbestos fibers on a regular basis;
- (B) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers;
- (C) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or
- (D) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described under subparagraph (A), (B), or (C).

(9) TLC- The term 'TLC' means total lung capacity, which is the volume of air in the lung after maximal inspiration.

(b) REQUIREMENT- To be eligible for an award or medical monitoring reimbursement under this title, a

claimant shall establish that the claimant meets the medical criteria for 1 of the following categories:

- (1) For Level I: Asymptomatic Exposure, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of a bilateral asbestos-related nonmalignant disease or an asbestos-related malignancy (except mesothelioma); and
 - (B) meaningful and credible evidence of 6 months of occupational exposure to asbestos before December 31, 1982.
- (2) For Level II: Asbestosis/Pleural Disease A, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of a bilateral asbestos-related nonmalignant disease by B-reader certified chest x-rays; and
 - (B) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and

- (ii) significant occupational exposure.
- (3) For Level III: Asbestosis/Pleural Disease B, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of asbestosis by B-reader certified chest x-rays showing bilateral pleural disease of B2 or greater, or by pathological evidence of asbestosis;
 - (B) pulmonary function testing that shows--
 - (i) TLC less than 80 percent of predicted; or
 - (ii) FVC less than 80 percent of predicted, and a FEV1/FVC ratio of not less than 65 percent;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.
- (4) For Level IV: Severe Asbestosis, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of asbestosis by B-reader certified chest x-rays of ILO Grade 2/1 or greater, or by pathological evidence of asbestosis;
 - (B) pulmonary function testing that shows--
 - (i) TLC less than 65 percent of predicted; or
 - (ii) FVC less than 65 percent of predicted, and a FEV1/FVC ratio greater than 65 percent;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.
- (5) For Level V: Other Cancer, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of a primary laryngeal, esophageal, pharyngeal, or stomach cancer;
 - (B) evidence of an underlying bilateral asbestos-related nonmalignant disease;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
- (6) For Level VI: Lung Cancer One, the claimant shall provide--

- (A) a diagnosis that meets the requirements of section 122 of a primary lung cancer;
 - (B) meaningful and credible evidence of 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (C) supporting medical documentation and certification by or on behalf of the claimant establishing asbestos exposure as a contributing factor causing the relevant lung cancer.
- (7) For Level VII: Lung Cancer Two, the claimant shall provide--
- (A) a diagnosis that meets the requirements of section 122 of a primary lung cancer;
 - (B) evidence of an underlying bilateral asbestos-related nonmalignant disease;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation and certification by or on behalf of the claimant establishing asbestos exposure as a contributing factor causing the relevant lung cancer.
- (8) For Level VIII: Mesothelioma, the claimant shall provide--
- (A) a diagnosis that meets the requirements of section 122 of mesothelioma; and
 - (B) meaningful and credible evidence of exposure to asbestos before December 31, 1982.

SEC. 125. EXPOSURE CRITERIA REQUIREMENTS.

- (a) REQUIREMENT- To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall contain information to demonstrate that--
- (1) the claimant meets the minimum exposure requirements under this subtitle; and
 - (2) such exposure to asbestos occurred within the United States, its territories, or possessions.
- (b) BURDEN OF PROOF-
- (1) IN GENERAL- An asbestos claimant has the burden of demonstrating meaningful and credible exposure to asbestos for purposes of this subtitle.
 - (2) EVIDENCE- The demonstration under paragraph (1) may be established by--
 - (A) an affidavit submitted by the claimant, a coworker of the claimant, or a family member, in the case of a deceased claimant;
 - (B) employment records;
 - (C) invoices;
 - (D) construction or other similar records; or
 - (E) other credible evidence.
- (c) RULES-

(1) EXPOSURE INFORMATION- The Asbestos Court shall issue rules prescribing specific exposure information that shall be submitted to permit the Court to process an asbestos claim and prescribing a proof of claim form. Such rules may provide that a claims examiner or magistrate, as applicable, may require the submission of other or additional evidence of exposure when determined to be appropriate and necessary.

(2) REBUTTABLE PRESUMPTIONS- The Asbestos Court may prescribe rules identifying specific industries, occupations within those industries, time periods, and employment periods for which significant occupational exposure (as defined under section 124) may be a rebuttable presumption for asbestos claimants who provide meaningful and credible evidence that the claimant worked in that industry and occupation for the requisite period of time. The Administrator may provide evidence to rebut this presumption.

Subtitle D--Awards

SEC. 131. AMOUNT.

(a) IN GENERAL- An asbestos claimant who meets the requirements of section 113 shall be entitled to an award in an amount determined by reference to the benefit table contained in subsection (b).

(b) BENEFIT TABLE-

(1) IN GENERAL- An asbestos claimant with an eligible disease or condition established in accordance with section 124, other than an injury described in paragraph (2), shall be eligible for an award according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
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(2) SCHEDULED VALUES FOR LEVELS VI AND VII-

(A) DEFINITION- In this paragraph, the term 'nonsmoker' means a claimant who--

- (i) never smoked; or
- (ii) has not smoked during any portion of the 12-year period preceding the diagnosis of the lung cancer.

(B) SCHEDULED VALUES- In accordance with subsection (a), a claimant--

- (i) who is a nonsmoker shall receive--
 - (I) \$50,000 for Level VI; and
 - (II) \$400,000 for Level VII; and
- (ii) who is not a nonsmoker shall receive--
 - (I) \$0 for Level VI; and
 - (II) \$100,000 for Level VII.

(3) MEDICAL MONITORING- An asbestos claimant with asymptomatic exposure or asbestosis/pleural disease A, based on the criteria under section 124(b)(1), shall only be eligible for medical monitoring reimbursement.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS- The filing of an asbestos claim that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 111(c).

(b) COSTS- Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for x-ray tests and pulmonary function tests every 3 years.

(c) REGULATIONS- The Administrator shall promulgate regulations that establish--

- (1) the reasonable costs for medical monitoring that is reimbursable; and
- (2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENTS.

(a) STRUCTURED PAYMENTS-

(1) IN GENERAL- An asbestos claimant who is entitled to an award shall receive the amount of the award through structured payments from the Fund, made over a period of not less than 3 years.

(2) ACCELERATED PAYMENTS- The Administrator shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the administrator receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(3) EXPEDITED PAYMENTS- The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(4) ANNUITY- An asbestos claimant may elect to receive any payments to which they are entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY- An asbestos claim shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS- An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) TREATMENT FOR INTERNAL REVENUE PURPOSES- All amounts of an award received under this subtitle shall be deemed to be compensation for

personal physical injuries or physical sickness under section 104 of the Internal Revenue Code of 1986.

(e) MEDICARE AS SECONDARY PAYER- No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL- The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of collateral source compensation that the claimant received, or is entitled to receive, for the asbestos-related injury that is the subject of the compensation.

(b) EXCLUSIONS- In no case shall statutory benefits under workers' compensation laws and veterans benefits programs be deemed as collateral source compensation for purposes of this section.

Subtitle E--En Banc Review

SEC. 141. EN BANC REVIEW.

(a) IN GENERAL-

(1) EN BANC PANELS- The chief judge of the Asbestos Court shall--

(A) establish en banc panels to carry out this subtitle; and

(B) assign 3 judges of the Asbestos Court to each en banc panel.

(2) RANDOM ASSIGNMENT OF PANELS- In carrying out paragraph (1), the chief judge shall--

(A) except as necessary to effectuate subparagraph (B), assign judges to panels randomly; and

(B) assign appeals to panels in a manner that results in no judge reviewing a decision made by that judge.

(3) FILING OF APPEAL- Not later than 30 days after receiving notice of the decision of a judge under section 114, a claimant may file an appeal for review with an en banc panel of the Asbestos Court.

(b) DE NOVO REVIEW- An Asbestos Court panel shall provide a de novo review of the magistrate's determination and the judge's decision.

(c) REPRESENTATION OF THE ADMINISTRATOR- The Administrator may appoint counsel to represent the interests of the Fund and the Administrator in all proceedings before a panel, including oral arguments and the submission of briefs.

(d) FEDERAL RULES OF APPELLATE PROCEDURE- An Asbestos Court panel shall apply the Federal Rules of Appellate Procedures to all proceedings before the panel.

(e) DECISION OF PANEL- An Asbestos Court panel shall enter a final decision on an appeal on the earlier date occurring--

- (1) not later than 30 days after the date of the conclusion of oral arguments; or
- (2) not later than 60 days after an appeal is filed under this section.

TITLE II--ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A--Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

- (1) **AFFILIATED GROUP-** The term `affiliated group'--
 - (A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and
 - (B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.
- (2) **DEBTOR-** The term `debtor'--
 - (A) means--
 - (i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and
 - (ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and
 - (B) shall not include an entity--
 - (i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or
 - (ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review.
- (3) **INDEMNIFIABLE COST-** The term `indemnifiable cost' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.
- (4) **INDEMNITEE-** The term `indemnitee' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the

defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(5) INDEMNITOR- The term 'indemnitor' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(6) PRIOR ASBESTOS EXPENDITURES- The term 'prior asbestos expenditures'--

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with any activities or disputes related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, including settlement, judgment, defense, or indemnity costs associated with these claims.

(7) TRUST- The term 'trust' means any person formed under section 524(g) of title 11, United States Code, or formed under any plan under section 1129 of title 11, United States Code, for any purpose, including administering and paying asbestos claims.

(8) ULTIMATE PARENT- The term 'ultimate parent' means a person--

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person.

SEC. 202. AUTHORITY AND TIERS.

(a) ASSESSMENT-

(1) IN GENERAL- The Administrator shall assess from defendant participants contributions to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE CONTRIBUTION LEVEL- The total contribution required of all defendant participants over the life of the Fund shall be equal to \$45,000,000,000.

(b) TIER I- The Administrator shall assign to Tier I all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than \$1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY-

(1) DEFINITION- In this subsection, the term `bankrupt business entity' means a person that is not a natural person that--

(A) filed under chapter 11, of title 11, United States Code, before January 1, 2003;

(B) has not confirmed a plan of reorganization as of the date of enactment of this Act; and

(C) the Chief Executive Officer, Chief Financial Officer, or Chief Legal Officer of that business entity certifies in writing to the bankruptcy court presiding over the business entity's case, that asbestos liability was neither the sole nor precipitating cause for the filing under chapter 11.

(2) PROCEEDING WITH REORGANIZATION PLAN- A bankrupt business entity may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if--

(A) the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that--

(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

(ii) confirmation is clearly favored by the balance of the equities; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY- If the bankruptcy court does not make the required determination, or if an order confirming the plan is not entered within 9 months after the effective date of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of the Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS-

(A) PAYMENTS BY INSURERS- To the extent that a bankrupt business entity successfully confirms a plan of reorganization, including a trust under section 524(g) of title 11, United States Code, and channeling injunction that involves payments by insurers who are otherwise subject to this Act, an insurer who makes payments to the trust under section 524(g) of title 11, United States Code, shall obtain a dollar for dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND- Any cash payments by a bankrupt business entity, if any, to a trust under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI- Except as provided in sections 202(b), 204(b), and 204(g), persons or affiliated groups shall be assigned to Tier II, III, IV, V, or VI according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

- (1) Tier II: \$75,000,000 or greater.
- (2) Tier III: \$50,000,000 or greater, but less than \$75,000,000.
- (3) Tier IV: \$10,000,000 or greater, but less than \$50,000,000.
- (4) Tier V: \$5,000,000 or greater, but less than \$10,000,000.
- (5) Tier VI: \$1,000,000 or greater, but less than \$5,000,000.

(e) ASSIGNMENTS AND COSTS-

(1) PERMANENT ASSIGNMENT- Subject to section 204(d), after the Administrator has assigned a person or affiliated group to a tier under this section, such person or affiliated group shall remain in that tier throughout the life of the Fund, regardless of subsequent events, including--

- (A) the filing of a petition under a chapter of title 11, United States Code;
- (B) a discharge from bankruptcy;
- (C) the confirmation of a plan of reorganization; or
- (D) the sale or transfer of assets to any other person or affiliated group.

(2) COSTS- The payment of contributions to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act--

- (A) shall constitute costs and expenses of administration of the case under section 503 of that title 11 and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;
- (B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and
- (C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS- Any plan of reorganization with respect to any debtor assigned to Tier I and any agreement, understanding, or undertaking

by any such debtor or any third party with respect to the treatment of any asbestos claim filed before the date of enactment of this Act and subject to confirmation of a plan under chapter 11 of title 11, United States Code, shall be superseded in their entirety by this Act. Any such plan of reorganization, agreement, understanding, or undertaking by any debtor or any third party shall be of no force or effect, and no person shall have any rights or claims with respect to any of the foregoing.

SEC. 203. SUBTIER ASSESSMENTS.

(a) IN GENERAL-

(1) **ASSESSMENTS-** Except as provided under subsections (a), (b), (d), (f), and (g) of section 204, the Administrator shall assess contributions to persons or affiliated groups within Tiers I through VII in accordance with this section.

(2) REVENUES-

(A) **IN GENERAL-** For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with section 13(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)(2)) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) **INSURANCE PREMIUMS-** Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the contribution of that defendant participant under this subtitle.

(C) **PRIVATELY HELD COMPANIES-** If the defendant participant is not required to file an earnings report with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant would have reported as revenues in the event that it had been required to file the report described under subparagraph (A).

(D) **DEBTORS-** Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is assigned to Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person.

(b) TIER I SUBTIERS-

(1) IN GENERAL- Except as provided under subsections (a), (b), (d), (f), and (g) of section 204, the Administrator shall assign each debtor in Tier I to subtiers. Each debtor or shall make contributions to the Fund as provided under this section.

(2) SUBTIER 1-

(A) IN GENERAL- All persons that are debtors with prior asbestos expenditures of \$1,000,000 or greater, shall be assigned to Subtier 1.

(B) ASSIGNMENT- Each debtor assigned to Subtier 1 shall make annual payments based on a percentage of its 2002 revenues.

(C) PAYMENT- Each debtor assigned to Subtier 1 shall pay on an annual basis the following with respect to the year of the establishment of the Fund:

(i) Years 1 through 5, 1.5005 percent of the debtor's 2002 revenues.

(ii) Years 6 through 8, 1.3504 percent of the debtor's 2002 revenues.

(iii) Years 9 through 11, 1.2154 percent of the debtor's 2002 revenues.

(iv) Years 12 through 14, 1.0938 percent of the debtor's 2002 revenues.

(v) Years 15 through 17, .9845 percent of the debtor's 2002 revenues.

(vi) Years 18 through 20, .8860 percent of the debtor's 2002 revenues.

(vii) Years 21 through 23, .7974 percent of the debtor's 2002 revenues.

(viii) Years 24 through 26, .7177 percent of the debtor's 2002 revenues.

(ix) Year 27, .1794 percent of the debtor's 2002 revenues.

(3) SUBTIER 2-

(A) IN GENERAL- Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations but hold cash or other assets that have been allocated or earmarked for asbestos settlements shall be assigned to Subtier 2.

(B) ASSIGNMENT OF ASSETS- Not later than 30 days after the date of enactment of this Act, each person assigned to Subtier 2 shall assign all of its assets to the Fund.

(4) SUBTIER 3-

(A) IN GENERAL- Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be assigned to Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS- Not later than 30 days after the date of enactment of this Act, each person

assigned to Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(C) CALCULATION OF UNENCUMBERED ASSETS-

Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance related assets, less--

- (i) all allowable administrative expenses;
- (ii) allowed priority claims under section 507 of title 11, United States Code; and
- (iii) allowed secured claims.

(c) TIER II SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier II to 1 of 5 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with--

- (A) those persons or affiliated groups with the highest revenues assigned to Subtier 1;
- (B) those persons or affiliated groups with the next highest revenues assigned to Subtier 2;
- (C) those persons or affiliated groups with the lowest revenues assigned to Subtier 5;
- (D) those persons or affiliated groups with the next lowest revenues assigned to Subtier 4; and
- (E) those persons or affiliated groups remaining assigned to Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$25,000,000.
- (B) Subtier 2: \$22,500,000.
- (C) Subtier 3: \$20,000,000.
- (D) Subtier 4: \$17,500,000.
- (E) Subtier 5: \$15,000,000.

(d) TIER III SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier III to 1 of 5 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with--

- (A) those persons or affiliated groups with the highest revenues assigned to Subtier 1;
- (B) those persons or affiliated groups with the next highest revenues assigned to Subtier 2;
- (C) those persons or affiliated groups with the lowest revenues assigned to Subtier 5;
- (D) those persons or affiliated groups with the next lowest revenues assigned to Subtier 4; and
- (E) those persons or affiliated groups remaining assigned to Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$15,000,000.
- (B) Subtier 2: \$12,500,000.
- (C) Subtier 3: \$10,000,000.
- (D) Subtier 4: \$7,500,000.
- (E) Subtier 5: \$5,000,000.

(e) TIER IV SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier IV to 1 of 4 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be assigned to Subtier 2 and the rest in Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$3,500,000.
- (B) Subtier 2: \$2,250,000.
- (C) Subtier 3: \$1,500,000.
- (D) Subtier 4: \$500,000.

(f) TIER V SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier V to 1 of 3 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$1,000,000.
- (B) Subtier 2: \$500,000.
- (C) Subtier 3: \$200,000.

(g) TIER VI SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier VI to 1 of 3 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$500,000.
- (B) Subtier 2: \$250,000.
- (C) Subtier 3: \$100,000.

(h) TIER VII-

(1) IN GENERAL- Notwithstanding any assignment to Tiers II, III, IV, V, and VI based on prior asbestos expenditures under section 204(d), a person shall be assigned to Tier VII if the person--

(A) is subject to asbestos claims brought under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.) as a result of operations as a common carrier by railroad; and

(B) have paid not less than \$5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT- The contribution requirement for persons assigned to Tier VII shall be in addition to any applicable contribution requirement that such person may be assessed under Tiers II through VI.

(3) SUBTIER 1- The Administrator shall assign each person or affiliated group in Tier VII with revenues of not less than \$5,000,000,000 to Subtier 1 and shall require each such person or affiliated group to make annual payments of \$10,000,000 into the Fund.

(4) SUBTIER 2- The Administrator shall assign each person or affiliated group in Tier VII with revenues of less than \$5,000,000,000, but not less than \$3,000,000,000 to Subtier 2, and shall require each such person or affiliated group to make annual payments of \$5,000,000 into the Fund.

(5) SUBTIER 3- The Administrator shall assign each person or affiliated group in Tier VII with revenues of less than \$3,000,000,000, but not less than \$500,000,000 to Subtier 3, and shall require each such person or affiliated group to make annual payments of \$500,000 into the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY-

(A) REVENUES- For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY- For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a contribution amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) REDUCTION ADJUSTMENTS- The Administrator shall assess contributions based on amounts provided under this subtitle for each person or affiliated group

within Tiers II, III, IV, V, VI, and VII for the first 5 years of the operation of the Fund. Beginning in year 6, and thereafter, the Administrator shall reduce the contribution amount for each defendant participant in each of these tiers in proportion to the reductions in the schedule under subsection (h)(2).

(b) SMALL BUSINESS EXEMPTION- A person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any contribution requirement under this subtitle.

(c) PROCEDURES- The Administrator shall prescribe procedures on how contributions assessed under this subtitle are to be paid.

(d) EXCEPTIONS-

(1) IN GENERAL- Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its contribution based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. Such determinations shall not prejudice the integrity of the Fund and shall not be subject to judicial review.

(2) FINANCIAL HARDSHIP ADJUSTMENTS-

(A) IN GENERAL- A defendant may apply for an adjustment based on financial hardship at any time during the life of the Fund and may qualify for such adjustment by demonstrating that the amount of its contribution under the statutory allocation would constitute a severe financial hardship.

(B) TERM- A hardship adjustment under this subsection shall have a term of 3 years.

(C) RENEWAL- A defendant may renew its hardship adjustment by demonstrating that it remains justified.

(D) LIMITATION- The Administrator may not grant hardship adjustments under this subsection in any year that exceed, in the aggregate, 3 percent of the total annual contributions required of all defendant participants.

(3) INEQUITY ADJUSTMENTS-

(A) IN GENERAL- A defendant may qualify for an adjustment based on inequity by demonstrating that the amount of its contribution under the statutory allocation is exceptionally inequitable when measured against the amount of the likely cost to the defendant of its future liability in the tort system in the absence of the Fund.

(B) TERM- Subject to the annual availability of funds in the Orphan Share Reserve Account established under section 223(e), an inequity adjustment granted by the Administrator under this subsection shall remain in effect for the life of the Fund.

(C) LIMITATION- The Administrator may grant inequity adjustments only to the extent that--

(i) the financial condition of the Fund is sufficient to accommodate such adjustments;

(ii) the Orphan Share Reserve Account is sufficient to cover such adjustments for that year; and

(iii) such adjustments do not exceed 2 percent of the total annual contributions required of all defendant participants.

(4) ADVISORY PANELS-

(A) APPOINTMENT- The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP- The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION- The panels appointed under subparagraph (A) shall coordinate their deliberations and recommendations.

(e) LIMITATION ON LIABILITY- The liability of each defendant participant to contribute to the Fund shall be limited to the payment obligations under this subtitle, and, except as provided in subsection (f), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF CONTRIBUTIONS-

(1) IN GENERAL- For purposes of determining the contribution levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submission to be made under subsection (i), to report on a consolidated basis all of the information necessary to determine the contribution level under this subtitle and contribute to the Fund on a consolidated basis.

(2) ELECTION- If an affiliated group elects consolidation as provided in this subsection--

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including without limitation with respect to the assessment of a single annual contribution under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit the submission to be made under subsection (i), on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual contribution assessed against the affiliated group, except that, if the ultimate parent does not pay when due any contribution for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this

subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES-

(1) IN GENERAL- For purposes of determining a defendant participant's prior asbestos expenditure, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditure, rather than the indemnitee's prior asbestos expenditure, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS- If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS- When computing the prior asbestos expenditure with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if--

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee, any indemnifiable cost related to the asbestos claim; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(h) MINIMUM CONTRIBUTIONS- Minimum aggregate contributions of defendant participants to the Fund in any calendar year shall be as follows:

(1) For each of the first 5 years of the Fund, the aggregate contributions of defendant participants to the fund shall be at least \$2,500,000,000.

(2) After the 5th year, the minimum aggregate contribution shall be reduced as follows:

(A) For years 6 through 8, \$2,250,000,000.

(B) For years 9 through 11, \$2,000,000,000.

(C) For years 12 through 14, \$1,750,000,000.

(D) For years 15 through 17, \$1,500,000,000.

(E) For years 18 through 20, \$1,250,000,000.

(F) For years 21 through 26, \$1,000,000,000.

(G) For year 27, \$250,000,000.

(i) PROCEDURES TO DETERMINE FUND CONTRIBUTION ASSESSMENTS-

(1) NOTICE TO PARTICIPANTS- Not later than 60 days after the initial appointment of the Administrator, the Administrator shall--

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required contribution to the Fund; and

(B) publish in the Federal Register a notice requiring any person who may be a defendant participant (as determined by criteria outlined in the notice) to submit such information.

(2) RESPONSE REQUIRED-

(A) IN GENERAL- Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Administrator with all the information requested in the notice at the earlier of--

- (i) 30 days after the receipt of direct notice; or
- (ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION- The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE OF INITIAL DETERMINATION-

(A) IN GENERAL- Not later than 60 days after receiving a response under paragraph (2), the Administrator shall send the participant a notice of initial determination assessing a contribution to the Fund, which shall be based on the information received from the participant in response to the Administrator's request for information.

(B) NO RESPONSE; INCOMPLETE RESPONSE- If no response is received from the participant, or if the response is incomplete, the initial determination assessing a contribution from the participant shall be based on the best information available to the Administrator.

(4) CONFIDENTIALITY- Any person may designate any information submitted under this subsection as confidential commercial or financial information for purposes of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act). The Administrator shall adopt procedures for designating such information as confidential.

(5) NEW INFORMATION-

(A) EXISTING PARTICIPANT- The Administrator shall adopt procedures for revising initial assessments based on new information received after the initial assessments are calculated.

(B) ADDITIONAL PARTICIPANT- If the Administrator, at any time, receives information that an additional person may qualify as a participant, the Administrator shall require such person to submit information necessary to determine whether an initial determination assessing a contribution from that person should be issued, in accordance with the requirements of this subsection.

(6) PAYMENT SCHEDULE- Any initial determination issued under this subsection may allow for periodic payments, if the full annual amount assessed is paid each year. Each participant shall pay its contribution to the Fund in the amount specified at the initial determination of assessment from the Administrator, according to the schedule specified in the initial determination.

(7) SUBPOENAS- The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(8) REHEARING- A participant has a right to obtain rehearing of the Administrator's initial determination under section 202.

Subtitle B--Asbestos Insurers Commission

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT- There is established the Asbestos Insurers Commission (referred to in this subtitle as the 'Commission') to carry out the duties described in section 212.

(b) MEMBERSHIP-

(1) APPOINTMENT- The Commission shall be composed of 5 members who shall be appointed by the President, after consultation with--

- (A) the majority leader of the Senate;
- (B) the minority leader of the Senate;
- (C) the Speaker of the House of Representatives; and
- (D) the minority leader of the House of Representatives.

(2) QUALIFICATIONS-

(A) EXPERTISE- Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST- No member of the Commission appointed under paragraph (1) may be an employee, former employee, or shareholder of any insurer participant, or an immediate family member of any such individual.

(C) FEDERAL EMPLOYMENT- A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) DATE- The appointments of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(4) PERIOD OF APPOINTMENT- Members shall be appointed for the life of the Commission.

(5) VACANCIES- Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(6) CHAIRMAN- The Commission shall select a Chairman from among its members.

(c) MEETINGS-

(1) INITIAL MEETING- Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS- The Commission shall meet at the call of the Chairman as necessary to accomplish the duties under section 212.

(3) QUORUM- No business may be conducted or hearings held without the participation of all of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER LIABILITY FOR ASBESTOS INJURIES-

(1) IN GENERAL- The Commission shall determine the amount that each insurer participant will be required to pay into the Fund to satisfy their contractual obligation to compensate claimants for asbestos injuries.

(2) ALLOCATION AGREEMENT-

(A) IN GENERAL- Not later than 30 days after the Commission issues its initial determination, the insurer participants may submit an allocation agreement, approved by all of the insurer participants, to--

(i) the Commission;

(ii) the Committee on the Judiciary of the Senate; and

(iii) the Committee on the Judiciary of the House of Representatives.

(B) CERTIFICATION- The authority of the Commission under this subtitle shall terminate on the day after the Commission certifies that an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle.

(3) GENERAL PROVISIONS-

(A) AGGREGATE CONTRIBUTION LEVEL- The total contribution required of all insurer participants over the life of the Fund shall be equal to \$45,000,000,000.

(B) DECLINING PAYMENTS- Since the payments from the Fund are expected to decline over time, the annual contributions from insurer participants is also expected to decline over time. The proportionate share of each insurer participant's contributions to the Fund will remain the same throughout the life of the Fund.

(C) SEVERAL LIABILITY- Each insurer participant's obligation to contribute to the Fund is several. There is no joint liability and the future insolvency of any insurer participant shall not affect the assessment assigned to any other insurer participant.

(4) ASSESSMENT CRITERIA-

(A) MANDATORY PARTICIPANTS- Insurers that have paid, or been assessed by a legal judgment or settlement, at least \$1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries shall be mandatory participants in the Fund. Other insurers shall be exempt from mandatory payments.

(B) PARTICIPANT TIERS- Contributions shall be determined by assigning mandatory insurer participants into tiers, which shall be determined and defined based on--

(i) net written premiums received from policies covering asbestos that were in force at any time during the period beginning on January 1, 1940 and ending on December 31, 1986;

(ii) net paid losses for asbestos injuries compared to all such losses for the insurance industry;

(iii) net carried reserve level for asbestos claims on the most recent financial statement of the insurer participant; and

(iv) future liability.

(C) PAYMENT SCHEDULE- Any final determination of assessment issued under subsection (b) may allow for periodic payments, provided that the full annual amount assessed is paid each year. Each insurer participant shall pay its contribution to the Fund in the amount specified in the final determination of assessment from the Commission, according to the schedule specified in the final determination.

(b) PROCEDURE-

(1) NOTICE TO PARTICIPANTS- Not later than 30 days after the initial meeting of the Commission, the Commission shall--

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required contribution to the Fund; and

(B) publish in the Federal Register a notice requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information.

(2) RESPONSE REQUIRED-

(A) IN GENERAL- Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice at the earlier of--

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION- The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE OF INITIAL DETERMINATION-

(A) IN GENERAL- Not later than 120 days after the initial meeting of the Commission, the Commission shall send each insurer participant a notice of initial determination assessing a contribution to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information.

(B) NO RESPONSE; INCOMPLETE RESPONSE- If no response is received from an insurer participant, or if the response is incomplete, the initial determination assessing a contribution from the insurer participant shall be based on the best information available to the Commission.

(4) REVIEW PERIOD-

(A) COMMENTS FROM INSURER PARTICIPANTS- Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support limited adjustments to the assessment received to reflect exceptional circumstances.

(B) ADDITIONAL PARTICIPANTS- If, before the final determination of the Commission,

the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether a contribution from that person should be assessed, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES- The Commission shall adopt procedures for revising initial assessments based on information received under subparagraphs (A) and (B). Any adjustments to assessment levels shall comply with the criteria under subsection (a).

(5) SUBPOENAS- The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) NOTICE OF FINAL DETERMINATION-

(A) IN GENERAL- Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(B) JUDICIAL REVIEW- A participant has a right to obtain judicial review of the Commission's final determination under title III.

(c) DETERMINATION OF RELATIVE LIABILITY FOR ASBESTOS INJURIES- The Commission shall determine the percentage of the total liability of each participant identified under subsection (a).

(d) REPORT-

(1) RECIPIENTS- Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report, containing the information described under paragraph (2), to--

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Court of Asbestos Claims.

(2) CONTENTS- The report under paragraph (1) shall contain the amount that each insurer participant is required to contribute to the Fund, including the payment schedule for such contributions.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) HEARINGS- The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES- The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES- The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS- The Commission may not accept, use, or dispose of gifts or donations of services or property.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS- Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES- The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for

employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF-

(1) IN GENERAL- The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION- The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES- Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES- The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. NONAPPLICATION OF FOIA AND CONFIDENTIALITY OF INFORMATION.

(a) IN GENERAL- Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall not apply to the Commission.

(b) CONFIDENTIALITY OF INFORMATION- All information submitted to the Commission shall be privileged and confidential information and shall not be disclosed to any person outside the Commission, unless such privilege is knowingly and intentionally waived by the person submitting the information. An appeal of an assessment to the Fund under this subtitle shall be deemed a waiver for

the purposes of this subsection unless the appellee participant makes a motion for an in camera review of its appeal.

SEC. 216. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 60 days after the date on which the Commission submits its report under section 212(c).

SEC. 217. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL- There are authorized to be appropriated to the Commission such sums as may be necessary for fiscal year 2004 to carry out the provisions of this subtitle.

(b) AVAILABILITY- Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

Subtitle C--Office of Asbestos Injury Claims Resolution

SEC. 221. ESTABLISHMENT OF THE OFFICE OF ASBESTOS INJURY CLAIMS RESOLUTION.

(a) IN GENERAL- There is established the Office of Asbestos Injury Claims Resolution.

(b) RESPONSIBILITIES- The Office shall be responsible for--

- (1) administering the Fund;
- (2) providing payments from the Fund to asbestos claimants who are determined to be eligible for awards; and
- (3) carrying out other applicable provisions of this title and other activities determined appropriate by the Administrator.

(c) ADMINISTRATOR-

- (1) APPOINTMENT- The Office shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.
- (2) TERM; REMOVAL- The Administrator shall serve for a term of 5 years and may be removable by the President only for good cause.

SEC. 222. POWERS OF THE ADMINISTRATOR AND MANAGEMENT OF THE FUND.

(a) GENERAL POWERS- The Administrator shall have the following general powers:

- (1) To promulgate such regulations as the Administrator determines to be necessary to implement the provisions of this subtitle.
- (2) To appoint employees or contract for the services of other personnel as may be necessary and appropriate to carry out the provisions of this subtitle, including entering into cooperative agreements with other Federal agencies.
- (3) To make such expenditures as may be necessary and appropriate in the administration of this subtitle.
- (4) To take all actions necessary to prudently manage the Fund, including-

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- (A) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;
- (B) defraying the reasonable expenses of administering the Fund;
- (C) investing the assets of the Fund in accordance with subsection (b)(2); and
- (D) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets.

(5) To have all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(b) REQUIREMENTS RELATING TO FUND ASSETS-

(1) IN GENERAL- Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(2) INVESTMENTS-

(A) IN GENERAL- Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(B) STRATEGY- The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action--

- (i) the size of the Fund;
- (ii) the nature and estimated duration of the Fund;
- (iii) the liquidity and distribution requirements of the Fund;
- (iv) general economic conditions at the time of the investment;
- (v) the possible effect of inflation or deflation on Fund assets;
- (vi) the role that each investment or course of action plays with respect to the overall assets of the Fund;
- (vii) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and
- (viii) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) VIOLATIONS OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH AND SAFETY REQUIREMENTS-

(1) ASBESTOS IN COMMERCE- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under section 6(a)

of the Toxic Substances Control Act (15 U.S.C. 2605(a)), relating to the manufacture, importation, processing and distribution in commerce of asbestos-containing products, the Administrator may refer the matter to the Administrator of the Environmental Protection Agency and the United States Attorney for possible civil or criminal penalties under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)).

(2) ASBESTOS AS AIR POLLUTANT- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under section 112(d) of the Clean Air Act (42 U.S.C. 7412(d)), relating to asbestos as a hazardous air pollutant, the Administrator may refer the matter to the Administrator of the Environmental Protection Agency and the United States Attorney for possible criminal and civil penalties under section 113 of the Clean Air Act (42 U.S.C. 7413).

(3) OCCUPATIONAL EXPOSURE- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator may refer the matter to the United States Attorney for possible criminal prosecution under section 5(a) of such Act (29 U.S.C. 654(a)), and to the Secretary of Labor for possible civil penalties under section 17 (a)-(d) of such Act (29 U.S.C. 666 (a)-(d)).

SEC. 223. ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT- There is established in the Office of Asbestos Injury Claims Resolution, the Asbestos Injury Claims Resolution Fund, which shall be available to pay--

- (1) claims for awards for an eligible disease or condition determined under title I;
- (2) claims for reimbursement for medical monitoring determined under title I;
- (3) principal and interest on borrowings under subsection (c); and
- (4) administrative expenses to carry out this subtitle.

(b) LIMITATIONS ON CONTRIBUTIONS BY MANDATORY

PARTICIPANTS- The aggregate contributions of all mandatory participants to the Fund may not exceed \$5,000,000,000 in any calendar year.

(c) **BORROWING AUTHORITY-** The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

(d) **GUARANTEED PAYMENT ACCOUNT-**

(1) **IN GENERAL-** The Administrator shall establish a guaranteed payment account within the Fund to insure payment of the total amount of contributions required to be paid into the Fund by all participants.

(2) **SURCHARGE-** The Administrator shall impose, on each participant required to pay contributions into the Fund under this Act, in addition to the amount of such contributions, a reasonable surcharge to be paid into the guaranteed payment account in an amount that the Administrator determines appropriate to insure against the risk of nonpayment of required contributions by any such participant.

(3) **PROCEDURE-** The surcharge required under this section shall be paid in such manner, at such times, and in accordance with such procedures as the Administrator determines appropriate.

(4) **USES OF GUARANTEED PAYMENT ACCOUNT-** Amounts in the guaranteed payment account shall be used as necessary to pay claims from the Fund, to the extent that amounts in the Fund are insufficient to pay such claims due to nonpayment by any participant.

(5) **ENFORCEMENT-** The enforcement of the payment of a surcharge under this subsection may be enforced in the same manner and to the same extent as the enforcement of a contribution under section 224.

(e) **ORPHAN SHARE RESERVE ACCOUNT-**

(1) **IN GENERAL-** To the extent the total amount of contributions of the participants in any given year exceed the maximum aggregate contribution under section 204(h), the excess monies shall be placed in an orphan share reserve account established within the Fund by the Administrator.

(2) **USE OF ACCOUNT MONIES-** Monies from the orphan share reserve account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only--

(A) in the event that a petition for relief is filed and not withdrawn for the participant under title 11, United States Code, after the date of enactment of this Act and the participant cannot meet its obligations under this subtitle; and

(B) to the extent the Administrator grants a participant relief for severe financial hardship or demonstrated inequity under this section.

SEC. 224. ENFORCEMENT OF CONTRIBUTIONS.

(a) **DEFAULT-** If any participant fails to make any payment in the amount and according to the schedule specified in a determination of assessment, after demand and 30 days opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest)

upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY- In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code.

(c) CIVIL ACTION-

(1) IN GENERAL- In any case in which there has been a refusal or neglect to pay the liability imposed by the final determination under section 202 or 212, the Administrator may bring a civil action in the Federal district court for the District of Columbia to--

(A) enforce such liability and the lien of the United States under this section; or

(B) subject any property, of whatever nature, of the participant, or in which the participant has any right, title, or interest, to the payment of such liability.

(2) DEFENSE LIMITATION- In any proceeding under this subsection, the participant shall be barred from bringing any challenge to the assessment if such challenge could have been made during the review period under section 202(b)(4) or 212(b)(4), or a judicial review proceeding under title III.

SEC. 225. ADDITIONAL CONTRIBUTING PARTICIPANTS.

(a) DEFINITION- In this section, the term 'additional contributing participant' means any defendant in an asbestos claim that is not a mandatory participant under subtitle A and is likely to avoid future civil liability as a result of this Act.

(b) ASSESSMENT- In addition to contributions assessed under subtitle A, the Administrator may assess additional contributing participants for contributions to the Fund. Any additional contributing participant assessed under this section shall be treated as a defendant participant for purposes of procedures and appeals under this Act.

(c) ASSESSMENT LIMITATIONS- The Administrator may assess under subsection (b), over the life of the Fund, an amount not to exceed \$14,000,000,000 from all additional contributing participants.

TITLE III--JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF DECISIONS OF THE ASBESTOS COURT.

(a) EXCLUSIVE JURISDICTION- The United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction over any action to review a final decision of the Asbestos Court.

(b) PROCEDURE FOR APPEALS-

(1) PERIOD FOR FILING APPEAL- An appeal under this section shall be filed not later than 30 days after the issuance of a final decision by the Asbestos Court.

(2) TRANSMITTAL OF RECORD- Upon the filing of an appeal, a copy of the filing shall be transmitted by the clerk of the court to the Asbestos Court, and the Asbestos Court shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(3) STANDARD OF REVIEW-

(A) IN GENERAL- The court shall uphold the decision of the Asbestos Court if the court determines, upon review of the record as a whole, that the decision is not arbitrary and capricious.

(B) EFFECT OF DETERMINATION- If the court determines that a final decision of the Asbestos Court is arbitrary and capricious, the court shall remand the case to the Asbestos Court.

(4) FINALITY OF DETERMINATION- The decision of the United States Court of Appeals for the District of Columbia shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

SEC. 302. JUDICIAL REVIEW OF FINAL DETERMINATIONS OF THE ADMINISTRATOR AND OF THE ASBESTOS INSURERS COMMISSION.

(a) EXCLUSIVE JURISDICTION- The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the assessment of a contribution to the Fund from a participant.

(b) PROCEDURE FOR APPEAL-

(1) PERIOD FOR FILING APPEAL- An appeal under this section shall be filed not later than 30 days after the issuance of a final determination by the Administrator or the Commission.

(2) TRANSMITTAL OF RECORD- Upon the filing of an appeal, a copy of the filing shall be transmitted by the clerk of the court to the Administrator or the Commission.

(c) STANDARD OF REVIEW-

(1) IN GENERAL- The United States District Court for the District of Columbia shall uphold the final determination of the Administrator or the Commission with respect to the assessment of a contribution to the Fund from a participant if such determination is not arbitrary and capricious.

(2) EFFECT OF DETERMINATION- If the court determines that a final determination with respect to the amount of a contribution to the Fund by a participant may not be upheld, the court shall remand the decision to the Administrator or the Commission, with instructions to modify the final determination.

(3) NO STAYS- The court may not issue a stay of payment into the Fund pending its final judgment.

(4) FINALITY OF DETERMINATION- The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court, as provided in section 1254 of title 28, United States Code.

SEC. 303. EXCLUSIVE REVIEW.

(a) EXCLUSIVITY OF REVIEW- An action of the Asbestos Court, the Administrator, or the Asbestos Insurers Commission for which review could have been obtained under section 301 or 302 shall not be subject to judicial review in any other proceeding, including proceedings before the Asbestos Court.

(b) CONSTITUTIONAL REVIEW-

(1) IN GENERAL- Notwithstanding any other provision of law, any interlocutory or final judgment,

decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

(2) PERIOD FOR FILING APPEAL- Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.

SEC. 304. PRIVATE RIGHT OF ACTION AGAINST REINSURERS.

(a) IN GENERAL- Any insurer participant may file a claim in the United States District Court for the District of Columbia against any reinsurer that is contractually obligated to reimburse such insurer participant for a portion of costs incurred as a result of payment of asbestos related claims.

(b) EXPEDITED PROCEDURES-

(1) IN GENERAL- A claim filed under subsection (a) shall be subject to expedited procedures, as prescribed by the United States District Court for the District of Columbia.

(2) EVIDENTIARY STANDARD- The plaintiff shall not recover in a claim under subsection (a) unless the plaintiff demonstrates the right to recover by a preponderance of the evidence.

(3) FINAL JUDGMENT- A final judgment shall be issued on a claim filed under subsection (a) not later than 30 days after such filing.

(c) APPEALS-

(1) IN GENERAL- An appeal from a decision under subsection (b) may be filed with the Court of Appeals for the District of Columbia.

(2) STANDARD OF REVIEW- The final judgment of the district court shall be upheld unless the court of appeals finds the judgment to be arbitrary and capricious.

(3) FINAL JUDGMENT- A final judgment shall be issued on an appeal filed under paragraph (1) not later than 30 days after such filing.

TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

Any person who knowingly provides false information in connection with an assessment of contributions, a claim for an award, or an audit under this Act shall be subject to--

- (1) criminal prosecution under section 1001 of title 18, United States Code; and
- (2) civil penalties under section 3729 of title 31, United States Code.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY- Section 362(b) of title 11, United States Code, is amended--

- (1) in paragraph (17), by striking `or' at the end;
- (2) in paragraph (18), by striking the period at the end and inserting `; or'; and
- (3) by inserting after paragraph (18) the following:
`(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2003, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).'

(b) ASSUMPTION OF EXECUTORY CONTRACTS- Section 365 of title 11, United States Code, is amended by adding at the end the following:

`(q) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.'

(c) ALLOWED ADMINISTRATIVE EXPENSES- Section 503 of title 11, United States Code, is amended by adding at the end the following:

`(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

`(2) For purposes of paragraph (1), the term `asbestos payment obligation' means any payment obligation under subtitle B of title II of the Fairness in Asbestos Injury Resolution Act of 2003.'

(d) NO DISCHARGE- Section 523 of title 11, United States Code, is amended by adding at the end the following:

`(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of

the Fairness in Asbestos Injury Resolution Act of 2003) of the payment obligations that is a debtor under subtitle B of title II of that Act.'

(e) PAYMENT- Section 524 of title 11, United States Code, is amended by adding at the end the following:

`(i) PARTICIPANT DEBTORS-

`(1) IN GENERAL- Paragraphs (2) and (3) shall apply to a debtor who--

`(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2003); and

`(B) is subject to a case under this title that is pending--

`(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003; or

`(ii) at any time during the 1-year period preceding the date of enactment of that Act.

`(2) TIER I DEBTORS- A debtor that has been assigned to tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2003 shall make payments in accordance with sections 202 and 203 of that Act.

`(3) TREATMENT OF PAYMENT OBLIGATIONS- All payment obligations of a debtor under

sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2003 shall--

`(A) constitute costs and expenses of administration of a case under section 503 of this title;

`(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

`(C) not be stayed;

`(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

`(E) not be impaired or discharged in any current or future case under this title.'

(f) TREATMENT OF TRUSTS- Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

`(j) ASBESTOS TRUSTS-

`(1) IN GENERAL- A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as is required under section 202 of the Fairness in Asbestos Injury Resolution Act of 2003 if the trust qualifies as a 'trust' under section 201 of that Act.

`(2) TRANSFER OF TRUST ASSETS-

`(A) IN GENERAL- Except as provided under subparagraphs (B) and (C), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003) shall be transferred to the Fund not later than 6 months after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003. Except as

provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 223 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred. After such transfer, each trustee of such trust shall have no liability to any beneficiary of such trust.

`(B) AUTHORITY TO REFUSE ASSETS- The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

`(C) ALLOCATION OF TRUST ASSETS- If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. Such reserved amount shall not be greater than 3 percent of the total assets in the trust and shall not be transferred to the Fund.

`(D) SALE OF FUND ASSETS- The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2003 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

`(E) LIQUIDATED CLAIMS- A trust shall not make any payment relating to asbestos claims unless such claims were liquidated in the ordinary course and the normal and usual administration of the trust consistent with past practices before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003.

`(3) INJUNCTION- Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect until the assignment required under paragraph (1) has been made.'

(g) NO AVOIDANCE OF TRANSFER- Section 546 of title 11, United States Code, is amended by adding at the end the following:

`(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the trustee may not avoid a transfer made by the debtor pursuant to its payment obligations under section 202 or 203 of that Act.'

(h) CONFIRMATION OF PLAN- Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

`(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the plan provides for the continuation after its effective date of payment of all

payment obligations under title II of that Act.'.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW- The provisions of this Act shall supersede any and all Federal and State laws insofar as they may relate to any asbestos claim filed under this Act.

(b) SUPERSEDING PROVISIONS-

(1) IN GENERAL- Any agreement, understanding, or undertaking by any person or affiliated group assigned to Tiers II through VI with respect to the treatment of any asbestos claim filed before the date of enactment of this Act that requires future performance by any party shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT- Any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any of the foregoing.

(c) EXCLUSIVE REMEDY- The remedies provided under this Act shall be the exclusive remedy for any asbestos claim under any Federal or State law.

(d) BAR ON ASBESTOS CLAIMS-

(1) IN GENERAL- No asbestos claim may be pursued in any Federal or State court, except for enforcement of claims for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before the date of enactment of this Act.

(2) PREEMPTION- Any action asserting an asbestos claim in a court of any State, except actions for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before the date of enactment of this Act, is preempted by this Act.

(3) DISMISSAL- No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the district court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(4) REMOVAL-

(A) IN GENERAL- If an action under paragraph (2) is not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS- For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within

the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES- The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) JURISDICTION- The jurisdiction of the district court shall be limited to--

- (i) determining whether removal was proper; and
- (ii) ruling on a motion to dismiss based on this Act.

END

From: CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB]
To: James J. Jukes/OMB/EOP@EOP [OMB] <James J. Jukes>; Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>; James Boden/OMB/EOP@EOP [OMB] <James Boden>; Jeffrey F. Kupfer/WHO/EOP@Exchange@EOP [WHO] <Jeffrey F. Kupfer>; Kevin Warsh/OPD/EOP@EOP [OPD] <Kevin Warsh>; Melissa N. Benton/OMB/EOP@EOP [OMB] <Melissa N. Benton>; Richard E. Green/OMB/EOP@EOP [OMB] <Richard E. Green>; Kenneth L. Schwartz/OMB/EOP@EOP [OMB] <Kenneth L. Schwartz>; Lauren E. Bloomquist/OMB/EOP@EOP [OMB] <Lauren E. Bloomquist>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/11/2003 6:41:56 AM
Subject: : FYI - S. 1125 (asbestos) markup scheduled for Thursday 6/12
Attachments: P_CVX2H003_OPD.TXT_1.doc

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lisa J. Macecevic (CN=Lisa J. Macecevic/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:11-JUN-2003 10:41:56.00
SUBJECT:: FYI - S. 1125 (asbestos) markup scheduled for Thursday 6/12
TO:James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN
TO:Stephen S. McMillin (CN=Stephen S. McMillin/OU=OMB/O=EOP@EOP [OMB])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Asbestos Bill Slated For Markup

yyyyyA bill creating a separate court system and a pool for compensation for asbestos-related litigation is tentatively scheduled for a Senate Judiciary Committee markup Thursday.

yyyyyThe bill has been in development for months in a process that has involved meetings among senators, industry lobbyists and workers' groups.

yyyyyThe "Fairness in Asbestos Injury Resolution Act" is sponsored by Judiciary Chairman Hatch and Sens. Mike DeWine, R-Ohio, and Saxby Chambliss , R-Ga. Hatch had held off offering the bill until he could build consensus behind it. But consensus has proven elusive as Democrats and labor group sought assurances of available money for damages in the event an industry fund runs dry. (from 6/11 CongressDaily AM)

FYI - Introduced text:

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REV_00237640

S 1125 IS

108th CONGRESS
1st Session
S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 22, 2003

Mr. Hatch (for himself, Mr. Nelson of Nebraska, Mr. DeWine, Mr. Miller, Mr. Voinovich, Mr. Allen, and Mr. Chambliss) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Fairness in Asbestos Injury Resolution Act of 2003' or the 'FAIR Act of 2003'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.

TITLE I--ASBESTOS CLAIMS RESOLUTION

Subtitle A--United States Court of Asbestos Claims

Sec. 101. Establishment of Asbestos Court.

Subtitle B--Asbestos Injury Claims Resolution Procedures

- Sec. 111. Filing of claims.
- Sec. 112. General rule concerning no-fault compensation.
- Sec. 113. Essential elements of eligible asbestos claim.

- Sec. 114. Eligibility determinations and claim awards.
- Sec. 115. Medical evidence auditing procedures.
- Sec. 116. Claimant assistance program.

Subtitle C--Medical Criteria

- Sec. 121. Essential elements of eligible asbestos claim.
- Sec. 122. Diagnostic criteria requirements.
- Sec. 123. Latency criteria requirements.
- Sec. 124. Medical criteria requirements.
- Sec. 125. Exposure criteria requirements.

Subtitle D--Awards

- Sec. 131. Amount.
- Sec. 132. Medical monitoring.
- Sec. 133. Payments.
- Sec. 134. Reduction in benefit payments for collateral sources.

Subtitle E--En Banc Review

- Sec. 141. En banc review.

TITLE II--ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A--Asbestos Defendants Funding Allocation

- Sec. 201. Definitions.
- Sec. 202. Authority and tiers.
- Sec. 203. Subtier assessments.
- Sec. 204. Assessment administration.

Subtitle B--Asbestos Insurers Commission

- Sec. 211. Establishment of Asbestos Insurers Commission.
- Sec. 212. Duties of Asbestos Insurers Commission.
- Sec. 213. Powers of Asbestos Insurers Commission.
- Sec. 214. Personnel matters.
- Sec. 215. Nonapplication of FOIA and confidentiality of information.
- Sec. 216. Termination of Asbestos Insurers Commission.
- Sec. 217. Authorization of appropriations.

Subtitle C--Office of Asbestos Injury Claims Resolution

- Sec. 221. Establishment of the Office of Asbestos Injury Claims Resolution.
- Sec. 222. Powers of the Administrator and management of the Fund.
- Sec. 223. Asbestos Injury Claims Resolution Fund.
- Sec. 224. Enforcement of contributions.
- Sec. 225. Additional contributing participants.

TITLE III--JUDICIAL REVIEW

- Sec. 301. Judicial review of decisions of the Asbestos Court.
- Sec. 302. Judicial review of final determinations of the Administrator and of the Asbestos Insurers Commission.
- Sec. 303. Exclusive review.
- Sec. 304. Private right of action against reinsurers.

TITLE IV--MISCELLANEOUS PROVISIONS

- Sec. 401. False information.
- Sec. 402. Effect on bankruptcy laws.
- Sec. 403. Effect on other laws and existing claims.

SEC. 2. PURPOSE.

The purpose of this Act is to create a privately funded, publicly administered fund to provide the necessary resources for an asbestos injury claims resolution program.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

- (1) ADMINISTRATOR- The term `Administrator' means the Administrator of the Office of Asbestos Injury Claims Resolution appointed under section 221(c).
- (2) ASBESTOS- The term `asbestos' includes--
 - (A) asbestos chrysotile;
 - (B) asbestos amosite;
 - (C) asbestos crocidolite;
 - (D) asbestos tremolite;
 - (E) asbestos winchite;
 - (F) asbestos richterite;
 - (G) asbestos anthophyllite;
 - (H) asbestos actinolite;
 - (I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(J) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM-

(A) IN GENERAL- The term `asbestos claim' means any personal injury claim for damages or other relief presented in a civil action or bankruptcy proceeding, arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child or other relative of any exposed person.

(B) EXCLUSION- The term does not include claims for benefits under a workers' compensation law or veterans' benefits program, or claims brought by any person as a subrogee by virtue of the payment of benefits under a workers' compensation law.

(4) ASBESTOS CLAIMANT- The term `asbestos claimant' means an individual who files an asbestos claim under section 111.

(5) ASBESTOS COURT; COURT- The terms `Asbestos Court' or `Court' means the United States Court of Asbestos Claims established under section 101.

(6) CIVIL ACTION- The term `civil action' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(7) COLLATERAL SOURCE- The term `collateral source'--

(A) means all collateral sources, including--

- (i) disability insurance;
- (ii) health insurance;
- (iii) medicare;
- (iv) medicaid;
- (v) death benefit programs;
- (vi) defendants;
- (vii) insurers of defendants; and
- (viii) compensation trusts; and

(B) shall not include life insurance.

(8) ELIGIBLE DISEASE OR CONDITION- The term `eligible disease or condition' means, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis/pleural disease, severe asbestosis disease, mesothelioma, lung cancer I, lung cancer II, other cancers, and qualifying nonmalignant asbestos-related diseases.

(9) FUND- The term `Fund' means the Asbestos Injury Claims Resolution Fund established under section 223.

- (10) LAW- The term `law' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.
- (11) PARTICIPANT- The term `participant' means any person subject to the funding requirements of title II, including--
- (A) any defendant participant subject to an assessment for contribution under subtitle A of that title; and
 - (B) any insurer participant subject to an assessment for contribution under subtitle B of that title.
- (12) PERSON- The term `person'--
- (A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and
 - (B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.
- (13) STATE- The term `State' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.
- (14) VETERANS' BENEFITS PROGRAM- The term `veterans' benefits program' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.
- (15) WORKER'S COMPENSATION LAW- The term `worker's compensation law'--
- (A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;
 - (B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. sections 901 et seq.) and chapter 81 of title 5, United States Code; and
 - (C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

TITLE I--ASBESTOS CLAIMS RESOLUTION

Subtitle A--United States Court of Asbestos Claims

SEC. 101. ESTABLISHMENT OF ASBESTOS COURT.

(a) IN GENERAL- Part I of title 28, United States Code, is amended by inserting after chapter 7 the following:

CHAPTER 9--UNITED STATES COURT OF ASBESTOS CLAIMS

Sec.

201. Establishment of the United States Court of Asbestos Claims.

202. Magistrates.

203. Retirement of judges of the United States Court of Asbestos Claims.

Sec. 201. Establishment of the United States Court of Asbestos Claims

(a) ESTABLISHMENT AND APPOINTMENT OF JUDGES-

(1) IN GENERAL- The President shall appoint, by and with the advice and consent of the Senate, 5 judges, who shall constitute a court of record known as the United States Court of Asbestos Claims.

(2) ARTICLE I COURT- The Court of Asbestos Claims is declared to be a court established under article I of the Constitution of the United States.

(b) TERM; REMOVAL; COMPENSATION-

(1) TERM- Each judge appointed under subsection (a) shall serve for a term of 15 years, except that judges initially appointed shall serve for staggered terms as the President shall determine appropriate to assure continuity.

(2) REMOVAL- Judges may be removed by the President only for good cause.

(3) COMPENSATION- Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.

(c) CHIEF JUDGE-

(1) IN GENERAL- The President shall designate 1 of the judges appointed under subsection (b)(1), who is less than 70 years of age, to serve as chief judge.

(2) TERM- The chief judge may continue to serve as such until--

(A) he or she reaches the age of 70 years;

(B) another judge is designated as chief judge by the President; or

(C) the expiration of his or her term under subsection (b)(1).

(3) CONTINUITY OF SERVICE- Upon the designation by the President of another judge to serve as chief judge, the former chief judge may continue

to serve as a judge of the Court of Asbestos Claims for the balance of the term to which he or she was appointed.

(4) POWERS OF CHIEF JUDGE- The chief judge is authorized to--

`(A) prescribe rules and procedures for hearings and appeals of the Court of Asbestos Claims and its magistrates;

`(B) appoint magistrates;

`(C) appoint or contract for the services of such personnel as may be necessary and appropriate to carry out the responsibilities of the Court of Asbestos Claims; and

`(D) make such expenditures as may be necessary and appropriate in the administration of the responsibilities of the Court of Asbestos Claims and the chief judge under this chapter and the Fairness in Asbestos Injury Resolution Act of 2003.

`(d) TIME AND PLACES OF HOLDING COURT-

`(1) IN GENERAL- The principal office of the Court of Asbestos Claims shall be in the District of Columbia, but the Court of Asbestos Claims may hold court at such times and in such places as the chief judge may prescribe by rule.

`(2) LIMITATION- The times and places of the sessions of the Court of Asbestos Claims shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Court of Asbestos Claims.

`(e) OFFICIAL DUTY STATION; RESIDENCE-

`(1) DUTY STATION- The official duty station of each judge of the Court of Asbestos Claims is the District of Columbia.

`(2) RESIDENCE- After appointment and while in active service, each judge of the Court of Asbestos Claims shall reside within 50 miles of the District of Columbia.

`Sec. 202. Magistrates

`(a) APPOINTMENT- The chief judge shall appoint such magistrates as necessary to facilitate the expeditious processing of claims.

`(b) COMPENSATION- The compensation of magistrates shall be determined by the chief judge, but shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316 of title 5.

`(c) RETIREMENT- For purposes of Federal laws relating to retirement, including chapters 83 and 84 of title 5, magistrates appointed under this section shall be deemed to be appointed under section 631 of this title.

`(d) REGULATIONS- Except as provided under subsection (c), chapter 43 shall not apply to magistrates appointed under this chapter, except the chief judge may prescribe rules similar to the provisions of chapter 43 to apply to magistrates.

`Sec. 203. Retirement of judges of the United States Court of Asbestos Claims

`(a) IN GENERAL- For purposes of Federal laws relating to retirement, judges of the Court of Asbestos Claims shall be treated in the same manner and to the same extent as judges of the Court of Federal Claims.

`(b) REGULATIONS- In carrying out this section--

(1) the Director of the Administrative Office of the United States Courts shall promulgate regulations to apply provisions similar to section 178 of this title (including the establishment of a Court of Asbestos Claims Judges Retirement Fund) to judges of the Court of Asbestos Claims; and
(2) the Director of the Office of Personnel Management shall promulgate regulations to apply chapters 83 and 84 of title 5 to judges of the Court of Asbestos Claims.'

(b) TECHNICAL AND CONFORMING AMENDMENT- The table of chapters for part I of title 28, United States Code, is amended by striking the item relating to chapter 9, and inserting after the item relating to chapter 7 the following:

'9. United States Court of Asbestos Claims.'

Subtitle B--Asbestos Injury Claims Resolution Procedures

SEC. 111. FILING OF CLAIMS.

(a) WHO MAY SUBMIT-

(1) GENERAL RULE- Any individual who has suffered from an eligible disease or condition that is believed to meet the requirements established under subtitle C (or the spouse, parent, child, or other relative of such individual in a representative capacity, or the executor of the estate of such individual) may file a claim with the Asbestos Court for an award with respect to such injury.

(2) RULES- The Asbestos Court may issue procedural rules to specify individuals who may file an asbestos claim as a representative of another individual.

(3) LIMITATION- An asbestos claim may not be filed by any person seeking contribution or indemnity.

(b) REQUIRED INFORMATION- To be valid, an asbestos claim filed under subsection (a) shall be notarized and include--

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a detailed description of the work history of the claimant, including social security records or a signed release permitting access to such records;

(4) a detailed description of the asbestos exposure of the claimant, including information on the identity of any product or manufacturer, site, or location of exposure, plant name, and duration and intensity of exposure;

(5) a detailed description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases of the claimant, including a written report by the claimant's physician with

medical diagnoses and test results necessary to make a determination of medical eligibility that complies

with the applicable requirements of this subtitle and subtitle C;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) any other information that is required to be included under procedural rules issued by the Court.

(c) STATUTE OF LIMITATIONS-

(1) IN GENERAL- Except as provided in paragraphs (2) and (3), if an individual fails to file an asbestos claim with the Asbestos Court under this section within 2 years after the date on which the individual first--

(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition,

any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EFFECT ON PENDING CLAIMS- If an asbestos claimant has any timely filed claim for an asbestos-related injury that is pending in a Federal or State court or with a trust established under title 11, United States Code, on the date of enactment of this Act, such claimant shall file an asbestos claim under this section within 2 years after such date of enactment or be barred from receiving any award under this title.

(3) EFFECT OF MULTIPLE INJURIES- An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(4) RULE OF CONSTRUCTION- Paragraph (2) shall be interpreted as a statute of limitations and be construed to the benefit of the Fund and of any person who might otherwise have been made subject to an asbestos claim to which such paragraph is applied.

**SEC. 112. GENERAL RULE CONCERNING NO-FAULT
COMPENSATION.**

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.

To be eligible for an award under this subtitle for an asbestos-related injury, an individual shall--

- (1) file an asbestos claim in a timely manner in accordance with section 111; and
- (2) prove, by a preponderance of the evidence that--
 - (A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the medical criteria requirements and diagnostic criteria requirements established under subtitle C; and
 - (B) the claimant meets the latency criteria requirements and the exposure criteria requirements established under subtitle C.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) CLAIMS EXAMINERS-

- (1) IN GENERAL- The Asbestos Court shall appoint, or contract for the services of, qualified individuals to assist magistrates by conducting eligibility reviews of asbestos claims filed with the Court.
- (2) CRITERIA- The Asbestos Court shall establish criteria with respect to the qualifications of individuals who are eligible to serve as claims examiners and, in developing such criteria, shall consult with such experts as the Court determines appropriate.

(b) REFERRAL OF ASBESTOS CLAIM- Not later than 20 days after the filing of an asbestos claim with the Asbestos Court, the Court shall refer such claim to a magistrate.

(c) INITIAL REVIEW-

- (1) IN GENERAL- Under the direction of a magistrate, a claims examiner shall make an initial review of an asbestos claim to determine whether all required information has been submitted by the claimant.
- (2) NOTICE OF INCOMPLETE CLAIM- If the claims examiner determines that all required information has not been submitted, the examiner--
 - (A) shall notify the claimant of such determination and require the submission of additional information necessary for a determination of eligibility;
 - (B) may compel the submission of any additional information;
 - (C) may request that the claimant undergo additional medical examinations and tests if information from such examinations or

tests is necessary to enable the examiner to make a determination of medical eligibility; and

(D) may require any releases necessary to enable the examiner to obtain medical or other information relevant to the determination of eligibility.

(d) EXPEDITIOUS DETERMINATIONS- The Asbestos Court shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES- The Asbestos Court shall establish audit and

personnel review procedures for evaluating the accuracy of eligibility recommendations of magistrates.

(f) ELIGIBILITY DETERMINATIONS-

(1) IN GENERAL- Not later than 60 days after the receipt by a magistrate of all required information and requested medical advice with respect to an asbestos claim, the magistrate shall transmit a recommendation of the amount of any award to which the claimant is entitled and findings of fact to a judge of the Asbestos Court.

(2) ADMISSIBILITY OF FINDINGS OF FACT- A determination under paragraph (1) shall include relevant findings of fact and shall be admissible as evidence in any judicial review.

(g) DECISION OF JUDGE-

(1) IN GENERAL- Not later than 30 days after receipt of a recommendation of a magistrate, a judge of the Asbestos Court shall make a final decision of any award to which the claimant is entitled.

(2) WAIVER OF JUDICIAL REVIEW- The final decision under paragraph (1) shall include an acceptance form by which the claimant may waive the right to judicial review and expedite payment of an award from the Fund.

(h) AWARDING OF COMPENSATION-

(1) IN GENERAL- If a judge of the Asbestos Court determines that an asbestos claimant is entitled to an award, the Court shall notify the Administrator to award the claimant an amount of the judge's decision from the Fund.

(2) CLAIM EXTINGUISHED- The acceptance of a payment under this Act shall extinguish all claims related to such payment.

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) DEVELOPMENT- The Asbestos Court shall develop methods for auditing the medical evidence submitted as part of an asbestos claim, including methods to ensure the independent reading of x-rays and results of pulmonary function tests. The Court may develop additional methods for auditing other types of evidence or information received by the Court.

(b) REFUSAL TO CONSIDER CERTAIN EVIDENCE-

(1) IN GENERAL- If the Asbestos Court determines that an audit conducted in accordance with the methods developed under subsection (a) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, the Court shall notify claims examiners and the magistrates that any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(2) NOTIFICATION- Upon a determination by the Asbestos Court under paragraph (1), the Court shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal the determination of the Court under procedures issued by the Court.

SEC. 116. CLAIMANT ASSISTANCE PROGRAM.

(a) ESTABLISHMENT- The Asbestos Court shall establish an asbestos claimant assistance program to provide assistance to claimants in preparing and submitting asbestos claim applications and in responding to claimant inquiries.

(b) LEGAL ASSISTANCE-

(1) IN GENERAL- As part of the program established under subsection (a), the Asbestos Court shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS- As part of the program, the Court shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Court. The claimants shall not be required to use the attorneys listed on such roster.

Subtitle C--Medical Criteria

SEC. 121. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.

To be eligible for an award under this title for an asbestos-related injury, an individual shall--

(1) file an asbestos claim under this title in a timely manner; and

(2) prove, by a preponderance of the evidence that--

(A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the diagnostic criteria requirements described in section 122 and the medical criteria requirements described in section 124; and
(B) the claimant meets the latency criteria requirements described in section 123 and the exposure criteria requirements described in section 125.

SEC. 122. DIAGNOSTIC CRITERIA REQUIREMENTS.

- (a) **IN GENERAL-** To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate a medical diagnosis that meets the requirements of this section.
- (b) **DIAGNOSIS-** A medical diagnosis meets the requirements of this section if the diagnosis--
- (1) is made by a physician who--
 - (A) treated, or is treating, the claimant;
 - (B) conducted an in-person medical examination of the claimant; and
 - (C) is licensed to practice medicine in the State in which the examination occurred and in which the diagnosis is rendered;
 - (2) includes a review by the physician of the work history, asbestos exposure pattern, and smoking history of the claimant, or other factors determined appropriate by the Asbestos Court;
 - (3) is independently verified with respect to the duration, proximity, regularity, and intensity of the asbestos exposure involved; and
 - (4) has excluded other more likely causes of the injury of the claimant.
- (c) **RESULTS OF MEDICAL EXAMINATIONS AND TESTS-**
- (1) **IN GENERAL-** In making the demonstration required under subsection (a), an asbestos claimant shall submit--
 - (A) x-rays (including both films and B-reader reports);
 - (B) detailed results of pulmonary function tests (including spirometric tracings);
 - (C) laboratory tests; and
 - (D) the results of medical examination or reviews of other medical evidence.
 - (2) **PROCEDURAL REQUIREMENTS-** A submission under paragraph (1) shall comply with the requirements of this Act and recognized medical standards regarding equipment, testing methods, and procedures to ensure that such medical evidence is reliable.
- (d) **SUFFICIENCY OF MEDICAL EVIDENCE-** In making determinations under this section, a magistrate shall not make a determination unless the medical evidence provided in support of the asbestos claim is credible and consistent with this section, the medical criteria described in section 124, and recognized medical standards.
- (e) **ATTORNEY RETENTION AGREEMENTS-** An attorney retention agreement shall not be required as a prerequisite to a medical examination or medical screening for purposes of obtaining a medical diagnosis or other medical information under this section.
- (f) **RULES-** The Asbestos Court shall prescribe rules to implement the diagnostic criteria requirements to be used in applying this section.

SEC. 123. LATENCY CRITERIA REQUIREMENTS.

- (a) IN GENERAL- To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate that the claimant was exposed to asbestos--
- (1) in a manner that meets the exposure requirements of sections 124 and 125;
 - (2) within the United States or its territories or possessions; and
 - (3) for at least 10 years before the initial diagnosis of any asbestos-related injury.
- (b) CONSISTENCY WITH MEDICAL CRITERIA- An asbestos claimant shall be required to demonstrate that any delay between asbestos exposure and the asbestos-related injury is consistent with medical criteria concerning the latency periods typically associated with the disease category for which the claim is being made.
- (c) VARIATIONS IN LATENCY PERIODS- Latency periods under this section may vary based on the eligible disease or condition involved.
- (d) RULES- The Asbestos Court shall prescribe rules, based on the medical literature or other appropriate medical evidence concerning latency periods, for the purpose of implementing the criteria used in applying this section.

SEC. 124. MEDICAL CRITERIA REQUIREMENTS.

- (a) DEFINITIONS- In this section, the following definitions shall apply:
- (1) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE- The term 'bilateral asbestos-related nonmalignant disease' means a diagnosis of bilateral asbestos-related nonmalignant disease based on--
 - (A) an x-ray reading of 1/0 or higher on the ILO scale; or
 - (B) an x-ray showing bilateral pleural plaques or pleural thickening, bilateral interstitial fibrosis, or bilateral interstitial markings.
 - (2) BILATERAL PLEURAL DISEASE OF B2- The term 'bilateral pleural disease of B2' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least 1/4 of the projection of the lateral chest wall.
 - (3) FEV1- The term 'FEV1' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.
 - (4) FVC- The term 'FVC' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.
 - (5) ILO GRADE- The term 'ILO grade' means the radiological ratings for the presence of lung or pleural changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.
 - (6) PATHOLOGICAL EVIDENCE OF ASBESTOSIS- The term 'pathological evidence of asbestosis' means proof of asbestosis based on

the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, 'Asbestos-associated Diseases', Vol. 106, No. 11, App. 3 (October 8, 1982).

(7) PULMONARY FUNCTION TESTING- The term 'pulmonary function testing' means spirometry testing that is in compliance with the quality criteria established from time to time by the American Thoracic Society and is performed on equipment which is in compliance with the standards of the American Thoracic Society for technical quality and calibration.

(8) SIGNIFICANT OCCUPATIONAL EXPOSURE- The term 'significant occupational exposure' means employment for a cumulative period of at least 5 years, in an industry and an occupation in which the claimant--

- (A) handled raw asbestos fibers on a regular basis;
- (B) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers;
- (C) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or
- (D) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described under subparagraph (A), (B), or (C).

(9) TLC- The term 'TLC' means total lung capacity, which is the volume of air in the lung after maximal inspiration.

(b) REQUIREMENT- To be eligible for an award or medical monitoring reimbursement under this title, a

claimant shall establish that the claimant meets the medical criteria for 1 of the following categories:

- (1) For Level I: Asymptomatic Exposure, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of a bilateral asbestos-related nonmalignant disease or an asbestos-related malignancy (except mesothelioma); and
 - (B) meaningful and credible evidence of 6 months of occupational exposure to asbestos before December 31, 1982.
- (2) For Level II: Asbestosis/Pleural Disease A, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of a bilateral asbestos-related nonmalignant disease by B-reader certified chest x-rays; and
 - (B) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and

- (ii) significant occupational exposure.
- (3) For Level III: Asbestosis/Pleural Disease B, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of asbestosis by B-reader certified chest x-rays showing bilateral pleural disease of B2 or greater, or by pathological evidence of asbestosis;
 - (B) pulmonary function testing that shows--
 - (i) TLC less than 80 percent of predicted; or
 - (ii) FVC less than 80 percent of predicted, and a FEV1/FVC ratio of not less than 65 percent;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.
- (4) For Level IV: Severe Asbestosis, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of asbestosis by B-reader certified chest x-rays of ILO Grade 2/1 or greater, or by pathological evidence of asbestosis;
 - (B) pulmonary function testing that shows--
 - (i) TLC less than 65 percent of predicted; or
 - (ii) FVC less than 65 percent of predicted, and a FEV1/FVC ratio greater than 65 percent;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.
- (5) For Level V: Other Cancer, the claimant shall provide--
 - (A) a diagnosis that meets the requirements of section 122 of a primary laryngeal, esophageal, pharyngeal, or stomach cancer;
 - (B) evidence of an underlying bilateral asbestos-related nonmalignant disease;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
- (6) For Level VI: Lung Cancer One, the claimant shall provide--

- (A) a diagnosis that meets the requirements of section 122 of a primary lung cancer;
 - (B) meaningful and credible evidence of 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (C) supporting medical documentation and certification by or on behalf of the claimant establishing asbestos exposure as a contributing factor causing the relevant lung cancer.
- (7) For Level VII: Lung Cancer Two, the claimant shall provide--
- (A) a diagnosis that meets the requirements of section 122 of a primary lung cancer;
 - (B) evidence of an underlying bilateral asbestos-related nonmalignant disease;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation and certification by or on behalf of the claimant establishing asbestos exposure as a contributing factor causing the relevant lung cancer.
- (8) For Level VIII: Mesothelioma, the claimant shall provide--
- (A) a diagnosis that meets the requirements of section 122 of mesothelioma; and
 - (B) meaningful and credible evidence of exposure to asbestos before December 31, 1982.

SEC. 125. EXPOSURE CRITERIA REQUIREMENTS.

- (a) REQUIREMENT- To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall contain information to demonstrate that--
- (1) the claimant meets the minimum exposure requirements under this subtitle; and
 - (2) such exposure to asbestos occurred within the United States, its territories, or possessions.
- (b) BURDEN OF PROOF-
- (1) IN GENERAL- An asbestos claimant has the burden of demonstrating meaningful and credible exposure to asbestos for purposes of this subtitle.
 - (2) EVIDENCE- The demonstration under paragraph (1) may be established by--
 - (A) an affidavit submitted by the claimant, a coworker of the claimant, or a family member, in the case of a deceased claimant;
 - (B) employment records;
 - (C) invoices;
 - (D) construction or other similar records; or
 - (E) other credible evidence.
- (c) RULES-

(1) EXPOSURE INFORMATION- The Asbestos Court shall issue rules prescribing specific exposure information that shall be submitted to permit the Court to process an asbestos claim and prescribing a proof of claim form. Such rules may provide that a claims examiner or magistrate, as applicable, may require the submission of other or additional evidence of exposure when determined to be appropriate and necessary.

(2) REBUTTABLE PRESUMPTIONS- The Asbestos Court may prescribe rules identifying specific industries, occupations within those industries, time periods, and employment periods for which significant occupational exposure (as defined under section 124) may be a rebuttable presumption for asbestos claimants who provide meaningful and credible evidence that the claimant worked in that industry and occupation for the requisite period of time. The Administrator may provide evidence to rebut this presumption.

Subtitle D--Awards

SEC. 131. AMOUNT.

(a) IN GENERAL- An asbestos claimant who meets the requirements of section 113 shall be entitled to an award in an amount determined by reference to the benefit table contained in subsection (b).

(b) BENEFIT TABLE-

(1) IN GENERAL- An asbestos claimant with an eligible disease or condition established in accordance with section 124, other than an injury described in paragraph (2), shall be eligible for an award according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
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(2) SCHEDULED VALUES FOR LEVELS VI AND VII-

(A) DEFINITION- In this paragraph, the term 'nonsmoker' means a claimant who--

- (i) never smoked; or
- (ii) has not smoked during any portion of the 12-year period preceding the diagnosis of the lung cancer.

(B) SCHEDULED VALUES- In accordance with subsection (a), a claimant--

- (i) who is a nonsmoker shall receive--
 - (I) \$50,000 for Level VI; and
 - (II) \$400,000 for Level VII; and
- (ii) who is not a nonsmoker shall receive--
 - (I) \$0 for Level VI; and
 - (II) \$100,000 for Level VII.

(3) MEDICAL MONITORING- An asbestos claimant with asymptomatic exposure or asbestosis/pleural disease A, based on the criteria under section 124(b)(1), shall only be eligible for medical monitoring reimbursement.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS- The filing of an asbestos claim that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 111(c).

(b) COSTS- Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for x-ray tests and pulmonary function tests every 3 years.

(c) REGULATIONS- The Administrator shall promulgate regulations that establish--

- (1) the reasonable costs for medical monitoring that is reimbursable; and
- (2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENTS.

(a) STRUCTURED PAYMENTS-

(1) IN GENERAL- An asbestos claimant who is entitled to an award shall receive the amount of the award through structured payments from the Fund, made over a period of not less than 3 years.

(2) ACCELERATED PAYMENTS- The Administrator shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the administrator receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(3) EXPEDITED PAYMENTS- The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(4) ANNUITY- An asbestos claimant may elect to receive any payments to which they are entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY- An asbestos claim shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS- An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) TREATMENT FOR INTERNAL REVENUE PURPOSES- All amounts of an award received under this subtitle shall be deemed to be compensation for

personal physical injuries or physical sickness under section 104 of the Internal Revenue Code of 1986.

(e) MEDICARE AS SECONDARY PAYER- No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL- The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of collateral source compensation that the claimant received, or is entitled to receive, for the asbestos-related injury that is the subject of the compensation.

(b) EXCLUSIONS- In no case shall statutory benefits under workers' compensation laws and veterans benefits programs be deemed as collateral source compensation for purposes of this section.

Subtitle E--En Banc Review

SEC. 141. EN BANC REVIEW.

(a) IN GENERAL-

(1) EN BANC PANELS- The chief judge of the Asbestos Court shall--

(A) establish en banc panels to carry out this subtitle; and

(B) assign 3 judges of the Asbestos Court to each en banc panel.

(2) RANDOM ASSIGNMENT OF PANELS- In carrying out paragraph (1), the chief judge shall--

(A) except as necessary to effectuate subparagraph (B), assign judges to panels randomly; and

(B) assign appeals to panels in a manner that results in no judge reviewing a decision made by that judge.

(3) FILING OF APPEAL- Not later than 30 days after receiving notice of the decision of a judge under section 114, a claimant may file an appeal for review with an en banc panel of the Asbestos Court.

(b) DE NOVO REVIEW- An Asbestos Court panel shall provide a de novo review of the magistrate's determination and the judge's decision.

(c) REPRESENTATION OF THE ADMINISTRATOR- The Administrator may appoint counsel to represent the interests of the Fund and the Administrator in all proceedings before a panel, including oral arguments and the submission of briefs.

(d) FEDERAL RULES OF APPELLATE PROCEDURE- An Asbestos Court panel shall apply the Federal Rules of Appellate Procedures to all proceedings before the panel.

(e) DECISION OF PANEL- An Asbestos Court panel shall enter a final decision on an appeal on the earlier date occurring--

- (1) not later than 30 days after the date of the conclusion of oral arguments; or
- (2) not later than 60 days after an appeal is filed under this section.

TITLE II--ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A--Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

- (1) **AFFILIATED GROUP-** The term `affiliated group'--
 - (A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and
 - (B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.
- (2) **DEBTOR-** The term `debtor'--
 - (A) means--
 - (i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and
 - (ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and
 - (B) shall not include an entity--
 - (i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or
 - (ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review.
- (3) **INDEMNIFIABLE COST-** The term `indemnifiable cost' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.
- (4) **INDEMNITEE-** The term `indemnitee' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the

defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(5) INDEMNITOR- The term 'indemnitor' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(6) PRIOR ASBESTOS EXPENDITURES- The term 'prior asbestos expenditures'--

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with any activities or disputes related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, including settlement, judgment, defense, or indemnity costs associated with these claims.

(7) TRUST- The term 'trust' means any person formed under section 524(g) of title 11, United States Code, or formed under any plan under section 1129 of title 11, United States Code, for any purpose, including administering and paying asbestos claims.

(8) ULTIMATE PARENT- The term 'ultimate parent' means a person--

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person.

SEC. 202. AUTHORITY AND TIERS.

(a) ASSESSMENT-

(1) IN GENERAL- The Administrator shall assess from defendant participants contributions to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE CONTRIBUTION LEVEL- The total contribution required of all defendant participants over the life of the Fund shall be equal to \$45,000,000,000.

(b) TIER I- The Administrator shall assign to Tier I all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than \$1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY-

(1) DEFINITION- In this subsection, the term `bankrupt business entity' means a person that is not a natural person that--

(A) filed under chapter 11, of title 11, United States Code, before January 1, 2003;

(B) has not confirmed a plan of reorganization as of the date of enactment of this Act; and

(C) the Chief Executive Officer, Chief Financial Officer, or Chief Legal Officer of that business entity certifies in writing to the bankruptcy court presiding over the business entity's case, that asbestos liability was neither the sole nor precipitating cause for the filing under chapter 11.

(2) PROCEEDING WITH REORGANIZATION PLAN- A bankrupt business entity may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if--

(A) the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that--

(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

(ii) confirmation is clearly favored by the balance of the equities; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY- If the bankruptcy court does not make the required determination, or if an order confirming the plan is not entered within 9 months after the effective date of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of the Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS-

(A) PAYMENTS BY INSURERS- To the extent that a bankrupt business entity successfully confirms a plan of reorganization, including a trust under section 524(g) of title 11, United States Code, and channeling injunction that involves payments by insurers who are otherwise subject to this Act, an insurer who makes payments to the trust under section 524(g) of title 11, United States Code, shall obtain a dollar for dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND- Any cash payments by a bankrupt business entity, if any, to a trust under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI- Except as provided in sections 202(b), 204(b), and 204(g), persons or affiliated groups shall be assigned to Tier II, III, IV, V, or VI according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

- (1) Tier II: \$75,000,000 or greater.
- (2) Tier III: \$50,000,000 or greater, but less than \$75,000,000.
- (3) Tier IV: \$10,000,000 or greater, but less than \$50,000,000.
- (4) Tier V: \$5,000,000 or greater, but less than \$10,000,000.
- (5) Tier VI: \$1,000,000 or greater, but less than \$5,000,000.

(e) ASSIGNMENTS AND COSTS-

(1) PERMANENT ASSIGNMENT- Subject to section 204(d), after the Administrator has assigned a person or affiliated group to a tier under this section, such person or affiliated group shall remain in that tier throughout the life of the Fund, regardless of subsequent events, including--

- (A) the filing of a petition under a chapter of title 11, United States Code;
- (B) a discharge from bankruptcy;
- (C) the confirmation of a plan of reorganization; or
- (D) the sale or transfer of assets to any other person or affiliated group.

(2) COSTS- The payment of contributions to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act--

- (A) shall constitute costs and expenses of administration of the case under section 503 of that title 11 and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;
- (B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and
- (C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS- Any plan of reorganization with respect to any debtor assigned to Tier I and any agreement, understanding, or undertaking

by any such debtor or any third party with respect to the treatment of any asbestos claim filed before the date of enactment of this Act and subject to confirmation of a plan under chapter 11 of title 11, United States Code, shall be superseded in their entirety by this Act. Any such plan of reorganization, agreement, understanding, or undertaking by any debtor or any third party shall be of no force or effect, and no person shall have any rights or claims with respect to any of the foregoing.

SEC. 203. SUBTIER ASSESSMENTS.

(a) IN GENERAL-

(1) **ASSESSMENTS-** Except as provided under subsections (a), (b), (d), (f), and (g) of section 204, the Administrator shall assess contributions to persons or affiliated groups within Tiers I through VII in accordance with this section.

(2) REVENUES-

(A) **IN GENERAL-** For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with section 13(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)(2)) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) **INSURANCE PREMIUMS-** Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the contribution of that defendant participant under this subtitle.

(C) **PRIVATELY HELD COMPANIES-** If the defendant participant is not required to file an earnings report with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant would have reported as revenues in the event that it had been required to file the report described under subparagraph (A).

(D) **DEBTORS-** Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is assigned to Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person.

(b) TIER I SUBTIERS-

(1) IN GENERAL- Except as provided under subsections (a), (b), (d), (f), and (g) of section 204, the Administrator shall assign each debtor in Tier I to subtiers. Each debtor or shall make contributions to the Fund as provided under this section.

(2) SUBTIER 1-

(A) IN GENERAL- All persons that are debtors with prior asbestos expenditures of \$1,000,000 or greater, shall be assigned to Subtier 1.

(B) ASSIGNMENT- Each debtor assigned to Subtier 1 shall make annual payments based on a percentage of its 2002 revenues.

(C) PAYMENT- Each debtor assigned to Subtier 1 shall pay on an annual basis the following with respect to the year of the establishment of the Fund:

(i) Years 1 through 5, 1.5005 percent of the debtor's 2002 revenues.

(ii) Years 6 through 8, 1.3504 percent of the debtor's 2002 revenues.

(iii) Years 9 through 11, 1.2154 percent of the debtor's 2002 revenues.

(iv) Years 12 through 14, 1.0938 percent of the debtor's 2002 revenues.

(v) Years 15 through 17, .9845 percent of the debtor's 2002 revenues.

(vi) Years 18 through 20, .8860 percent of the debtor's 2002 revenues.

(vii) Years 21 through 23, .7974 percent of the debtor's 2002 revenues.

(viii) Years 24 through 26, .7177 percent of the debtor's 2002 revenues.

(ix) Year 27, .1794 percent of the debtor's 2002 revenues.

(3) SUBTIER 2-

(A) IN GENERAL- Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations but hold cash or other assets that have been allocated or earmarked for asbestos settlements shall be assigned to Subtier 2.

(B) ASSIGNMENT OF ASSETS- Not later than 30 days after the date of enactment of this Act, each person assigned to Subtier 2 shall assign all of its assets to the Fund.

(4) SUBTIER 3-

(A) IN GENERAL- Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be assigned to Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS- Not later than 30 days after the date of enactment of this Act, each person

assigned to Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(C) CALCULATION OF UNENCUMBERED ASSETS-

Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance related assets, less--

- (i) all allowable administrative expenses;
- (ii) allowed priority claims under section 507 of title 11, United States Code; and
- (iii) allowed secured claims.

(c) TIER II SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier II to 1 of 5 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with--

- (A) those persons or affiliated groups with the highest revenues assigned to Subtier 1;
- (B) those persons or affiliated groups with the next highest revenues assigned to Subtier 2;
- (C) those persons or affiliated groups with the lowest revenues assigned to Subtier 5;
- (D) those persons or affiliated groups with the next lowest revenues assigned to Subtier 4; and
- (E) those persons or affiliated groups remaining assigned to Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$25,000,000.
- (B) Subtier 2: \$22,500,000.
- (C) Subtier 3: \$20,000,000.
- (D) Subtier 4: \$17,500,000.
- (E) Subtier 5: \$15,000,000.

(d) TIER III SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier III to 1 of 5 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with--

- (A) those persons or affiliated groups with the highest revenues assigned to Subtier 1;
- (B) those persons or affiliated groups with the next highest revenues assigned to Subtier 2;
- (C) those persons or affiliated groups with the lowest revenues assigned to Subtier 5;
- (D) those persons or affiliated groups with the next lowest revenues assigned to Subtier 4; and
- (E) those persons or affiliated groups remaining assigned to Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$15,000,000.
- (B) Subtier 2: \$12,500,000.
- (C) Subtier 3: \$10,000,000.
- (D) Subtier 4: \$7,500,000.
- (E) Subtier 5: \$5,000,000.

(e) TIER IV SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier IV to 1 of 4 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be assigned to Subtier 2 and the rest in Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$3,500,000.
- (B) Subtier 2: \$2,250,000.
- (C) Subtier 3: \$1,500,000.
- (D) Subtier 4: \$500,000.

(f) TIER V SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier V to 1 of 3 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$1,000,000.
- (B) Subtier 2: \$500,000.
- (C) Subtier 3: \$200,000.

(g) TIER VI SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier VI to 1 of 3 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$500,000.
- (B) Subtier 2: \$250,000.
- (C) Subtier 3: \$100,000.

(h) TIER VII-

(1) IN GENERAL- Notwithstanding any assignment to Tiers II, III, IV, V, and VI based on prior asbestos expenditures under section 204(d), a person shall be assigned to Tier VII if the person--

(A) is subject to asbestos claims brought under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.) as a result of operations as a common carrier by railroad; and

(B) have paid not less than \$5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT- The contribution requirement for persons assigned to Tier VII shall be in addition to any applicable contribution requirement that such person may be assessed under Tiers II through VI.

(3) SUBTIER 1- The Administrator shall assign each person or affiliated group in Tier VII with revenues of not less than \$5,000,000,000 to Subtier 1 and shall require each such person or affiliated group to make annual payments of \$10,000,000 into the Fund.

(4) SUBTIER 2- The Administrator shall assign each person or affiliated group in Tier VII with revenues of less than \$5,000,000,000, but not less than \$3,000,000,000 to Subtier 2, and shall require each such person or affiliated group to make annual payments of \$5,000,000 into the Fund.

(5) SUBTIER 3- The Administrator shall assign each person or affiliated group in Tier VII with revenues of less than \$3,000,000,000, but not less than \$500,000,000 to Subtier 3, and shall require each such person or affiliated group to make annual payments of \$500,000 into the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY-

(A) REVENUES- For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY- For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a contribution amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) REDUCTION ADJUSTMENTS- The Administrator shall assess contributions based on amounts provided under this subtitle for each person or affiliated group

within Tiers II, III, IV, V, VI, and VII for the first 5 years of the operation of the Fund. Beginning in year 6, and thereafter, the Administrator shall reduce the contribution amount for each defendant participant in each of these tiers in proportion to the reductions in the schedule under subsection (h)(2).

(b) SMALL BUSINESS EXEMPTION- A person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any contribution requirement under this subtitle.

(c) PROCEDURES- The Administrator shall prescribe procedures on how contributions assessed under this subtitle are to be paid.

(d) EXCEPTIONS-

(1) IN GENERAL- Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its contribution based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. Such determinations shall not prejudice the integrity of the Fund and shall not be subject to judicial review.

(2) FINANCIAL HARDSHIP ADJUSTMENTS-

(A) IN GENERAL- A defendant may apply for an adjustment based on financial hardship at any time during the life of the Fund and may qualify for such adjustment by demonstrating that the amount of its contribution under the statutory allocation would constitute a severe financial hardship.

(B) TERM- A hardship adjustment under this subsection shall have a term of 3 years.

(C) RENEWAL- A defendant may renew its hardship adjustment by demonstrating that it remains justified.

(D) LIMITATION- The Administrator may not grant hardship adjustments under this subsection in any year that exceed, in the aggregate, 3 percent of the total annual contributions required of all defendant participants.

(3) INEQUITY ADJUSTMENTS-

(A) IN GENERAL- A defendant may qualify for an adjustment based on inequity by demonstrating that the amount of its contribution under the statutory allocation is exceptionally inequitable when measured against the amount of the likely cost to the defendant of its future liability in the tort system in the absence of the Fund.

(B) TERM- Subject to the annual availability of funds in the Orphan Share Reserve Account established under section 223(e), an inequity adjustment granted by the Administrator under this subsection shall remain in effect for the life of the Fund.

(C) LIMITATION- The Administrator may grant inequity adjustments only to the extent that--

(i) the financial condition of the Fund is sufficient to accommodate such adjustments;

(ii) the Orphan Share Reserve Account is sufficient to cover such adjustments for that year; and

(iii) such adjustments do not exceed 2 percent of the total annual contributions required of all defendant participants.

(4) ADVISORY PANELS-

(A) APPOINTMENT- The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP- The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION- The panels appointed under subparagraph (A) shall coordinate their deliberations and recommendations.

(e) LIMITATION ON LIABILITY- The liability of each defendant participant to contribute to the Fund shall be limited to the payment obligations under this subtitle, and, except as provided in subsection (f), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF CONTRIBUTIONS-

(1) IN GENERAL- For purposes of determining the contribution levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submission to be made under subsection (i), to report on a consolidated basis all of the information necessary to determine the contribution level under this subtitle and contribute to the Fund on a consolidated basis.

(2) ELECTION- If an affiliated group elects consolidation as provided in this subsection--

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including without limitation with respect to the assessment of a single annual contribution under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit the submission to be made under subsection (i), on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual contribution assessed against the affiliated group, except that, if the ultimate parent does not pay when due any contribution for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this

subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES-

(1) IN GENERAL- For purposes of determining a defendant participant's prior asbestos expenditure, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditure, rather than the indemnitee's prior asbestos expenditure, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS- If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS- When computing the prior asbestos expenditure with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if--

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee, any indemnifiable cost related to the asbestos claim; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(h) MINIMUM CONTRIBUTIONS- Minimum aggregate contributions of defendant participants to the Fund in any calendar year shall be as follows:

(1) For each of the first 5 years of the Fund, the aggregate contributions of defendant participants to the fund shall be at least \$2,500,000,000.

(2) After the 5th year, the minimum aggregate contribution shall be reduced as follows:

(A) For years 6 through 8, \$2,250,000,000.

(B) For years 9 through 11, \$2,000,000,000.

(C) For years 12 through 14, \$1,750,000,000.

(D) For years 15 through 17, \$1,500,000,000.

(E) For years 18 through 20, \$1,250,000,000.

(F) For years 21 through 26, \$1,000,000,000.

(G) For year 27, \$250,000,000.

(i) PROCEDURES TO DETERMINE FUND CONTRIBUTION ASSESSMENTS-

(1) NOTICE TO PARTICIPANTS- Not later than 60 days after the initial appointment of the Administrator, the Administrator shall--

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required contribution to the Fund; and

(B) publish in the Federal Register a notice requiring any person who may be a defendant participant (as determined by criteria outlined in the notice) to submit such information.

(2) RESPONSE REQUIRED-

(A) IN GENERAL- Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Administrator with all the information requested in the notice at the earlier of--

- (i) 30 days after the receipt of direct notice; or
- (ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION- The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE OF INITIAL DETERMINATION-

(A) IN GENERAL- Not later than 60 days after receiving a response under paragraph (2), the Administrator shall send the participant a notice of initial determination assessing a contribution to the Fund, which shall be based on the information received from the participant in response to the Administrator's request for information.

(B) NO RESPONSE; INCOMPLETE RESPONSE- If no response is received from the participant, or if the response is incomplete, the initial determination assessing a contribution from the participant shall be based on the best information available to the Administrator.

(4) CONFIDENTIALITY- Any person may designate any information submitted under this subsection as confidential commercial or financial information for purposes of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act). The Administrator shall adopt procedures for designating such information as confidential.

(5) NEW INFORMATION-

(A) EXISTING PARTICIPANT- The Administrator shall adopt procedures for revising initial assessments based on new information received after the initial assessments are calculated.

(B) ADDITIONAL PARTICIPANT- If the Administrator, at any time, receives information that an additional person may qualify as a participant, the Administrator shall require such person to submit information necessary to determine whether an initial determination assessing a contribution from that person should be issued, in accordance with the requirements of this subsection.

(6) PAYMENT SCHEDULE- Any initial determination issued under this subsection may allow for periodic payments, if the full annual amount assessed is paid each year. Each participant shall pay its contribution to the Fund in the amount specified at the initial determination of assessment from the Administrator, according to the schedule specified in the initial determination.

(7) SUBPOENAS- The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(8) REHEARING- A participant has a right to obtain rehearing of the Administrator's initial determination under section 202.

Subtitle B--Asbestos Insurers Commission

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT- There is established the Asbestos Insurers Commission (referred to in this subtitle as the 'Commission') to carry out the duties described in section 212.

(b) MEMBERSHIP-

(1) APPOINTMENT- The Commission shall be composed of 5 members who shall be appointed by the President, after consultation with--

- (A) the majority leader of the Senate;
- (B) the minority leader of the Senate;
- (C) the Speaker of the House of Representatives; and
- (D) the minority leader of the House of Representatives.

(2) QUALIFICATIONS-

(A) EXPERTISE- Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST- No member of the Commission appointed under paragraph (1) may be an employee, former employee, or shareholder of any insurer participant, or an immediate family member of any such individual.

(C) FEDERAL EMPLOYMENT- A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) DATE- The appointments of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(4) PERIOD OF APPOINTMENT- Members shall be appointed for the life of the Commission.

(5) VACANCIES- Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(6) CHAIRMAN- The Commission shall select a Chairman from among its members.

(c) MEETINGS-

(1) INITIAL MEETING- Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS- The Commission shall meet at the call of the Chairman as necessary to accomplish the duties under section 212.

(3) QUORUM- No business may be conducted or hearings held without the participation of all of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER LIABILITY FOR ASBESTOS INJURIES-

(1) IN GENERAL- The Commission shall determine the amount that each insurer participant will be required to pay into the Fund to satisfy their contractual obligation to compensate claimants for asbestos injuries.

(2) ALLOCATION AGREEMENT-

(A) IN GENERAL- Not later than 30 days after the Commission issues its initial determination, the insurer participants may submit an allocation agreement, approved by all of the insurer participants, to--

(i) the Commission;

(ii) the Committee on the Judiciary of the Senate; and

(iii) the Committee on the Judiciary of the House of Representatives.

(B) CERTIFICATION- The authority of the Commission under this subtitle shall terminate on the day after the Commission certifies that an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle.

(3) GENERAL PROVISIONS-

(A) AGGREGATE CONTRIBUTION LEVEL- The total contribution required of all insurer participants over the life of the Fund shall be equal to \$45,000,000,000.

(B) DECLINING PAYMENTS- Since the payments from the Fund are expected to decline over time, the annual contributions from insurer participants is also expected to decline over time. The proportionate share of each insurer participant's contributions to the Fund will remain the same throughout the life of the Fund.

(C) SEVERAL LIABILITY- Each insurer participant's obligation to contribute to the Fund is several. There is no joint liability and the future insolvency of any insurer participant shall not affect the assessment assigned to any other insurer participant.

(4) ASSESSMENT CRITERIA-

(A) MANDATORY PARTICIPANTS- Insurers that have paid, or been assessed by a legal judgment or settlement, at least \$1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries shall be mandatory participants in the Fund. Other insurers shall be exempt from mandatory payments.

(B) PARTICIPANT TIERS- Contributions shall be determined by assigning mandatory insurer participants into tiers, which shall be determined and defined based on--

(i) net written premiums received from policies covering asbestos that were in force at any time during the period beginning on January 1, 1940 and ending on December 31, 1986;

(ii) net paid losses for asbestos injuries compared to all such losses for the insurance industry;

(iii) net carried reserve level for asbestos claims on the most recent financial statement of the insurer participant; and

(iv) future liability.

(C) PAYMENT SCHEDULE- Any final determination of assessment issued under subsection (b) may allow for periodic payments, provided that the full annual amount assessed is paid each year. Each insurer participant shall pay its contribution to the Fund in the amount specified in the final determination of assessment from the Commission, according to the schedule specified in the final determination.

(b) PROCEDURE-

(1) NOTICE TO PARTICIPANTS- Not later than 30 days after the initial meeting of the Commission, the Commission shall--

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required contribution to the Fund; and

(B) publish in the Federal Register a notice requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information.

(2) RESPONSE REQUIRED-

(A) IN GENERAL- Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice at the earlier of--

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION- The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE OF INITIAL DETERMINATION-

(A) IN GENERAL- Not later than 120 days after the initial meeting of the Commission, the Commission shall send each insurer participant a notice of initial determination assessing a contribution to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information.

(B) NO RESPONSE; INCOMPLETE RESPONSE- If no response is received from an insurer participant, or if the response is incomplete, the initial determination assessing a contribution from the insurer participant shall be based on the best information available to the Commission.

(4) REVIEW PERIOD-

(A) COMMENTS FROM INSURER PARTICIPANTS- Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support limited adjustments to the assessment received to reflect exceptional circumstances.

(B) ADDITIONAL PARTICIPANTS- If, before the final determination of the Commission,

the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether a contribution from that person should be assessed, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES- The Commission shall adopt procedures for revising initial assessments based on information received under subparagraphs (A) and (B). Any adjustments to assessment levels shall comply with the criteria under subsection (a).

(5) SUBPOENAS- The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) NOTICE OF FINAL DETERMINATION-

(A) IN GENERAL- Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(B) JUDICIAL REVIEW- A participant has a right to obtain judicial review of the Commission's final determination under title III.

(c) DETERMINATION OF RELATIVE LIABILITY FOR ASBESTOS INJURIES- The Commission shall determine the percentage of the total liability of each participant identified under subsection (a).

(d) REPORT-

(1) RECIPIENTS- Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report, containing the information described under paragraph (2), to--

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Court of Asbestos Claims.

(2) CONTENTS- The report under paragraph (1) shall contain the amount that each insurer participant is required to contribute to the Fund, including the payment schedule for such contributions.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) HEARINGS- The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES- The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES- The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS- The Commission may not accept, use, or dispose of gifts or donations of services or property.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS- Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES- The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for

employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF-

(1) IN GENERAL- The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION- The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES- Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES- The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. NONAPPLICATION OF FOIA AND CONFIDENTIALITY OF INFORMATION.

(a) IN GENERAL- Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall not apply to the Commission.

(b) CONFIDENTIALITY OF INFORMATION- All information submitted to the Commission shall be privileged and confidential information and shall not be disclosed to any person outside the Commission, unless such privilege is knowingly and intentionally waived by the person submitting the information. An appeal of an assessment to the Fund under this subtitle shall be deemed a waiver for

the purposes of this subsection unless the appellee participant makes a motion for an in camera review of its appeal.

SEC. 216. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 60 days after the date on which the Commission submits its report under section 212(c).

SEC. 217. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL- There are authorized to be appropriated to the Commission such sums as may be necessary for fiscal year 2004 to carry out the provisions of this subtitle.

(b) AVAILABILITY- Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

Subtitle C--Office of Asbestos Injury Claims Resolution

SEC. 221. ESTABLISHMENT OF THE OFFICE OF ASBESTOS INJURY CLAIMS RESOLUTION.

(a) IN GENERAL- There is established the Office of Asbestos Injury Claims Resolution.

(b) RESPONSIBILITIES- The Office shall be responsible for--

- (1) administering the Fund;
- (2) providing payments from the Fund to asbestos claimants who are determined to be eligible for awards; and
- (3) carrying out other applicable provisions of this title and other activities determined appropriate by the Administrator.

(c) ADMINISTRATOR-

- (1) APPOINTMENT- The Office shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.
- (2) TERM; REMOVAL- The Administrator shall serve for a term of 5 years and may be removable by the President only for good cause.

SEC. 222. POWERS OF THE ADMINISTRATOR AND MANAGEMENT OF THE FUND.

(a) GENERAL POWERS- The Administrator shall have the following general powers:

- (1) To promulgate such regulations as the Administrator determines to be necessary to implement the provisions of this subtitle.
- (2) To appoint employees or contract for the services of other personnel as may be necessary and appropriate to carry out the provisions of this subtitle, including entering into cooperative agreements with other Federal agencies.
- (3) To make such expenditures as may be necessary and appropriate in the administration of this subtitle.
- (4) To take all actions necessary to prudently manage the Fund, including-

-

- (A) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;
- (B) defraying the reasonable expenses of administering the Fund;
- (C) investing the assets of the Fund in accordance with subsection (b)(2); and
- (D) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets.

(5) To have all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(b) REQUIREMENTS RELATING TO FUND ASSETS-

(1) IN GENERAL- Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(2) INVESTMENTS-

(A) IN GENERAL- Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(B) STRATEGY- The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action--

- (i) the size of the Fund;
- (ii) the nature and estimated duration of the Fund;
- (iii) the liquidity and distribution requirements of the Fund;
- (iv) general economic conditions at the time of the investment;
- (v) the possible effect of inflation or deflation on Fund assets;
- (vi) the role that each investment or course of action plays with respect to the overall assets of the Fund;
- (vii) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and
- (viii) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) VIOLATIONS OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH AND SAFETY REQUIREMENTS-

(1) ASBESTOS IN COMMERCE- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under section 6(a)

of the Toxic Substances Control Act (15 U.S.C. 2605(a)), relating to the manufacture, importation, processing and distribution in commerce of asbestos-containing products, the Administrator may refer the matter to the Administrator of the Environmental Protection Agency and the United States Attorney for possible civil or criminal penalties under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)).

(2) ASBESTOS AS AIR POLLUTANT- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under section 112(d) of the Clean Air Act (42 U.S.C. 7412(d)), relating to asbestos as a hazardous air pollutant, the Administrator may refer the matter to the Administrator of the Environmental Protection Agency and the United States Attorney for possible criminal and civil penalties under section 113 of the Clean Air Act (42 U.S.C. 7413).

(3) OCCUPATIONAL EXPOSURE- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator may refer the matter to the United States Attorney for possible criminal prosecution under section 5(a) of such Act (29 U.S.C. 654(a)), and to the Secretary of Labor for possible civil penalties under section 17 (a)-(d) of such Act (29 U.S.C. 666 (a)-(d)).

SEC. 223. ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT- There is established in the Office of Asbestos Injury Claims Resolution, the Asbestos Injury Claims Resolution Fund, which shall be available to pay--

- (1) claims for awards for an eligible disease or condition determined under title I;
- (2) claims for reimbursement for medical monitoring determined under title I;
- (3) principal and interest on borrowings under subsection (c); and
- (4) administrative expenses to carry out this subtitle.

(b) LIMITATIONS ON CONTRIBUTIONS BY MANDATORY

PARTICIPANTS- The aggregate contributions of all mandatory participants to the Fund may not exceed \$5,000,000,000 in any calendar year.

(c) **BORROWING AUTHORITY-** The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

(d) **GUARANTEED PAYMENT ACCOUNT-**

(1) **IN GENERAL-** The Administrator shall establish a guaranteed payment account within the Fund to insure payment of the total amount of contributions required to be paid into the Fund by all participants.

(2) **SURCHARGE-** The Administrator shall impose, on each participant required to pay contributions into the Fund under this Act, in addition to the amount of such contributions, a reasonable surcharge to be paid into the guaranteed payment account in an amount that the Administrator determines appropriate to insure against the risk of nonpayment of required contributions by any such participant.

(3) **PROCEDURE-** The surcharge required under this section shall be paid in such manner, at such times, and in accordance with such procedures as the Administrator determines appropriate.

(4) **USES OF GUARANTEED PAYMENT ACCOUNT-** Amounts in the guaranteed payment account shall be used as necessary to pay claims from the Fund, to the extent that amounts in the Fund are insufficient to pay such claims due to nonpayment by any participant.

(5) **ENFORCEMENT-** The enforcement of the payment of a surcharge under this subsection may be enforced in the same manner and to the same extent as the enforcement of a contribution under section 224.

(e) **ORPHAN SHARE RESERVE ACCOUNT-**

(1) **IN GENERAL-** To the extent the total amount of contributions of the participants in any given year exceed the maximum aggregate contribution under section 204(h), the excess monies shall be placed in an orphan share reserve account established within the Fund by the Administrator.

(2) **USE OF ACCOUNT MONIES-** Monies from the orphan share reserve account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only--

(A) in the event that a petition for relief is filed and not withdrawn for the participant under title 11, United States Code, after the date of enactment of this Act and the participant cannot meet its obligations under this subtitle; and

(B) to the extent the Administrator grants a participant relief for severe financial hardship or demonstrated inequity under this section.

SEC. 224. ENFORCEMENT OF CONTRIBUTIONS.

(a) **DEFAULT-** If any participant fails to make any payment in the amount and according to the schedule specified in a determination of assessment, after demand and 30 days opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest)

upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY- In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code.

(c) CIVIL ACTION-

(1) IN GENERAL- In any case in which there has been a refusal or neglect to pay the liability imposed by the final determination under section 202 or 212, the Administrator may bring a civil action in the Federal district court for the District of Columbia to--

(A) enforce such liability and the lien of the United States under this section; or

(B) subject any property, of whatever nature, of the participant, or in which the participant has any right, title, or interest, to the payment of such liability.

(2) DEFENSE LIMITATION- In any proceeding under this subsection, the participant shall be barred from bringing any challenge to the assessment if such challenge could have been made during the review period under section 202(b)(4) or 212(b)(4), or a judicial review proceeding under title III.

SEC. 225. ADDITIONAL CONTRIBUTING PARTICIPANTS.

(a) DEFINITION- In this section, the term 'additional contributing participant' means any defendant in an asbestos claim that is not a mandatory participant under subtitle A and is likely to avoid future civil liability as a result of this Act.

(b) ASSESSMENT- In addition to contributions assessed under subtitle A, the Administrator may assess additional contributing participants for contributions to the Fund. Any additional contributing participant assessed under this section shall be treated as a defendant participant for purposes of procedures and appeals under this Act.

(c) ASSESSMENT LIMITATIONS- The Administrator may assess under subsection (b), over the life of the Fund, an amount not to exceed \$14,000,000,000 from all additional contributing participants.

TITLE III--JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF DECISIONS OF THE ASBESTOS COURT.

(a) EXCLUSIVE JURISDICTION- The United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction over any action to review a final decision of the Asbestos Court.

(b) PROCEDURE FOR APPEALS-

(1) PERIOD FOR FILING APPEAL- An appeal under this section shall be filed not later than 30 days after the issuance of a final decision by the Asbestos Court.

(2) TRANSMITTAL OF RECORD- Upon the filing of an appeal, a copy of the filing shall be transmitted by the clerk of the court to the Asbestos Court, and the Asbestos Court shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(3) STANDARD OF REVIEW-

(A) IN GENERAL- The court shall uphold the decision of the Asbestos Court if the court determines, upon review of the record as a whole, that the decision is not arbitrary and capricious.

(B) EFFECT OF DETERMINATION- If the court determines that a final decision of the Asbestos Court is arbitrary and capricious, the court shall remand the case to the Asbestos Court.

(4) FINALITY OF DETERMINATION- The decision of the United States Court of Appeals for the District of Columbia shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

SEC. 302. JUDICIAL REVIEW OF FINAL DETERMINATIONS OF THE ADMINISTRATOR AND OF THE ASBESTOS INSURERS COMMISSION.

(a) EXCLUSIVE JURISDICTION- The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the assessment of a contribution to the Fund from a participant.

(b) PROCEDURE FOR APPEAL-

(1) PERIOD FOR FILING APPEAL- An appeal under this section shall be filed not later than 30 days after the issuance of a final determination by the Administrator or the Commission.

(2) TRANSMITTAL OF RECORD- Upon the filing of an appeal, a copy of the filing shall be transmitted by the clerk of the court to the Administrator or the Commission.

(c) STANDARD OF REVIEW-

(1) IN GENERAL- The United States District Court for the District of Columbia shall uphold the final determination of the Administrator or the Commission with respect to the assessment of a contribution to the Fund from a participant if such determination is not arbitrary and capricious.

(2) EFFECT OF DETERMINATION- If the court determines that a final determination with respect to the amount of a contribution to the Fund by a participant may not be upheld, the court shall remand the decision to the Administrator or the Commission, with instructions to modify the final determination.

(3) NO STAYS- The court may not issue a stay of payment into the Fund pending its final judgment.

(4) FINALITY OF DETERMINATION- The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court, as provided in section 1254 of title 28, United States Code.

SEC. 303. EXCLUSIVE REVIEW.

(a) EXCLUSIVITY OF REVIEW- An action of the Asbestos Court, the Administrator, or the Asbestos Insurers Commission for which review could have been obtained under section 301 or 302 shall not be subject to judicial review in any other proceeding, including proceedings before the Asbestos Court.

(b) CONSTITUTIONAL REVIEW-

(1) IN GENERAL- Notwithstanding any other provision of law, any interlocutory or final judgment,

decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

(2) PERIOD FOR FILING APPEAL- Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.

SEC. 304. PRIVATE RIGHT OF ACTION AGAINST REINSURERS.

(a) IN GENERAL- Any insurer participant may file a claim in the United States District Court for the District of Columbia against any reinsurer that is contractually obligated to reimburse such insurer participant for a portion of costs incurred as a result of payment of asbestos related claims.

(b) EXPEDITED PROCEDURES-

(1) IN GENERAL- A claim filed under subsection (a) shall be subject to expedited procedures, as prescribed by the United States District Court for the District of Columbia.

(2) EVIDENTIARY STANDARD- The plaintiff shall not recover in a claim under subsection (a) unless the plaintiff demonstrates the right to recover by a preponderance of the evidence.

(3) FINAL JUDGMENT- A final judgment shall be issued on a claim filed under subsection (a) not later than 30 days after such filing.

(c) APPEALS-

(1) IN GENERAL- An appeal from a decision under subsection (b) may be filed with the Court of Appeals for the District of Columbia.

(2) STANDARD OF REVIEW- The final judgment of the district court shall be upheld unless the court of appeals finds the judgment to be arbitrary and capricious.

(3) FINAL JUDGMENT- A final judgment shall be issued on an appeal filed under paragraph (1) not later than 30 days after such filing.

TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

Any person who knowingly provides false information in connection with an assessment of contributions, a claim for an award, or an audit under this Act shall be subject to--

- (1) criminal prosecution under section 1001 of title 18, United States Code; and
- (2) civil penalties under section 3729 of title 31, United States Code.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY- Section 362(b) of title 11, United States Code, is amended--

- (1) in paragraph (17), by striking `or' at the end;
- (2) in paragraph (18), by striking the period at the end and inserting `; or'; and
- (3) by inserting after paragraph (18) the following:
`(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2003, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).'

(b) ASSUMPTION OF EXECUTORY CONTRACTS- Section 365 of title 11, United States Code, is amended by adding at the end the following:

`(q) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.'

(c) ALLOWED ADMINISTRATIVE EXPENSES- Section 503 of title 11, United States Code, is amended by adding at the end the following:

`(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

`(2) For purposes of paragraph (1), the term `asbestos payment obligation' means any payment obligation under subtitle B of title II of the Fairness in Asbestos Injury Resolution Act of 2003.'

(d) NO DISCHARGE- Section 523 of title 11, United States Code, is amended by adding at the end the following:

`(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of

the Fairness in Asbestos Injury Resolution Act of 2003) of the payment obligations that is a debtor under subtitle B of title II of that Act.'

(e) PAYMENT- Section 524 of title 11, United States Code, is amended by adding at the end the following:

`(i) PARTICIPANT DEBTORS-

`(1) IN GENERAL- Paragraphs (2) and (3) shall apply to a debtor who--

`(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2003); and

`(B) is subject to a case under this title that is pending--

`(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003; or

`(ii) at any time during the 1-year period preceding the date of enactment of that Act.

`(2) TIER I DEBTORS- A debtor that has been assigned to tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2003 shall make payments in accordance with sections 202 and 203 of that Act.

`(3) TREATMENT OF PAYMENT OBLIGATIONS- All payment obligations of a debtor under

sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2003 shall--

`(A) constitute costs and expenses of administration of a case under section 503 of this title;

`(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

`(C) not be stayed;

`(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

`(E) not be impaired or discharged in any current or future case under this title.'

(f) TREATMENT OF TRUSTS- Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

`(j) ASBESTOS TRUSTS-

`(1) IN GENERAL- A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as is required under section 202 of the Fairness in Asbestos Injury Resolution Act of 2003 if the trust qualifies as a 'trust' under section 201 of that Act.

`(2) TRANSFER OF TRUST ASSETS-

`(A) IN GENERAL- Except as provided under subparagraphs (B) and (C), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003) shall be transferred to the Fund not later than 6 months after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003. Except as

provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 223 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred. After such transfer, each trustee of such trust shall have no liability to any beneficiary of such trust.

`(B) AUTHORITY TO REFUSE ASSETS- The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

`(C) ALLOCATION OF TRUST ASSETS- If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. Such reserved amount shall not be greater than 3 percent of the total assets in the trust and shall not be transferred to the Fund.

`(D) SALE OF FUND ASSETS- The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2003 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

`(E) LIQUIDATED CLAIMS- A trust shall not make any payment relating to asbestos claims unless such claims were liquidated in the ordinary course and the normal and usual administration of the trust consistent with past practices before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003.

`(3) INJUNCTION- Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect until the assignment required under paragraph (1) has been made.'

(g) NO AVOIDANCE OF TRANSFER- Section 546 of title 11, United States Code, is amended by adding at the end the following:

`(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the trustee may not avoid a transfer made by the debtor pursuant to its payment obligations under section 202 or 203 of that Act.'

(h) CONFIRMATION OF PLAN- Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

`(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the plan provides for the continuation after its effective date of payment of all

payment obligations under title II of that Act.'.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW- The provisions of this Act shall supersede any and all Federal and State laws insofar as they may relate to any asbestos claim filed under this Act.

(b) SUPERSEDING PROVISIONS-

(1) IN GENERAL- Any agreement, understanding, or undertaking by any person or affiliated group assigned to Tiers II through VI with respect to the treatment of any asbestos claim filed before the date of enactment of this Act that requires future performance by any party shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT- Any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any of the foregoing.

(c) EXCLUSIVE REMEDY- The remedies provided under this Act shall be the exclusive remedy for any asbestos claim under any Federal or State law.

(d) BAR ON ASBESTOS CLAIMS-

(1) IN GENERAL- No asbestos claim may be pursued in any Federal or State court, except for enforcement of claims for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before the date of enactment of this Act.

(2) PREEMPTION- Any action asserting an asbestos claim in a court of any State, except actions for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before the date of enactment of this Act, is preempted by this Act.

(3) DISMISSAL- No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the district court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(4) REMOVAL-

(A) IN GENERAL- If an action under paragraph (2) is not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS- For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within

the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES- The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) JURISDICTION- The jurisdiction of the district court shall be limited to--

- (i) determining whether removal was proper; and
- (ii) ruling on a motion to dismiss based on this Act.

END

From: Leitch, David G.
To: <Gonzales, Alberto R.>; <Kavanaugh, Brett M.>
Sent: 6/11/2003 11:27:06 AM
Subject:

Pickering's nomination effort slows

- Judge's son says White House shifting concern to Supreme Court vacancy

By Ana Radelat
Clarion-Ledger Washington Bureau

WASHINGTON — The Bush administration is slowing down its push to elevate Hattiesburg Judge Charles Pickering to a federal appellate court in case the White House needs to fill a Supreme Court vacancy this summer, a spokesman for the judge's son said Tuesday.

The judge's nomination may not come up for consideration in the Senate until the fall, said Brian Perry, press secretary for Rep. Chip Pickering, the judge's son.

"It could be this month, it could be next month and it could be next fall," Perry said.

Supporters hoped Judge Pickering's nomination for the 5th U.S. Circuit Court of Appeals would be taken up by the Senate Judiciary Committee last month. Democrats, who controlled the committee last year, rejected Pickering's nomination over concerns about his record on civil rights and women's rights. Bush renominated the judge again at the beginning of the year after the GOP retook the Senate.

But now the White House is concerned there may be a retirement on the Supreme Court, Perry said. Speculation has been high since President Bush took office that one of the 12 justices will retire during his term, and that kind of talk usually grows as the high court finishes its work each July. Bush is thought to have a better chance of appointing a justice because several are aged or have had health problems.

Perry said the younger Pickering gets the sense that the White House doesn't want to exacerbate an ongoing fight with Senate Democrats over judges if the administration is concerned with getting confirmation of a Supreme Court nominee at the same time.

Marty Wiseman, the head of the Stennis Institute for Government at Mississippi State University, said it was logical for the White House to try to avoid a "tit for tat" on nominations.

"You certainly don't want lesser judicial nominees held hostage to bigger stakes," Wiseman said.

Tensions between the White House and Senate Democrats have escalated in the last few weeks with a rapid push to confirm conservative Alabama Attorney General Bill Pryor for an appellate court judgeship. Pryor, who was nominated in April, is scheduled to testify before the Senate Judiciary Committee today.

Senate Democrats also are angry that Sen. Trent Lott, R-Miss., and other Republican senators are trying to change the rules for the filibuster, a procedure that allows the minority party to block nominations and legislation by extending debate. It takes 60 votes to break a filibuster and Republicans have only been able to muster 55 when the procedure was used by Democrats to block votes on Miguel Estrada and Priscilla Owen.

The Justice Department helps the White House with judicial nominees. Justice Department spokeswoman Monica Goodling said she had no indication that the White House was slowing Judge Pickering's nomination. "The administration continues to stand behind all its judicial nominations," Goodling said.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Theodore W. Ullyot/WHO/EOP@EOP [WHO] <Theodore W. Ullyot>; Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 6/11/2003 12:09:29 PM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:11-JUN-2003 16:09:29.00

SUBJECT: :

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

End Original ARMS Header

Word on the street is that Chiongoli is going to be the new Ullyot, i.e.,
GC of AOL TW Europe.;

From: Ken Mehlman <kmehlman@georgewbush.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Susan Ralston <sralston@georgewbush.com>; agray@georgewbush.com [WHO] <agraay@georgewbush.com>; kr@rove.com [UNKNOWN] <kr@rove.com>
Sent: 6/11/2003 9:32:32 AM
Subject: : FW:
Attachments: P_WQ93H003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Ken Mehlman <kmehlman@georgewbush.com> (Ken Mehlman <kmehlman@georgewbush.com> [UNKNOWN])
CREATION DATE/TIME: 11-JUN-2003 13:32:32.00
SUBJECT: : FW:
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Susan Ralston <sralston@georgewbush.com> (Susan Ralston <sralston@georgewbush.com> [UNKNOWN])
READ: UNKNOWN
TO: agray@georgewbush.com (agray@georgewbush.com [WHO])
READ: UNKNOWN
TO: kr@rove.com (kr@rove.com [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

What say you? I think a better approach is for Adrian Gray to call the relevant political people (who they do travel with already) and low key invite them. Invites would be to the cabinet members who do political travel. Mercer agrees with this approach. Brett: OK? Karl: OK?

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

From: Jack Oliver
Sent: Wednesday, June 11, 2003 11:31 AM
To: Ken Mehlman
Subject:

Mercer would like to call the cabinet secretaries to ask them to attend the 17th in dc? process

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_WQ93H003_WHO.TXT_1>

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

From: Jack Oliver

Sent: Wednesday, June 11, 2003 11:31 AM

To: Ken Mehlman

Subject:

Mercer would like to call the cabinet secretaries to ask them to attend the 17th in dc? process

From: CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>;David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>;Theodore W. Ullyot/WHO/EOP@EOP [WHO] <Theodore W. Ullyot>;Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Alberto R. Gonzales/WHO/EOP@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/11/2003 3:01:12 PM
Subject: : Why Hillary Clinton Voted Against Chertoff

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:11-JUN-2003 19:01:12.00
SUBJECT:: Why Hillary Clinton Voted Against Chertoff
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Sen. Clinton told Larry King that she voted against Mike Chertoff because his Whitewater staff mistreated young Clinton White House aides:

KING: In the Senate yesterday, Assistant Attorney General Michael Chertoff came up to be a federal court appeals judge. The vote was 88-1. You were the one.

CLINTON: Right.

KING: Why?

CLINTON: Well during that time when he was on the staff of the committee in the Senate, a number of the young people who worked in the White House were, I thought, very badly treated by the Senate staff investigating Whitewater. And a number of those young people were put under tremendous pressure, legal bills that they had to run up. And I just didn't think it was handled appropriately or professionally.

KING: So you didn't think him worthy of a judgeship then?

CLINTON: Based on my firsthand knowledge of what went on during that period. But, you know, that's over. That vote is gone and part of history.

KING: Could have skipped the vote, couldn't you?

CLINTON: You know, there were several of these young people who asked me to express the only way I could the very difficult feelings that they had in the way that they were treated by that staff.

KING: So you were making a statement?

CLINTON: Yes. I mean, you know, it was a single vote. But it stood for a lot of what I think was wrong during that period.

*** Note that she deploys the "that's old news" argument for changing the subject ("That vote is gone and part of history") even though the vote was only one day before!

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/11/2003 5:35:53 PM
Subject: : Atlanta Journal-Constitution (6/11/03) EDITORIAL re: Unappealing choice for judgeship (Pryor)

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 11-JUN-2003 21:35:53.00
SUBJECT: : Atlanta Journal-Constitution (6/11/03) EDITORIAL re: Unappealing choice for judgeship (Pryor)
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

The Atlanta Journal-Constitution: 6/11/03]
OUR VIEW

Unappealing choice for judgeship

If it's a passionate advocate you need, a fiery speaker at an anti-abortion or pro-gun rally, you couldn't do better than Alabama's 41-year-old attorney general, Bill Pryor.

But if you're looking for a federal appellate judge who will make balanced judgments on the law, Pryor -- President Bush's nominee for a seat on the 11th Circuit-- is a big risk. His strong-willed advocacy of ultraconservative causes hardly commends him for a federal bench that will decide the individual liberty rights of many Southerners for years to come. (The 11th Circuit hears appeals from Georgia, Alabama and Florida.) When Pryor makes his first appearance before the Senate Judiciary Committee today, senators should follow the advice of Chief Justice William Rehnquist, a conservative jurist by any test, who once wrote that the Senate should "restore its practice of thoroughly informing itself of the judicial philosophy" of nominees prior to voting. Certainly a conservative president has a right to appoint well-qualified conservatives to the bench. Miguel Estrada -- whose nomination to the D.C. Circuit Court of Appeals is wrongly being held up by Democrats -- is a good example. By contrast, Pryor's record indicates that he sees every issue through an ideological lens and often derides the judges who make decisions with which he disagrees.

"No more Souters," Pryor cried in a recent speech, criticizing Justice David Souter, who was appointed to the court by the first President Bush and has turned out to exhibit admirable judicial independence from any political ideology.

Pryor's record places him far out of the mainstream. In addition to his vocal anti-abortion stance, even in cases of rape, Pryor has attacked federal environmental protections on the basis of his radical states' rights philosophy.

The 11th Circuit bench is now well-balanced, with six judges appointed by Republican presidents and five by Democrats. The court has two vacancies for Bush to fill; the addition of an extremist such as Pryor could be the beginning of an unhealthy lurch to the extreme right.

From: Mamo, Jeanie S.
To: <Snee, Ashley>;<Kavanaugh, Brett M.>;<Powell, Benjamin A.>
Sent: 6/11/2003 9:27:54 PM
Subject: Birmingham News (6/11/03) re: ABA gives Pryor mixed review for US bench

News

ABA gives Pryor mixed review for U.S. bench

06/11/03

MARY ORNDORFF

News Washington correspondent

WASHINGTON Democrats tried unsuccessfully to delay today's confirmation hearing for Bill Pryor after the American Bar Association issued a divided opinion Tuesday on whether the Alabama attorney general was qualified to be a federal judge.

While a "substantial majority" of the ABA's 15-member review committee considered Pryor to be qualified, a minority said he was not. The split raised a red flag to the top Democrat on the Senate Judiciary Committee, Sen. Patrick Leahy of Vermont, who wanted the panel to take more time to investigate.

There were no votes on the review committee to rate Pryor "well-qualified," the highest ranking. Those familiar with the rating process say the "well-qualified" ranking is usually reserved for those nominees who have already worked as a judge.

Pryor is still scheduled to testify at today's hearing on his nomination to the 11th Circuit U.S. Court of Appeals.

President Bush nominated Pryor to the lifetime post in April, and today's testimony will be his first chance to publicly defend himself against growing criticism that his long record of controversial opinions and legal arguments would cloud his ability to be an impartial jurist.

"Bill Pryor is one of the most dangerous judicial nominees we've ever seen," said Ralph Neas, president of the People For the American Way. His group is one of many that gathered Tuesday in Washington to explain why they believe Pryor would be harmful to their causes.

But Pryor's mentor, former boss and most ardent advocate on the judiciary committee, Sen. Jeff Sessions, said the divided rating from the lawyers' group would not be a factor. "In my view, Bill is one of the most brilliant, ethical and skilled lawyers in Alabama and should get the highest rating," Sessions said through a spokesman.

Pryor is only the fourth federal appeals court nominee to get mixed reviews from the ABA in the last two congressional sessions, according to Leahy's office. Two were confirmed, and the third is pending.

Pryor, 41, was appointed attorney general in 1997 by former Gov. Fob James. He was elected in 1998 and re-elected last year by a wide margin. He's built an extensive record of legal and personal positions on nearly every major social and political issue of the day, including states' rights.

Hilary Shelton, head of the NAACP's Washington chapter, noted that Pryor's hearing was on the 40th anniversary of former Alabama governor George Wallace's famed stand in the schoolhouse door to prevent black students from enrolling at the University of Alabama. Wallace at the time argued the state did not have to succumb to federal enforcement of civil rights laws.

"Fast forward to 2003. We now have a nominee to a critical appellate court in the Deep South tradition who is one of the most ardent modern day states' rights proponents," Shelton said.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>
Sent: 6/11/2003 9:28:12 PM
Subject: Fw: LATINOS WANT ESTRADA VOTED ON, CONFIRMED
Attachments: att1.htm

Fyi

.
----- Original Message -----

From: Leonard B. Rodriguez/WHO/EOP

To:

Cc:

Date: 06/11/2003 07:12:11 PM

Subject: LATINOS WANT ESTRADA VOTED ON, CONFIRMED

far and wide.

SURVEY: VOTERS WANT ESTRADA VOTED ON, CONFIRMED

NATIONAL MEDIA RELEASE

June 11, 2003

CONTACT:

RAUL DAMAS, Director of Operations, Opiniones Latinas

raul@opinioneslatinas.com (703/299-6255)

Washington, D.C. - Latino Opinions client, the Committee for Justice, today released the results of their national survey of Hispanic opinion on the Estrada nomination at a press conference in the LBJ Room in the U.S. Senate. Sen. George Allen (VA), Chairman of the National Republican Senatorial Committee and Committee for Justice Member, Stan Anderson, accompanied Raul Damas, Latino Opinions' Director of Operations, in presenting the astonishing results of this survey. Additional Senators, including Lindsey Graham (SC) and Jim Talent (MO) later reacted to the release of this information in the Senate Radio and TV Gallery.

"This survey shows that the vast majority of Hispanics want Miguel Estrada confirmed by the Senate," said Raul Damas, Latino Opinions' Director of Operations. "Even more importantly, 88% of Latinos believe the Senate should 'at least vote' on the Estrada nomination, regardless of whether or not he's ultimately confirmed. Clearly, those who oppose Estrada are far out of the mainstream of Hispanic sentiment."

Latino Opinions is a bilingual polling and communications strategy firm, based in Alexandria, VA. Its founding partners, John McLaughlin, Jim McLaughlin and Carlos Rodriguez, bring over 60 combined years of professional research and strategy experience to this firm. Latino Opinions specializes in bilingual research, strategy and message development aimed at targeting and communicating with the nation's most explosive and politically influential demographic: Latino Americans.

Key Findings

REV_00237719

- Latinos reflexively support the nomination of Miguel Estrada and other Latinos to the federal courts.
- Once educated on the confirmation process and Miguel Estrada's history of professional achievement, Latinos overwhelmingly support Miguel Estrada and want to see him confirmed.
- Regardless of their opinion of Miguel Estrada, the vast majority of Latinos believe the Senate should vote, up-or-down, on his and every other nomination.
- Any elected official who claims to represent, or even care about, the Latino community's needs, should support the confirmation of Miguel Estrada.

Hispanic Political Profile

- Although a plurality of Hispanics still identify themselves as Democrats (47%), the Republican party's actions, in this case supporting Miguel Estrada, continue to reflect the issues most important to Hispanics.
- With a 65% job approval rating, President Bush continues to enjoy enormous popularity among Hispanics. Bush's rating among Hispanics is slightly above the national average, which is remarkable not least because Bush received only 35% of the Latino vote in '00.
- 35% of Latinos consider themselves "conservative," as opposed to 28% "liberal."

Latino Judges are Extremely Important to this Community

- 94% of Hispanics believe "It is important that Latinos are represented on the federal courts, where some of the most important decisions in our government are made."
- 80% of Latinos believe it is "Important" that Miguel Estrada is confirmed by the Senate. 60% believe it is "Very Important."

As with all of this study's findings, this level of support is consistent regardless of voter registration, length of residence, language preference and national ancestry.

Like Most Americans, Latinos Want a Fair Judicial Nomination Process

- 94% of Hispanics believe "Every nominee to a federal court should be given the chance for a yes-or-no vote, regardless of whether or not they are ultimately confirmed."

Personal Achievement is Key to the Latino Community's Support

- Estrada's superlative rating from the ABA is "most likely" to foster Latinos' support For Miguel Estrada.
- His graduation from Harvard and his record of success arguing cases before the U.S. Supreme Court follow closely behind in terms of generating support.

Latinos Want Miguel Estrada Confirmed

- 87% of Hispanics believe Miguel Estrada should be confirmed by the Senate to serve on the D.C. Circuit Court of Appeals.

Either Way, Latinos Demand a Vote on Estrada

- 88% of Latinos believe the Senate should "at least vote" on Estrada's nomination.

Methodology

This national Hispanic survey was conducted by Latino Opinions between May 25 & May 28, 2003, among 800 Hispanic adults. All interviews were conducted by professional English and Spanish speaking interviewers via telephone. Respondents were given the option of conducting the survey in English or Spanish, yielding 38% English interviews and 62% Spanish interviews. Interview selection was at random within predetermined population units. These units were structured to statistically correlate with the nation's adult Hispanic population according to the 2000 U.S. Census. The accuracy of this national survey of 800 Hispanic adults is within $\pm 3.4\%$, at a 95% confidence interval.

For further information, please visit our Web site at www.opinioneslatinas.com. There you may also view a topline containing

totals to relevant questions in this survey, as well as a slideshow presentation of notable data. These files are viewable in Adobe Acrobat Reader®, available for free download at Adobe.com.

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- att1.htm

SURVEY: VOTERS WANT ESTRADA VOTED ON, CONFIRMED

NATIONAL MEDIA RELEASE

June 11, 2003

CONTACT:

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raul@opinioneslatinas.com (703/299-6255)

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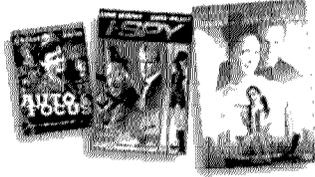
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From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/11/2003 5:30:35 PM
Subject: : Birmingham News (6/11/03) re: ABA gives Pryor mixed review for US bench

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 11-JUN-2003 21:30:35.00
SUBJECT: : Birmingham News (6/11/03) re: ABA gives Pryor mixed review for US bench
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

News

ABA gives Pryor mixed review for U.S. bench
06/11/03

MARY ORNDORFF

News Washington correspondent

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REV_00237725

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"Fast forward to 2003. We now have a nominee to a critical appellate court in the Deep South tradition who is one of the most ardent modern day states' rights proponents," Shelton said.

From: Mamo, Jeanie S.
To: <Kavanaugh, Brett M.>;<Snee, Ashley>;<Powell, Benjamin A.>
Sent: 6/11/2003 9:30:17 PM
Subject: Birmingham News (6/11/03) re: Pryor restraint

Pryor restraint

Hard to recognize attorney general amid attacks

EDITORIAL

Birmingham News

06/11/03

Bill Pryor has been a good attorney general for Alabama.

He has handled most of the state's legal business well. He has led initiatives that will make Alabama a better place to live, such as his own Mentor Alabama that finds volunteers to work with children. He has supported worthy programs such as Children First to upgrade the state's juvenile justice system. He has pushed the Legislature to establish a commission to study the state's out-of-whack sentencing laws. He has been a voice for open government.

It's easy to forget Pryor's solid record amid the torrent of liberal interest-group attacks on him leading up to today's hearing of the U.S. Senate Judiciary Committee. The committee will consider whether to recommend Pryor, nominated by President Bush for the 11th U.S. Circuit Court of Appeals, to the full Senate for confirmation.

According to his attackers, Pryor is unfit to be a federal judge. A sample:

"William Pryor's words and abysmal record in protecting civil, constitutional and human rights demonstrate that he is an avowed extremist and legal activist," said Nancy Zirkin, deputy director of the Leadership Conference on Civil Rights. "His ideological agenda of limiting Congress' ability to pass laws aimed at protecting against discrimination and inequalities should certainly disqualify him from a lifetime appointment to the federal judiciary."

Amid the caricature, it's hard to recognize the thoughtful, earnest attorney general of Alabama for the past six years. Yes, Pryor is conservative, but so is the president who nominated him. That said, Pryor is not blindly conservative, one who would rule the way Republicans want instead of based on what the law says. In fact, he has been criticized by some in his own party for not being Republican enough, even as he is now earning strong support for a seat on the federal bench from black Democrats such as U.S. Rep. Artur Davis and state Rep. Alvin Holmes.

Today's committee hearing could be long and bruising. With 10 Republicans and nine Democrats, the biggest threat to Pryor isn't the committee vote but on the floor on the Senate. If Democrats filibuster Pryor as they have two other Bush nominees, it prevents a vote.

Alabama's attorney general is a fit nominee for the appeals court. The Senate Judiciary Committee should send his nomination to the full Senate, and the full Senate should confirm him.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/11/2003 5:31:57 PM
Subject: : Birmingham News (6/11/03) re: Pryor restraint

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 11-JUN-2003 21:31:57.00
SUBJECT: : Birmingham News (6/11/03) re: Pryor restraint
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Pryor restraint
Hard to recognize attorney general amid attacks
EDITORIAL
Birmingham News
06/11/03

Bill Pryor has been a good attorney general for Alabama. He has handled most of the state's legal business well. He has led initiatives that will make Alabama a better place to live, such as his own Mentor Alabama that finds volunteers to work with children. He has supported worthy programs such as Children First to upgrade the state's juvenile justice system. He has pushed the Legislature to establish a commission to study the state's out-of-whack sentencing laws. He has been a voice for open government.

It's easy to forget Pryor's solid record amid the torrent of liberal interest-group attacks on him leading up to today's hearing of the U.S. Senate Judiciary Committee. The committee will consider whether to recommend Pryor, nominated by President Bush for the 11th U.S. Circuit Court of Appeals, to the full Senate for confirmation.

According to his attackers, Pryor is unfit to be a federal judge. A sample:

"William Pryor's words and abysmal record in protecting civil, constitutional and human rights demonstrate that he is an avowed extremist and legal activist," said Nancy Zirkin, deputy director of the Leadership Conference on Civil Rights. "His ideological agenda of limiting Congress' ability to pass laws aimed at protecting against discrimination and inequalities should certainly disqualify him from a lifetime appointment to the federal judiciary."

Amid the caricature, it's hard to recognize the thoughtful, earnest attorney general of Alabama for the past six years. Yes, Pryor is conservative, but so is the president who nominated him. That said, Pryor is not blindly conservative, one who would rule the way Republicans want instead of based on what the law says. In fact, he has been criticized by some in his own party for not being Republican enough, even as he is now earning strong support for a seat on the federal bench from black Democrats such as U.S. Rep. Artur Davis and state Rep. Alvin Holmes. Today's committee hearing could be long and bruising. With 10 Republicans and nine Democrats, the biggest threat to Pryor isn't the committee vote but on the floor on the Senate. If Democrats filibuster Pryor as they have two other Bush nominees, it prevents a vote.

Alabama's attorney general is a fit nominee for the appeals court. The Senate Judiciary Committee should send his nomination to the full Senate, and the full Senate should confirm him.

From: Mamo, Jeanie S.
To: <Snee, Ashley>;<Kavanaugh, Brett M.>;<Powell, Benjamin A.>
Sent: 6/11/2003 9:33:59 PM
Subject: Atlanta Journal-Constitution (6/11/03) EDITORIAL re: Unappealing choice for judgeship (Pryor)

The Atlanta Journal-Constitution: 6/11/03]

OUR VIEW

Unappealing choice for judgeship

If it's a passionate advocate you need, a fiery speaker at an anti-abortion or pro-gun rally, you couldn't do better than Alabama's 41-year-old attorney general, Bill Pryor.

But if you're looking for a federal appellate judge who will make balanced judgments on the law, Pryor -- President Bush's nominee for a seat on the 11th Circuit-- is a big risk. His strong-willed advocacy of ultraconservative causes hardly commends him for a federal bench that will decide the individual liberty rights of many Southerners for years to come. (The 11th Circuit hears appeals from Georgia, Alabama and Florida.)

When Pryor makes his first appearance before the Senate Judiciary Committee today, senators should follow the advice of Chief Justice William Rehnquist, a conservative jurist by any test, who once wrote that the Senate should "restore its practice of thoroughly informing itself of the judicial philosophy" of nominees prior to voting.

Certainly a conservative president has a right to appoint well-qualified conservatives to the bench. Miguel Estrada -- whose nomination to the D.C. Circuit Court of Appeals is wrongly being held up by Democrats -- is a good example. By contrast, Pryor's record indicates that he sees every issue through an ideological lens and often derides the judges who make decisions with which he disagrees.

"No more Souters," Pryor cried in a recent speech, criticizing Justice David Souter, who was appointed to the court by the first President Bush and has turned out to exhibit admirable judicial independence from any political ideology.

Pryor's record places him far out of the mainstream. In addition to his vocal anti-abortion stance, even in cases of rape, Pryor has attacked federal environmental protections on the basis of his radical states' rights philosophy.

The 11th Circuit bench is now well-balanced, with six judges appointed by Republican presidents and five by Democrats. The court has two vacancies for Bush to fill; the addition of an extremist such as Pryor could be the beginning of an unhealthy lurch to the extreme right.

REV_00237729

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Brown, Reginald J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>
Sent: 6/12/2003 8:41:59 AM
Subject: LATINOS WANT ESTRADA VOTED ON, CONFIRMED
Attachments: att1.htm

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/12/2003 08:42 AM -----

Leonard B. Rodriguez

06/11/2003 07:12:11 PM

Record Type: Record

To:

cc:

Subject: LATINOS WANT ESTRADA VOTED ON, CONFIRMED

far and wide.

SURVEY: VOTERS WANT ESTRADA VOTED ON, CONFIRMED

NATIONAL MEDIA RELEASE

June 11, 2003

CONTACT:

RAUL DAMAS, Director of Operations, Opiniones Latinas

raul@opinioneslatinas.com (703/299-6255)

Washington, D.C. - Latino Opinions client, the Committee for Justice, today released the results of their national survey of Hispanic opinion on the Estrada nomination at a press conference in the LBJ Room in the U.S. Senate. Sen. George Allen (VA), Chairman of the National Republican Senatorial Committee and Committee for Justice Member, Stan Anderson, accompanied Raul Damas, Latino Opinions' Director of Operations, in presenting the astonishing results of this survey. Additional Senators, including Lindsey Graham (SC) and Jim Talent (MO) later reacted to the release of this information in the Senate Radio and TV Gallery.

"This survey shows that the vast majority of Hispanics want Miguel Estrada confirmed by the Senate," said Raul Damas, Latino Opinions' Director of Operations. "Even more importantly, 88% of Latinos believe the Senate should 'at least vote' on the Estrada nomination, regardless of whether or not he's ultimately confirmed. Clearly, those who oppose Estrada are far

REV_00237735

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- Latinos reflexively support the nomination of Miguel Estrada and other Latinos to the federal courts.
- Once educated on the confirmation process and Miguel Estrada's history of professional achievement, Latinos overwhelmingly support Miguel Estrada and want to see him confirmed.
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Hispanic Political Profile

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- With a 65% job approval rating, President Bush continues to enjoy enormous popularity among Hispanics. Bush's rating among Hispanics is slightly above the national average, which is remarkable not least because Bush received only 35% of the Latino vote in '00.
- 35% of Latinos consider themselves "conservative," as opposed to 28% "liberal."

Latino Judges are Extremely Important to this Community

- 94% of Hispanics believe "It is important that Latinos are represented on the federal courts, where some of the most important decisions in our government are made."
- 80% of Latinos believe it is "Important" that Miguel Estrada is confirmed by the Senate. 60% believe it is "Very Important."

As with all of this study's findings, this level of support is consistent regardless of voter registration, length of residence, language preference and national ancestry.

Like Most Americans, Latinos Want a Fair Judicial Nomination Process

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- att1.htm <>

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NATIONAL MEDIA RELEASE

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To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>; Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>; Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
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Subject: : LATINOS WANT ESTRADA VOTED ON, CONFIRMED
Attachments: P_KS04H003_WHO.TXT_1.htm

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 12-JUN-2003 08:43:07.00

SUBJECT: : LATINOS WANT ESTRADA VOTED ON, CONFIRMED

TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

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TO: Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

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TO: Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

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TO: Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])

READ: UNKNOWN

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----- Forwarded by Brett M. Kavanaugh/WHO/EOP on
06/12/2003 08:42 AM -----

Leonard B. Rodriguez
06/11/2003 07:12:11 PM
Record Type: Record

To:
cc:
Subject: LATINOS WANT ESTRADA VOTED ON, CONFIRMED

far and wide.

SURVEY: VOTERS WANT ESTRADA VOTED ON, CONFIRMED

NATIONAL MEDIA RELEASE

June 11, 2003

CONTACT:

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raul@opinioneslatinas.com (703/299-6255)

REV_00237741

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- att1.htm

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REV_00237743

SURVEY: VOTERS WANT ESTRADA VOTED ON, CONFIRMED

NATIONAL MEDIA RELEASE

June 11, 2003

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From: Deal Hudson <mail@crisismagazine.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/12/2003 11:14:18 AM
Subject: : Pryor Prejudice

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
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CREATION DATE/TIME:12-JUN-2003 15:14:18.00
SUBJECT:: Pryor Prejudice
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Pryor Prejudice

CRISIS Magazine - e-Letter

June 12, 2003

Dear Friend,

It was almost four months ago to the day that I first told you about Miguel Estrada, one of President Bush's judicial nominations for the US Court of Appeals. A highly respected lawyer in his own right and eminently qualified for the position, a vote on his nomination has nevertheless been filibustered by Senate Democrats determined to keep him out at any cost.

The reason? Estrada's conservatism scares them, plain and simple. They'll do anything to keep judges like him -- mainly, pro-life conservatives -- out of the higher courts. Most all of Bush's nominations have been stalled like this, and a Catholic nominee that is now up to bat in front of the Senate judiciary committee is no different.

Bill Pryor, attorney general from Alabama, has been hammered from all sides for his staunch pro-life beliefs. A devout Catholic, Pryor has gone on record calling Roe v. Wade "the worst abomination in the history of constitutional law." Pryor has also made strong statements against homosexuality, another popular political taboo.

But Pryor's record as an impartial judge is practically impeccable. Despite his firm insistence that abortion is a moral evil, he has upheld the Supreme Court's decision to the letter, doing his duty as attorney general faithfully. Much as he disagrees with the law, he knows that laws are changed in Congress, not the courtroom.

Pryor also has a history as a strong civil rights advocate. He helped prosecute the last of the notorious Birmingham bombers of the 16th St. Baptist Church in 1963 and spearheaded a campaign to strike Alabama's ban on interracial marriages. Alabama state representative Alvin Holmes, who is black, fully endorsed Pryor's nomination, commending Pryor's "constant efforts to help the causes of blacks in America."

In spite of this commendable record, Pryor's detractors seem interested only in his pro-life beliefs, and they minced no words in expressing their doubt over his ability to be an impartial judge. In his hearing before the judiciary committee, which began yesterday, New York Democrat Charles Schumer directly pointed to Pryor's private beliefs as a stumbling block, saying, "[Pryor's] beliefs are so

deeply held that it's very difficult to believe those views won't influence how he follows the law. A person's views matter."

At another point, Schumer doubted Pryor's credibility as a judge at all, telling him, "Your record screams passionate advocate, but doesn't so much as whisper judge."

Such a personal attack on a man who is well-respected by his peers and recommended highly by other state attorney generals should be beneath Schumer, especially after looking at Pryor's distinguished career. It's one thing to question Pryor's beliefs, but to disregard his personal record solely on account of those beliefs is discrimination of the worst kind.

Fortunately, Pryor handled himself far better than Schumer during the hearing. When the senator asked him if he stood by his condemnation of Roe v. Wade, Pryor didn't bat an eye, simply responding, "I do."

The response must have caught Schumer off guard -- he probably expected Pryor to crack under pressure, but Pryor stood his ground. Later, Pennsylvania Republican Arlen Specter asked him again about his views on abortion.

Pryor responded, "I stand by that comment. I believe that not only is [Roe] unsupported by the text and structure of the Constitution, but it has led to a morally wrong result. It has led to the slaughter of millions of innocent unborn children."

Dumbfounded, the committee moved on. They probably didn't expect such candor from a man whose fate is in their hands, but they are quickly discovering that this is simply the kind of man Pryor is.

Pryor's long journey to a federal appointment is far from over, and when it finally comes time to vote, we might see yet another filibuster by Democrats not willing to give an exceptional candidate a fair vote. Schumer and others on the judiciary committee may continue to harp on Pryor's beliefs, insisting they will cloud his judgment, and discriminate against him on that point alone.

But Schumer and other Democratic senators on the committee have no proof that a pro-life Catholic is automatically disqualified to be a federal judge simply because of his beliefs. They'll have to do some serious digging to find a solid reason to discount Pryor's nomination.

One thing is certain: If yesterday's performance is any indication, Pryor will continue to stand his ground, refusing to cave to accusations about his faith or personal beliefs. Whether or not they agree with him, the judiciary committee has to respect his unwavering honesty.

Let's hope it convinces them to give this excellent candidate the fair chance he deserves.

Talk to you soon,
Deal

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To change your e-mail address, please send an e-mail to mail@crisismagazine.com with "ADDRESS CHANGE" in the subject line. Please make sure to tell us your old and new e-mail addresses, so we can make the change.

Please forward this letter to anyone you think might benefit from it.

From: Parell, Christie
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>;<Oca - Office Of Cabinet Affairs>
Sent: 6/12/2003 12:35:26 PM
Subject: Agency FOIA Requests
Attachments: FOIA 06-12-03.doc

<>

AGENCY FOIA REQUESTS***DOC***

Received 6/2/03, from **Meghann K. Peterlin**, requesting all correspondence from January 1997 through May 2003 between DOC and Senators Barbara Boxer, Thomas Daschle, Christopher Dodd, Byron Dorgan, Russell Feingold, Ernest Hollings, Patrick Leahy, Blanche Lincoln, Barbara Mikulski, Patty Murray, Harry Reid, and Charles Schumer.

Received 6/4/03, from **Steven Emerson of SAE Productions**, requesting all documents regarding the situation in Chechnya and the government formed by Dzokhar Dudnev in 1991.

HHS

6/18/03 (Tentative)

The **Centers for Medicare and Medicaid Services (CMS) High Visibility** FOIA Request - On March 21, a FOIA request was submitted to CMS from Scott Street, the Deputy Research Director of Gephardt for President 2004. The request asked for correspondence and other information that was requested by or provided to Senator John Kerry.

7/2/03

The **Detroit Free Press** requested grant applications and HRSA communications regarding unsuccessful Federally Qualified Health Center applicants from the Detroit area during the past 5 years.

EPA

During the week of June 2, 2003, the agency received 252 FOIA requests. Of the total, 42 were received in Headquarters. Year-to-date totals are 1,627 for Headquarters and 8,724 agency-wide. Significant FOIA requests received this week include:

- (3) **Michael Milstein of *The Oregonian*** has requested copies of records related to EPA's funding of a contract with Klamath Basin Rangeland Trust (KBRT) based in Medford, Oregon;
- (4) **Judy M. Sheahan of the U.S. Conference of Mayors** has requested a list of the Brownfields applications that were rejected because of the 107 provision which bans potentially responsible parties from receiving Brownfields funding.;
- (5) **Richard Caplan of the U.S. Public Interest Research Group** has requested copies of various data used to compile the water compliance facility reports in EPA's Enforcement and Compliance History Online (ECHO) database;
- (6) **Sean Moulton of OMB Watch** has requested electronic copies of all Executive

Summaries submitted to EPA for facilities covered by the Risk Management Planning (RMP) program, basic information used to track submissions, and electronic copies of all five-year accident histories submitted to EPA for facilities covered by the RMP program;

- (7) **Sean Moulton of OMB Watch** has also requested all of the databases currently accessed by EPA's Enforcement and Compliance History Online (ECHO) website and related information;
- (8) **David Danelski of *The Press-Enterprise*** has requested all correspondence concerning the chemical perchlorate between the Administrator, her predecessors, and/or other EPA officials and (1) officials with the Department of Defense and/or any branch of the U.S. military, and (2) with officials with companies that have made or used perchlorate for weapons and related products used by the government or have been suspected of contaminating the environment with perchlorate.

DOI

The Aroostook Band of Micmacs. The Deputy Attorney General for the State of Maine filed a Freedom of Information Act request seeking records concerning the Aroostook Band of Micmacs and all petitions for acknowledgment as an Indian tribe filed by or on behalf of the Band with Interior.

DOJ

Katy Lewis, of the Center For Public Integrity, has requested copies of correspondence from January 1998 to the present between the Department of Justice and the Republican National Committee, the National Republican Senatorial Committee, and the Republican National Congressional Committee.

Katy Lewis, of the Center For Public Integrity, has requested copies of correspondence from January 1998 to the present between the Department of Justice and the Democratic National Committee, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee.

R. Jeffrey Smith, of the Washington Post, has requested all records of "communications related to a request from Rep. Thomas DeLay and/or any member of his staff or the staff of the House Majority Leader's office for assistance in locating and/or arresting members of the Texas legislature on May 12, 13, or 14, 2003."

DOL

Edgar F. Oldham, Jr., International Safety Representative, United Mine Workers of America, Madisonville, KY, is seeking:
copies of all violations issued in MSHA District 10 at all of the mines from January 1, 2000 to the present.

Joseph A. Main, Administrator, Department of Occupational Health and Safety, United Mine Workers of America, Fairfax, VA, is seeking:

a copy of the contracting arrangements the Mine Safety and Health Administration has with ICF Consulting of Lexington, Maryland involving an evaluation of the Federal mine inspection program carried out under the Federal Mine Safety and Health Act. This contract may have been entered into approximately a year ago.

Joseph Main is also seeking the following:

Correspondence between ICF Consulting and MSHA, including a copy of the contracts and any amendments, the statement and direction of work and requested services and the date the contract was awarded, length of contract, any amendments, payments made or agreed on and the costs of the contract.

Identify the principal MSHA or other official that approved the contract, including any amendments and the principal MSHA official overseeing the contract.

Copies of all bids issued by or on behalf of MSHA for the services sought for the contract and a list of all those who placed bids.

Meghann K. Peterlin, Falls Church, VA, is seeking:

for the period of January 1997 through May 2003, any and all correspondence and related documents between the Department of Labor or any of its offices, organizations, or agents and the following individuals:

Senator Barbara Boxer (California), Senator Thomas Daschle (South Dakota)

Senator Christopher Dodd (Connecticut), Senator Byron Dorgan (North Dakota)

Senator Russell Feingold (Wisconsin), Senator Ernest Hollings (South Carolina)

Senator Patrick Leahy (Vermont), Senator Blanche Lincoln (Arkansas)

Senator Barbara Mikulski (Maryland), Senator Patty Murray (Washington)

Senator Harry Reid (Nevada), Senator Charles Schumer (New York)

Adam Lee, Strategic Campaigns Department, United Steelworkers of America (AFL-CIO-CLC), Pittsburgh, PA, is seeking:

A file review of all documents, including notes, interoffice correspondence, interagency correspondence, other correspondence, meeting minutes, telephone memoranda, draft reports and/or recommendations, proposals or written "suggestions", e-mail and computer files, working documents, inspection reports, complaints, complaint investigations and other documentation concerning the recent investigations of activities at the United Steelworkers of America, Local 2635 in Johnstown, Pennsylvania.

Jennifer Dix, Reporter, Detroit Free-Press, is seeking:

information on injury and illness rates for multiple auto assembly plants.

Jason D. McCord, Reporter, Post-Star Newspaper (Saratoga Springs, NY), is seeking:

information concerning multiple paper mill and tissue paper companies in New York.

Jeremy Olson, Investigative Reporter, Omaha World Herald is seeking:

information on companies cleaning meat packing plants in the Omaha area and OSHA's oversight.

OPM

The firm of **Crowell Moring** has submitted a FOIA request for all documents relating to audits, rating practices, rate proposals, or rate reconciliations (including audit reports) for contract years 1997 to present for four FEHB carriers (UPMC Health Plan, HealthGuard, Keystone Health Plan Central, and Keystone Blue).

VA

Jeremy Olson, investigative reporter for the *Omaha World-Herald Newspaper* in Nebraska, requested a copy of the Veterans Health Administration's Technical Manual for Quality Indicators. He is writing a story on VA quality of care.

The **Financial Services Center** in Austin, Texas (which comes under the Office of Finance) closed a FOIA request from Nelson-Brown Equities, Inc., dated January 14, 2003. **Nelson-Brown, Inc.** requested a copy of all VA Limited Payability Cancellation Reports for refunds and credits for undeliverable checks for the period of September 2002 to the most current available, eliminating any checks which had been, or were in the process of being reissued. Nelson-Brown, Inc. was only interested in items over \$3,000.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Brosnahan, Jennifer R.>; <Newstead, Jennifer G.>; <Bartolomucci, H. Christopher>; <Sampson, Kyle>; <Brown, Reginald J.>; <Powell, Benjamin A.>; <Ullyot, Theodore W.>; <Addington, David S.>
Sent: 6/12/2003 1:39:20 PM
Subject: informative NRO story on Pryor; read last part about race and Alvin Holmes

The Nominee Who Won't Back Down

Alabama's Bill Pryor faces Senate Democrats.

ay you find yourself nominated for a seat on one of the nation's federal courts of appeal. You face a confirmation hearing in a bitterly divided Senate Judiciary Committee. You know that if you've ever made any particularly blunt statements in the past — particularly if they were true — you'll be confronted with your words and expected to explain to senators that your remarks were somehow taken out of context, that your real meaning was obscured, or that you wouldn't say such a thing today.

At least that's what the confirmation handbook says you should do. But on Wednesday in the Dirksen Senate Office Building, William Pryor, the Alabama state attorney general who has been nominated to a seat on the 11th Circuit Court of Appeals, threw the confirmation handbook out the window. The result was one of the most extraordinary Judiciary Committee sessions in recent memory.

THE "WORST ABOMINATION"

Pryor has said some very blunt things in the past. For example, he's a vigorous opponent of abortion and has called the *Roe v. Wade* decision "the worst abomination in the history of constitutional law."

The quote appears in every anti-Pryor tract produced by the liberal interest groups that oppose his nomination. Before the hearing, Pryor no doubt knew that more than one senator would read his words to him and ask for an explanation. And indeed, right off the bat, New York Democrat Charles Schumer recited the "abomination" line and asked, "Do you believe that now?"

It was the perfect moment for Pryor to begin a backpedaling, thank-you-for-your-question-and-please-confirm-me explanation. Instead, Pryor said, simply, "I do."

Schumer looked slightly amazed. "I appreciate your candor," he said. "I really do."

Later, Pennsylvania Republican Arlen Specter went over the same ground. Did Pryor really say such a thing? Specter asked. Was the quote accurate?

Yes, Pryor said, the quote was accurate.

Did Pryor stand by his words?

"I stand by that comment," Pryor said. "I believe that not only is [*Roe*] unsupported by the text and structure of the Constitution, but it has led to a morally wrong result. It has led to the slaughter of millions of innocent unborn

children."

Specter seemed more than a little chagrined. "Well," he said, pausing for a moment and looking down, "let's move on."

There were plenty of other Pryor statements to move on to. There was the time he said that with *Roe*, the Supreme Court had created "out of thin air a constitutional right to murder an unborn child." And then there was the remark that he "will never forget January 22, 1973 [the day of the *Roe* decision], the day seven members of our highest Court ripped up the Constitution."

Given more opportunities to back away from his words, Pryor again declined. "I believe that abortion is the taking of human life," he explained when committee chairman Orrin Hatch asked him about his comments. "I believe that abortion is morally wrong."

At that point some longtime confirmation observers, while impressed with Pryor's candor, wondered what was going on. Who is this guy? Is he suicidal?

Honest would be more like it. In years of speeches, interviews, campaigning, and writing, Pryor has in fact said many of the things attributed to him. Faced with strong Democratic opposition in a tense confirmation setting, he could either do an across-the-board climb down — something that would have looked ridiculous, given the intensity of his opinions on many matters — or he could argue that yes, he holds strong personal views but is able to separate them from his performance as a public official.

Pryor chose the latter. "I have a record as attorney general that is separate from my personal beliefs," he told Hatch. "I am able to put aside personal beliefs and follow the law, even when I strongly disagree with it."

On abortion, Pryor argued that, despite his personal opposition, he had ordered Alabama's district attorneys to take "the narrowest construction available" of the state's newly passed partial-birth-abortion ban. Pryor told the committee that he believed Supreme Court precedent, specifically the *Casey* decision, dictated a more moderate reading of the law than the aggressive stance favored by some pro-life groups in Alabama. "Look at my record," he told the committee. "I have done my duty."

MR. FEDERALISM

After abortion, the most contentious issue at Wednesday's hearing was the sometimes-touchy legal relationship between the states and the federal government. Pryor is a state attorney general and has on several occasions argued in favor of state interests when he felt they were being encroached upon by federal power. For his troubles, the left-wing interest group People for the American Way recently called him "a leader of the modern states' rights movement," a not-too-subtle attempt to link Pryor to southern defenses of segregation.

People for the American Way and other critics pointed to a Supreme Court case, *United States v. Morrison*, in which Pryor filed an amicus brief arguing against the constitutionality of part of the Violence Against Women Act. Pryor argued that Congress had unreasonably stretched the meaning of the Constitution's Commerce Clause to impose federal penalties on those guilty of violence against women. He argued that if Congress wanted to use the Commerce Clause to regulate an activity, then that activity must involve commerce — and that physical assault does not qualify. Pryor's opponents have written disapprovingly that he was the only state official to file a brief opposing portions of the act, while officials from 37 other states filed briefs supporting it.

To hear Democrats tell it, Pryor had made a grievously misguided legal judgment. But the problem for Pryor's opponents is that he was, in fact, proved right. The Supreme Court, in a five-to-four decision, ruled in favor of Pryor's argument in *United States v. Morrison*.

The same held true for other federalism cases in which Pryor played a part. While committee Democrats clearly did not like Pryor's position in those cases, they found it difficult to overcome the fact that Pryor's arguments had been validated by a majority of the nation's highest Court. At the very least, Pryor's Court victories made it

difficult for Democrats to charge, as they have in other confirmation battles, that the nominee was far outside the judicial mainstream.

THAT NICE JUSTICE SOUTER

Much of the hearing focused mostly on stray comments Pryor has made in the past about the Supreme Court. For example, after a high Court ruling on an Alabama death-penalty case a few years ago, Pryor said, "This issue should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court." While nobody pointed out that the remark was factually wrong — after all, there are some spry justices who have not quite hit their 80s — Democrats in general took offense.

Massachusetts senator Edward Kennedy pressed Pryor to admit that he had made an "improper" statement. Pryor declined, calling it instead "overheated political rhetoric."

But wasn't it improper? Kennedy asked again.

"It was overheated," Pryor answered.

Kennedy kept at it. Finally, Pryor offered a compromise. "I think it was inappropriate," he said.

Other Democrats questioned Pryor about remarks made in July 2000 about David Souter, the Supreme Court justice appointed by the first President Bush who has often disappointed Republicans by taking liberal positions in key cases. Speaking to a Federalist Society audience, Pryor praised the Court's federalism decisions, but noted the narrow margin of victory in many of them. "We are one vote away from the demise of federalism," he said. "Perhaps that means that our real last hope for federalism is the election of Governor George W. Bush as President of the United States, who has said his favorite justices are Antonin Scalia and Clarence Thomas....I will end with my prayer for the next administration: Please, God, no more Souters."

Senator Schumer asked Pryor: "What's wrong with Justice Souter?" For a moment it appeared that Pryor would retreat, as he began to explain that his remarks were a "perhaps feeble attempt at humor." But then Pryor stiffened again, saying he was simply responding to Souter's outspoken opposition to majority decisions in some federalism cases. "I have on several occasions disagreed with decisions of Justice Souter," Pryor explained. When asked why he had singled Souter out, Pryor gave a simple answer: Because Souter had written the opposing opinions. The issue went away.

THE ATTACK THAT WASN'T

All the talk about abortion and federalism and octogenarians and David Souter tended to conceal an extraordinary aspect of the hearing. Even though Pryor is a conservative white Republican from Alabama, there were almost no attacks on him based on race. Race was, in fact, a virtual non-issue in the hearing.

Yes, there was the "states' rights" innuendo — Pryor told the committee he didn't like the term because "from John C. Calhoun to George C. Wallace" it had been "used as an illegitimate defense of evil." There was also some talk about Pryor's opinion on one portion of the Voting Rights Act. But the strength of Pryor's record on race forced Democrats to abandon their traditional strategy of accusing southern Republicans of being "insensitive" to the concerns of African Americans.

To attack Pryor on race, Democrats would have had to counter the evidence contained in a detailed testimonial for Pryor sent to the committee by Alabama Democratic state representative Alvin Holmes. Offering his "full support and endorsement" of Pryor, Holmes, who is black, listed several examples of what he called Pryor's "constant efforts to help the causes of blacks in Alabama." Pryor had sided with the NAACP against a Republican lawsuit challenging state-legislative districts, Holmes wrote, even after he "came under heavy pressure from other white Republicans in Alabama for fighting to protect black legislative seats." Pryor played a key role in the prosecution of the last men charged in the 1963 Birmingham church bombing, took the lead in ending racial disparities in criminal sentences, worked to strike the state's ban on interracial marriages, and wrote

a bill strengthening penalties for cross burning, Holmes wrote.

The committee also received a letter from former Alabama state representative Chris McNair. While McNair noted Pryor's stands on legislative districting and other issues, his testimonial was more personal. McNair's daughter, Denise, was one of four girls killed in the 1963 bombing. "Bill Pryor's personal support for the recent trials of the men convicted of bombing the 16th Street Baptist Church and the murder of my daughter has meant a lot to my family and this community," McNair wrote. "By designating the prosecutors as Special Assistant Attorney Generals and by providing financial assistance through his office, he demonstrated a commitment to justice that had been long overdue. I had numerous conversations with him about these cases and his desire to see that justice was done. His commitment to the cases was sincere and has been very much appreciated."

NO BACKING DOWN

Whenever Pryor comes up for a vote in the Judiciary Committee — it could be a couple of weeks — it is likely that he will be approved on a straight party-line vote. If Democrats remain united in opposition, that would make him an ideal candidate for yet another filibuster on the Senate floor.

But that is not guaranteed. Yes, Pryor has made strong statements about abortion, but not any stronger than those made by Michael McConnell, who was confirmed by the Senate — when it was controlled by Democrats — to a seat on the Tenth Circuit Court of Appeals. Yes, Pryor's opinions on federalism rankle some Democrats, but his views have the virtue of having prevailed in several Supreme Court cases. And yes, Pryor's statements about Souter and the Court's octogenarians were unwise, but by no means confirmation-killers.

So maybe he will be filibustered and maybe not. In the end, Pryor's nomination might be the ultimate illustration of the capriciousness of the confirmation process as currently practiced in the Senate. How could Democrats filibuster Pryor when they confirmed McConnell? On the other hand, how could they *not* filibuster Pryor when they are filibustering Priscilla Owen, the Texas judge who angered Democrats by her views on the decidedly tangential issue of parental notification for teenage girls seeking abortions?

Whatever happens, Pryor knows this: He didn't duck, he didn't cover, and he didn't backtrack in the face of his critics on the Judiciary Committee. And when it was all over, even his opponents respected him for that.

From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
Sent: 6/12/2003 4:26:11 PM
Subject:

Bashman on Brown:

California Supreme Court Justice Janice Rogers Brown issues interesting decision in insurance coverage dispute: Writing on behalf of a total of four Justices on the seven member Supreme Court of California, Justice Brown's opinion issued today begins: The insurance policy in this case defined "collapse" as "actually fallen down or fallen to pieces." However, sound public policy, the Court of Appeal concluded, requires coverage for imminent, as well as actual, collapse, lest dangerous conditions go uncorrected. By failing to apply the plain, unambiguous language of the policy, the Court of Appeal erred. Later, Justice Brown's opinion explains: Applying the same logic, with the same lack of restraint, courts could convert life insurance into health insurance. In rewriting the coverage provision to conform to their notions of sound public policy, the trial court and the Court of Appeal exceeded their authority, disregarding the clear language of the policy and the equally clear holdings of this court. You can access the complete decision [at this link](#).

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Lewis Libby/OVP /EOP@EOP [OVP] <Lewis Libby>; David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>
Sent: 6/12/2003 12:35:47 PM
Subject: : FW: AP coverage of House vote

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME:12-JUN-2003 16:35:47.00
SUBJECT:: FW: AP coverage of House vote
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

House Republicans approve plan to move most class-action lawsuits to federal courts
Associated Press Newswires
June 12, 2003

By Jesse J. Holland

WASHINGTON (AP) - The House on Thursday approved moving virtually all national class-action lawsuits from state court into federal court, a move supporters hope will curb frivolous lawsuits but opponents fear will allow big businesses to escape multimillion-dollar verdicts for misdeeds.

Pushing the bill through on a 253-170 vote, majority Republicans argued that trial lawyers increasingly abuse such lawsuits to profit from multimillion-dollar settlements. Victims, on the other hand, often get virtually worthless coupons, GOP lawmakers maintain.

"These suits are one of the most grossly abused parts of the American system of justice," said Rep. Deborah Pryce, R-Ohio. "We have seen a deluge of frivolous lawsuits designed to coerce quick and often unwarranted settlements, often to enrich only a few."

Democrats called the bill corporate welfare to help out big businesses that abuse the public. Federal courts are assumed to be less likely to issue multimillion-dollar verdicts on big corporations.

"It's indefensible," said Rep. Martin Frost, D-Texas. "This is simply welfare for some of the worst corporate wrongdoers, big companies like WorldCom, Arthur Andersen and Enron."

The White House supports the legislation. "The bill will remove significant burdens on class-action litigants and provide greater protections for the victims whom the class-action device originally was designed to benefit," the Bush administration said.

House Democrats say the bill is unfair, because it would change not only future class-action lawsuits, but even the ones being heard in court right now.

"The purpose is to shield corporate wrongdoers from civil liability and leave the public unprotected," said Rep. William Delahunt, D-Mass. "This is not about protecting plaintiffs and insuring prompt recoveries, it's about protecting large corporations."

The House, on a voice vote, changed their legislation to make it similar to a version being considered by the Senate.

Under the House and Senate bills, class-action lawsuits in which the primary defendant and more than one-third of the plaintiffs were from the same state would still be heard in state court. But if fewer than one-third of the plaintiffs were from the same state as the primary defendant, the case would go to federal court.

Also, at least \$5 million would have to be at stake for a class-action lawsuit to be heard in federal court.

But House Democrats say the Senate bill is still better, because it does not apply retroactively. The Senate bill also applies only to class-action lawsuits, and not to mass tort cases, consolidated cases, joinder cases, or state attorney general actions.

"We know who they're protecting," said Rep. Max Sandlin, D-Texas.

Businesses long have complained about the threats from liability suits and have made changing the way such cases are tried a priority.

Opponents say the bill would make it harder for individuals to seek grievances against powerful defendants and would add to the burdens of federal courts overloaded with cases.

Public Citizen, a consumer advocacy group, says more than 100 companies and pro-business groups spent millions and used at least 475 lobbyists to push the legislation.

The bill "contains a number of changes that will enable corporations to injure or defraud average Americans while hiding behind legal loopholes or procedural technicalities," the group said in a report.

From: Schwartz, Victor <VSCHWARTZ@shb.com>
To: Karl Rove (E-mail) <kr@georgewbush.com>
CC: Adam B. Goldman/WHO/EOP@EOP [WHO] <Adam B. Goldman>; Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/12/2003 2:53:23 PM
Subject: : PLAINTIFFS' LAWYER'S QUOTE TELLS WHY CLASS ACTION REFORM IS NEEDED

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Schwartz, Victor" <VSCHWARTZ@shb.com> ("Schwartz, Victor" <VSCHWARTZ@shb.com> [UNKNOWN])
CREATION DATE/TIME:12-JUN-2003 18:53:23.00
SUBJECT:: PLAINTIFFS' LAWYER'S QUOTE TELLS WHY CLASS ACTION REFORM IS NEEDED
TO:"Karl Rove (E-mail)" <kr@georgewbush.com> ("Karl Rove (E-mail)" <kr@georgewbush.com> [UNKNOWN])
READ:UNKNOWN
CC:Adam B. Goldman (CN=Adam B. Goldman/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Dear Karl,

An op-ed in yesterday's Wall Street Journal contains a quote by Dickie Scruggs, the famous plaintiff's lawyer, that demonstrates better than any other statement I have seen as to why federal class action reform is needed now. It arose in a debate I had with Mr. Scruggs some time ago. You may be able to use this quote with recalcitrant Republican Senators, such as Dick Shelby, to demonstrate why it is embarrassing to oppose federal class action reform. What Mr. Scruggs refers to as "magic" jurisdictions are called "judicial hellholes" by the American Tort Reform Association; the principle is the same - defendants cannot get a fair trial in these places. The President also may wish to use this quote when he discusses the need for class action reform.

If I can be of further assistance, please let me know.

Kind regards, Victor

Victor E. Schwartz
Shook, Hardy & Bacon L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004
Telephone 202-662-4886
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vschwartz@shb.com

The Tort Tax
By Jim Copland
932 words
11 June 2003
The Wall Street Journal
A16

Plaintiffs' lawyers admit the existence of magnet courts. Dickie Scruggs, one of the nation's foremost plaintiffs' lawyers, who pocketed hundreds of millions in the tobacco settlements, described it best at a conference last June: "[W]hat I call the 'magic jurisdiction' . . . [is] where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected They've got large populations of voters who are in on the deal And so, it's a

REV_00237779

political force in their jurisdiction, and it's almost impossible to get a fair trial if you're a defendant in some of these places Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or the law is."

"MMS <shb.com>" made the following annotations on 06/12/2003 05:51:59 PM

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From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin A. Powell/WHO /EOP@EOP [WHO] <Benjamin A. Powell>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/12/2003 3:34:47 PM
Subject: : Birmingham News (6/12/03) re: Pryor says his beliefs won't interfere with law

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CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 12-JUN-2003 19:34:47.00
SUBJECT: : Birmingham News (6/12/03) re: Pryor says his beliefs won't interfere with law
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
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News

Pryor says his beliefs won't interfere with law
06/12/03

MARY ORNDORFF

News Washington correspondent

WASHINGTON Alabama Attorney General Bill Pryor told senators Wednesday that he could discard his history of strong personal opinions and political agendas to become a fair and objective judge, a statement Republicans cheered and Democrats doubted.

"My record as attorney general shows that I am able to put aside my beliefs and follow the law," Pryor said. "It is my duty."
They were his first public comments since President Bush nominated him in April to a lifetime slot on the 11th U.S. Circuit Court of Appeals, a post that requires the blessing of the U.S. Senate.

Pryor's four-plus hours before the Senate Judiciary Committee were less contentious than his supporters had expected. But Democrats, while they applauded Pryor's candor, grilled him about everything from his stated position that abortion is murder to his distaste for federal government reaching into state issues.

"I believe a judge can be pro-life yet be fair, balanced, and uphold a woman's right to choose," said Sen. Charles Schumer, D-NY. "But based on the comments Attorney General Pryor has made on this subject, I've got some real concerns that he cannot, because he feels these views so deeply and passionately."

The hearing's tempo swung like a pendulum. Republicans heaped praise on Pryor as he leaned back in his chair and sipped water. But the more interrogating Democrats took turns sending him to the edge of his seat to defend himself, sometimes at higher volume, against their pointed questions.

Sen. Russ Feingold, D-Wisconsin, debated Pryor on his record of raising campaign cash from corporations through a political group he created for Republican state attorneys general. Pryor said the contributions would not create a conflict of interest for prosecutors who might have to investigate those companies.

Feingold also asked Pryor why he decided to reschedule a family vacation to Disney World to avoid a planned gathering of homosexuals. Pryor said he and his wife, when their daughters were ages 6 and 4, "made a value judgment" and went another time.

Sen. Edward Kennedy, D-Mass., accused Pryor of "ducking" a question about a case involving the death penalty's application to the mentally retarded. Pryor testified that he regretted only one of his published remarks, when

REV_00237781

he said Alabama's method of execution should not be a decision for the "octogenarians" on the Supreme Court.

Pryor's biggest defenders were the committee chairman, Sen. Orrin Hatch, R-Utah, and Sen. Jeff Sessions, R-Ala. Sessions, whose own nomination to the bench was killed several years ago by the same committee, beamed like a proud father. He hired Pryor into the state prosecutor's office in 1995. "Bill is one of the good guys," Sessions said. "There is no extremism here."

Hatch was incredulous that opponents blasted Pryor's legal positions in cases ultimately won before the U.S. Supreme Court. "The ones outside the mainstream are these critics," Hatch said.

Pryor returned time and again to a set of examples of his defying his personal beliefs or bucking his supporters to make a legal argument in a case. He ordered local prosecutors in Alabama to enforce a ban on a late-term abortion method critics call partial-birth abortion only to the extent that would be upheld by the courts, and no further; he took the side of blacks and Democrats in a challenge to legislative district lines; and he disagreed with former Gov. Fob James and argued in support of student-led, but not school-led, prayer.

"Whatever my political philosophies might be ... I strive to follow the law," Pryor said.

Race and religion were undercurrents. There were multiple references to the 16th Street Baptist Church bombings and how Pryor aided the prosecution of the final two suspects. Sessions and other Republicans spoke frequently and highly of state Rep. Alvin Holmes, D-Montgomery, who endorsed Pryor's nomination. Hatch called Holmes "a great black leader." There were no signs that the seven Democrats at Wednesday's hearing were swayed to vote for Pryor. One Republican, Sen. Arlen Specter of Pennsylvania, asked Pryor for assurances that he would follow the precedents of the Supreme Court, especially Roe v. Wade. Pryor under earlier questioning had said he would follow the law on abortion. Specter, who is pro-choice, did not disclose whether he would support Pryor's nomination.

If the committee votes along party lines, in a meeting that is probably more than a week away, Pryor would be approved 10-9. Pryor's opponents are lobbying Democrats to filibuster Pryor's nomination on the Senate floor, a tactic employed against two other nominees.

In the end, Sessions declared Pryor had won the day. Democrats, who were limited to 10-minute sessions per senator, did not return for a second round of questions after a lunch break.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/12/2003 3:37:56 PM
Subject: : Mobile Register (6/12/03) re: Pryor's backers are pleased

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 12-JUN-2003 19:37:56.00
SUBJECT: : Mobile Register (6/12/03) re: Pryor's backers are pleased
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
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News

Pryor's backers are pleased
'Nobody laid a glove on him,' says Sessions of Senate panel's hearing
06/12/03

By SEAN REILLY

Washington Bureau

WASHINGTON -- In occasionally heated exchanges Wednesday, Alabama Attorney General Bill Pryor told the Senate Judiciary Committee that he would place the law above his personal convictions if approved for a federal appeals court judgeship, while Democrats on the panel peppered him with skepticism over his ability to serve impartially.

But after the Mobile native had spent more than three hours taking questions, the hearing abruptly concluded in mid-afternoon, when no Democratic senators showed up after a lunch break. Committee Chairman Orrin Hatch, R-Utah, interpreted their absence as a tribute to the Mobile native's performance. Echoing that assessment was U.S. Sen. Jeff Sessions, R-Mobile, who confidently declared that "nobody laid a glove on him."

While a "long tough battle" lies ahead, Sessions said, "we made real progress today."

In a statement issued afterward, however, the committee's top Democrat, Sen. Patrick Leahy of Vermont, said "the hearing made ever clearer to everyone that this has been and remains an extremely controversial nomination."

Although senators can submit written questions to Pryor until Tuesday, Hatch said, the Republican-run committee will probably vote to send his nomination to the full Senate within the next two weeks.

Observers on both sides have suggested that Democrats might then try to block the nomination on the Senate floor through stalling tactics that they are already employing with two other Bush nominees. Leahy's statement didn't look that far ahead, saying only that committee members will decide how to vote in light of Pryor's answers at Wednesday's hearing and to follow-up written questions.

Pryor, a 41-year-old Republican, is the latest in a string of Bush judicial candidates to arouse controversy since the White House announced his nomination two months ago for a lifetime seat on the Atlanta-based 11th U.S. Circuit Court of Appeals. On abortion, states' rights and other issues, critics say that Pryor's past positions raise troubling doubts about his future potential to make an even-handed judge.

In the last week, several advocacy organizations have published lengthy

reports documenting what they label as Pryor's record of right-wing activism. The day before Wednesday's hearing, a half-dozen groups joined in a news conference calling on the Senate to keep him off the bench.

"Bill Pryor is a proud and distinguished ideological warrior. I respect him for it," U.S. Sen. Charles Schumer, D-N.Y., said in his opening statement Wednesday. But ideological warriors of any political stripe "tend to make law, not interpret law," Schumer continued. "And that's not what any of us should want from our judges."

Pryor, clad in sober pin-stripes and accompanied by his wife and two young daughters, responded that as attorney general he had always stayed within settled legal boundaries and would continue to do so on the bench.

On the abortion issue, for example, Pryor repeatedly asserted that he had more narrowly interpreted a 1997 Alabama statute banning the procedure commonly known as "partial-birth abortion" than some anti-abortion advocates and then-Gov. Fob James had wanted.

"It was my best judgment of what the law required," Pryor said. Asked by Hatch whether he would continue to follow the precedent set by the 1973 U.S. Supreme Court decision legalizing abortion, Pryor replied: "You can take it to the bank, Mr. Chairman."

Even so, Pryor did not disavow his one-time characterization of that 1973 ruling as "the worst abomination in the history of constitutional law." In his opening statement, Schumer seemed to muse whether that ruling was truly worse than earlier high court decisions upholding slavery, racial segregation and the internment of Japanese-Americans during World War II. Pryor yielded no ground Wednesday.

"It has led to the slaughter of millions of innocent unborn children," he said later in the hearing.

Pryor also defended a friend-of-court brief filed earlier this year in support of Texas's criminal sodomy law. The brief had drawn fire from gay rights groups, who say that it equates private same-sex relations with necrophilia and possession of child pornography. But Pryor contended that he was simply following the lead of the late U.S. Supreme Court Justice Byron White in a 1986 opinion upholding a Georgia law that also made homosexual sodomy a crime.

And in response to friendly questioning from Hatch, Pryor gladly acknowledged that the high court has several times taken his side on controversial cases involving the balance of power between state and federal governments.

In a 2001 ruling on a challenge brought by Pryor, for example, the Supreme Court on a 5-4 vote dramatically restricted the right of state workers to sue for disability discrimination under federal law. Not long before, Pryor was the only attorney general in the nation to file a friend-of-court brief arguing the unconstitutionality of a provision in another law giving rape victims the ability to sue their attackers in federal court. Three-dozen other attorneys general took the opposite view, but in another 5-4 decision, the Supreme Court again landed in Pryor's corner.

"I think the fact the Supreme Court agreed with you in a number of these cases indicates that your arguments are hardly outside the mainstream," Hatch said.

Pryor did make a small concession after U.S. Sen. Edward Kennedy, D-Mass., challenged his comment three years ago that "nine octogenarian lawyers who happen to sit on the Supreme Court" should not decide whether an Alabama death row inmate got a temporary reprieve.

Pryor first described the remark as "overheated political rhetoric," but after Kennedy continued to prod him, then called it "an inappropriate statement."

Pryor also clashed with Sen. Russell Feingold, D-Wis., over disclosure of political contributions to the Republican Attorneys General Association, an organization that Pryor helped found in the late 1990s, although he is no longer an officer. The group has drawn criticism for raising money from corporations that may have a stake in the official actions of its members. After Pryor repeatedly referred questions about specific donors to the Republican National Committee, Feingold retorted that he took those responses as a "refusal" to provide the information.

To the surprise of at least one opponent, the panel never brought up Pryor's well-publicized refusal to sue tobacco companies to recover taxpayers' cost of smoking-related health problems. Also unmentioned

during the hearing was a newly released evaluation by an American Bar Association review committee giving Pryor lackluster grades on his professional qualifications.

Before beginning his testimony, Pryor was introduced by Sessions, Sen. Richard Shelby, R-Tuscaloosa, and U.S. Rep. Jo Bonner, R-Mobile. Bonner highlighted a letter of support written by state Rep. Alvin Holmes, a black Montgomery Democrat who urged swift confirmation for Pryor "because of his constant efforts to help the causes of blacks in Alabama."

In anticipation of a substantial crowd, the setting for Wednesday's hearing was moved to a larger room in a Senate office building than was first planned. At the outset, the standing room only audience numbered more than 200, but eventually dwindled to a few dozen. Pryor supporters were readily identifiable by lapel stickers that proclaimed him "A Judge for America." In a display of concern over Pryor's role in spearheading the disability discrimination case, several disabled people on indoor motor scooters also attended under the motto, "Don't Roll Back our Rights."

The 12 judges on the 11th Circuit hear appeals from Alabama, Georgia and Florida. Because the U.S. Supreme Court takes relatively few cases, the 11th Circuit is frequently the court of last resort in the three-state territory. The judges make \$164,000 annually.

From: Mamo, Jeanie S.
To: <Snee, Ashley>;<Kavanaugh, Brett M.>;<Powell, Benjamin A.>
Sent: 6/12/2003 7:39:54 PM
Subject: Montgomery Advertiser (6/12/03) re: Pryor meets opposition

Pryor meets opposition

Judicial nominee feels heat of hearing spotlight

By Ana Radelat

Montgomery Advertiser

Alabama Attorney General Bill Pryor testifies Wednesday before the Senate Judiciary Committee. Pryor's record of conservative activism is a point of contention for Democrats on the committee.

-- Heather Martin Morrissey, Gannett News Service

WASHINGTON -- Alabama Attorney General Bill Pryor is the latest White House judicial nominee to raise the ire of Senate Democrats who believe President Bush is trying to pack the federal courts with conservative activists.

"General Pryor's views seem to be a stitching-together of the parts of the worst nominees," Sen. Charles Schumer, D-N.Y. said Wednesday.

Pryor, 40, was nominated by Bush in April to fill a vacancy on the Atlanta-based 11th U.S. Circuit Court of Appeals. The brash attorney general's long record of conservative activism was the focus of often contentious grilling by Schumer and other Democrats on the Senate Judiciary Committee.

Pryor's candidacy also has been hurt by the American Bar Association's mixed review of his record, which was released late Tuesday. The majority on a 15-member ABA panel that evaluates candidates for the federal bench gave Pryor a "substantially qualified" rating, but a minority deemed him "not qualified."

Senators questioned Pryor about his views on the separation of church and state, his support of states' rights and his opposition to abortion and a federal law aimed at preventing domestic violence. Pryor also was asked about his cancellation of a family trip to Disney World to avoid "gay day."

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BILL PRYOR

REV_00237786

Name: William Holcombe Pryor Jr.

Age: 41

Born: April 26, 1962, in Mobile

Education: Law degree from Tulane University School of Law, Northeast Louisiana University, (now the University of Louisiana at Monroe), bachelor's degree in legal studies

Religion: Roman Catholic

Family: Wife, Kris, two children

Home: Montgomery

Career experience: Law clerk for the late Judge John Minor Wisdom of the U.S. Court of Appeals, 5th Circuit, 1987; private practice in two Birmingham law firms, 1988 to 1995, adjunct professor at the Cumberland School of Law of Samford University, 1989 to 1995; deputy attorney general of Alabama, 1996; attorney general of Alabama, 1997 to present.

--Gannett News Service

He also defended his support for Alabama Supreme Court Chief Justice Roy Moore, who has displayed a monument containing the Ten Commandments in the rotunda of the state Judicial Building. Senators also questioned Pryor about his campaign urging Congress to eliminate a provision of the Voting Rights Act that protects minority voting rights.

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"I have a record as attorney general that is separate from my personal beliefs," he said. "I can put aside my personal beliefs and follow the law."

Pryor also bristled at the suggestion that he is an archconservative.

"In Alabama, sometimes I'm called a moderate," he said.

Burgeoning Democratic opposition may not be as much of a problem for Pryor as the loss of a key Republican vote. In a sometimes testy exchange, pro-choice Sen. Arlen Specter, R-Pa., questioned Pryor's staunch opposition to abortion and his criticism of the Supreme Court's 1973 Roe v. Wade decision, a ruling the attorney general once called "the worst abomination of constitutional law in our history."

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The troubled nominee has his champions, however. Alabama Republican Sens. Richard Shelby and Jeff Sessions defended Pryor's record. So did Judiciary Committee chairman Sen. Orrin Hatch, R-Utah, who said opposition to Pryor had been fomented by "outside groups who don't seem to care how outrageous their smears are."

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"Those are not positions that people in the deep South have adhered to over the years," Chambliss said.

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Sent: 6/12/2003 3:41:41 PM
Subject: : Montgomery Advertiser (6/12/03) re: Pryor meets opposition

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CREATOR: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 12-JUN-2003 19:41:41.00
SUBJECT: : Montgomery Advertiser (6/12/03) re: Pryor meets opposition
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
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From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 6/13/2003 8:29:31 AM
Subject: FW: By the Numbers
Attachments: 03.06.13 by the numbers.doc

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

From: Hoelscher, Douglas L.
Sent: Friday, June 13, 2003 8:28 AM
To: Bumatay, Patrick J.
Subject: By the Numbers

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Lauren L. Willson
06/13/2003 08:23:52 AM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: By the Numbers

<<03.06.13 by the numbers.doc>>

Latinos Support President, Favor Estrada Confirmation

A survey of Latinos reveals:

Two-thirds approve of President's job performance.

- 65% approve of President's job performance.

Nearly nine in ten say Estrada deserves confirmation.

- 87% believe Miguel Estrada deserves Senate confirmation to serve on the Washington, D.C. Court of Appeals.
- Estrada receives strong support regardless of Latinos' party identification: 95% of Republicans, 87% of independents, and 84% of Democrats believe Estrada deserves confirmation.

Estrada confirmation important to Latino community.

· 80% say Estrada's confirmation is important to the Latino community.

Source: Latino Opinions and The Committee for Justice, May 25-28, 2003 (N=800 Latino Adults)

Message Sent To: _____

IGA Intergovernmental Affairs
OPA - Political Affairs
OPL - Public Liaison
OSI - Strategic Initiatives
Jennifer D. Field/OVP/EOP@Exchange@EOP



BY THE NUMBERS

June 13, 2003

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To: <Gonzales, Alberto R.>; <Leitch, David G.>; <Brosnahan, Jennifer R.>; <Newstead, Jennifer G.>; <Bartolomucci, H. Christopher>; <Sampson, Kyle>; <Brown, Reginald J.>; <Powell, Benjamin A.>; <Ullyot, Theodore W.>
Sent: 6/13/2003 9:42:06 AM
Subject: Status of circuit nominees

June 13, 2003

COURT OF APPEALS NOMINEES IN 108TH CONGRESS (25)

Confirmed (9)

Ed Prado (5th Texas)

Jeff Sutton (6th Ohio)

Jay Bybee (9th Nevada)

Tim Tymkovich (10th Colorado)

Deborah Cook (6th Ohio)

John Roberts (DC)

Consuelo Callahan (9th California)

Michael Chertoff (3rd New Jersey)

Richard Wesley (2nd New York)

On Executive Calendar (3)

Miguel Estrada (DC)

Priscilla Owen (5th Texas)

Carolyn Kuhl (9th California)

In Judiciary Committee (13)

Michael Fisher (3rd Pennsylvania)

Terry Boyle (4th North Carolina)

Claude Allen (4th Virginia)

Allyson Duncan (4th North Carolina)

Charles Pickering (5th Mississippi)

David McKeague (6th Michigan)

Susan Neilson (6th Michigan)

Richard Griffin (6th Michigan)

Henry Saad (6th Michigan)

Steve Colloton (8th Iowa)

Carlos Bea (9th California)

Bill Myers (9th Idaho)

Bill Pryor (11th Alabama)

ANNOUNCED FUTURE RETIREMENTS OR CURRENT VACANCIES WITHOUT NOMINEES (7)

CADC, CADC, CA3, CA4, CA7, CA8, and CA8

CIRCUIT NOMINEES CONFIRMED IN 107TH CONGRESS (17)

Jeffrey Howard (1st New Hampshire)

Barrington Parker (2nd Connecticut)

Reena Raggi (2nd New York)

Brooks Smith (3rd Pennsylvania)

Roger Gregory (4th Virginia)

Dennis Shedd (4th South Carolina)

Edith Brown Clement (5th Louisiana)

Julia Gibbons (6th Tennessee)

John Rogers (6th Kentucky)

Michael Melloy (8th Iowa)

William Riley (8th Nebraska)

Lavenski Smith (8th Arkansas)

Richard Clifton (9th Hawaii)

Harris Hartz (10th New Mexico)

Michael McConnell (10th Utah)

Terrence O'Brien (10th Wyoming)

Sharon Prost (Fed)

From: Kavanaugh, Brett M.
To: <Grubbs, Wendy J.>;<Snee, Ashley>
Sent: 6/13/2003 9:46:28 AM
Subject: Status of circuit nominees

June 13, 2003

COURT OF APPEALS NOMINEES IN 108TH CONGRESS (25)

Confirmed (9)

Ed Prado (5th Texas)

Jeff Sutton (6th Ohio)

Jay Bybee (9th Nevada)

Tim Tymkovich (10th Colorado)

Deborah Cook (6th Ohio)

John Roberts (DC)

Consuelo Callahan (9th California)

Michael Chertoff (3rd New Jersey)

Richard Wesley (2nd New York)

On Executive Calendar (3)

Miguel Estrada (DC)

Priscilla Owen (5th Texas)

Carolyn Kuhl (9th California)

In Judiciary Committee (13)

Michael Fisher (3rd Pennsylvania)

Terry Boyle (4th North Carolina)

Claude Allen (4th Virginia)

Allyson Duncan (4th North Carolina)

Charles Pickering (5th Mississippi)

David McKeague (6th Michigan)

Susan Neilson (6th Michigan)

Richard Griffin (6th Michigan)

Henry Saad (6th Michigan)

Steve Colloton (8th Iowa)

Carlos Bea (9th California)

Bill Myers (9th Idaho)

Bill Pryor (11th Alabama)

ANNOUNCED FUTURE RETIREMENTS OR CURRENT VACANCIES WITHOUT NOMINEES (7)

CADC, CADC, CA3, CA4, CA7, CA8, and CA8

CIRCUIT NOMINEES CONFIRMED IN 107TH CONGRESS (17)

Jeffrey Howard (1st New Hampshire)

Barrington Parker (2nd Connecticut)

Reena Raggi (2nd New York)

Brooks Smith (3rd Pennsylvania)

Roger Gregory (4th Virginia)

Dennis Shedd (4th South Carolina)

Edith Brown Clement (5th Louisiana)

Julia Gibbons (6th Tennessee)

John Rogers (6th Kentucky)

Michael Melloy (8th Iowa)

William Riley (8th Nebraska)

Lavenski Smith (8th Arkansas)

Richard Clifton (9th Hawaii)

Harris Hartz (10th New Mexico)

Michael McConnell (10th Utah)

Terrence O'Brien (10th Wyoming)

Sharon Prost (Fed)

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: David Dunn/OPD/EOP@EOP [OPD] <David Dunn>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>;Lauren J. Vestewig/OPD/EOP@EOP [OPD] <Lauren J. Vestewig>
Sent: 6/13/2003 3:42:03 PM
Subject: : Re: Meeting re. Affirmative Action

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 13-JUN-2003 19:42:03.00
SUBJECT:: Re: Meeting re. Affirmative Action
TO: David Dunn (CN=David Dunn/OU=OPD/O=EOP@EOP [OPD])
READ: UNKNOWN
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
TO: Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@EOP [OPD])
READ: UNKNOWN
End Original ARMS Header

Can we do 915? Thanks.

.
----- Original Message -----
From: Lauren J. Vestewig/OPD/EOP@Exchange
To: Brett M. Kavanaugh/WHO/EOP@EOP,
Scott McClellan/WHO/EOP@Exchange,
David Dunn/OPD/EOP@EOP
Cc:
Date: 06/13/2003 05:57:28 PM
Subject: Meeting re. Affirmative Action

There will be a meeting re. Affirmative Action on Monday at 9:30.; Please let me know if you can attend.; Thanks.

From: CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD]
To: Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>;David Dunn/OPD/EOP@EOP [OPD] <David Dunn>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/13/2003 1:58:43 PM
Subject: : Meeting re. Affirmative Action

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lauren J. Vestewig (CN=Lauren J. Vestewig/OU=OPD/O=EOP@Exchange [OPD])
CREATION DATE/TIME:13-JUN-2003 17:58:43.00
SUBJECT:: Meeting re. Affirmative Action
TO:Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:David Dunn (CN=David Dunn/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

There will be a meeting re. Affirmative Action on Monday at 9:30.; Please let me know if you can attend.; Thanks.

From: Kavanaugh, Brett M.
To: <Martin, Catherine J.>
Sent: 6/13/2003 8:24:21 PM
Subject:

Can we talk over weekend about specter and judges.

From: Bumatay, Patrick J.
To: <Montiel, Charlotte L.>;<Nelson, Carolyn>;<Leitch, David G.>;<Ullyot, Theodore W.>;<Bartolomucci, H. Christopher>;<Brosnahan, Jennifer R.>;<Brown, Reginald J.>;<Kavanaugh, Brett M.>;<Newstead, Jennifer G.>;<Powell, Benjamin A.>;<Sampson, Kyle>
Sent: 6/16/2003 9:31:02 AM
Subject: NY Times Leahy article
Attachments: logoprinter.gif; w.gif



June 16, 2003

Senator Seeks a Consensus in Replacing Any Justice

By NEIL A. LEWIS

WASHINGTON, June 15 — Senator Patrick J. Leahy of Vermont has urged President Bush to avoid a traumatic national battle over the Supreme Court by consulting with him and other leading Democrats before choosing a nominee, should a vacancy occur.

In two recent letters to the White House, Mr. Leahy, the ranking Democrat on the Judiciary Committee, said that if Mr. Bush took advantage of a vacancy on the court to select a staunchly conservative judge, it would produce a political war that would upset the nation and diminish respect for the courts.

"Though the landscape ahead is sown with the potential for controversy and contention over vacancies that may arise on the court, contention is avoidable, and consensus should be our goal," Mr. Leahy wrote on Wednesday. "I would hope your objective will not be to send the Senate nominees so polarizing that their confirmations are eked out in narrow margins."

Mr. Leahy said his two letters urging a bipartisan process, the one on Wednesday and one sent on May 14, had not been answered.

A White House official said the second letter had not yet been received. But this official made it sound as if that did not matter.

"There are no vacancies on the Supreme Court, so these kinds of discussions are premature," this official said.

Mr. Leahy said in an interview that he believed that Mr. Bush had an opportunity to defuse a potentially explosive situation precisely because there was no vacancy.

The next few weeks, he said, will provide an opportunity for a bipartisan agreement that will be lost if a Supreme Court retirement is announced at the end of the term in a few weeks.

Conservatives and liberals have been planning for the possibility that at least one justice will retire at the end of the term, given the age of several of them and the belief that this is Mr. Bush's last chance to choose a justice before the presidential campaign begins in earnest.

"The courts are the one part of government people yearn to believe is free of politics," Mr. Leahy said. "That's why the Florida case shook people so much," a reference to the Supreme Court ruling in *Bush v. Gore* that resulted in Mr. Bush's presidency.

Underlying the latest proposal by Mr. Leahy are the myriad political calculations each side has been making for any Supreme Court resignation, nomination and confirmation fight.

So far, the Bush White House and Senate Democrats have chosen confrontation over several nominees for the federal appeals courts, the level just below the Supreme Court.

Although the Senate has 51 Republicans, a bare majority, Democrats have blocked votes on two appeals court nominees and are likely to do so with other candidates, by mounting filibusters, or extended debates.

Mr. Leahy would not name any candidate conservative enough to satisfy Mr. Bush but nonideological enough to win broad support in the Senate.

Senator Charles E. Schumer of New York, a Democrat on the Judiciary Committee, offered such a list to the White House last week. His recommendations included Senator Arlen Specter, Republican of Pennsylvania, who is also on the committee; Judge Edward Prado of the United States Court of Appeals for the Fifth Circuit, who was nominated by Mr. Bush; and Judge Michael Mukasey of the Southern District of New York, who was nominated by President Ronald Reagan.

Mr. Leahy and Mr. Schumer noted that the chairman of the committee, Senator Orrin G. Hatch, Republican of Utah, had taken some credit for advising President Bill Clinton in his selection of Ruth Bader Ginsburg and Stephen G. Breyer for the Supreme Court.

In his book "Square Peg" (Basic Books, 2002), Mr. Hatch asserts that he advised Mr. Clinton not to select Bruce Babbitt, one of his cabinet officers and a former Arizona governor, because that would produce a divisive fight. Mr. Hatch said he recommended Judge Ginsburg and Judge Breyer, Mr. Clinton's eventual appointments.

From: Leitch, David G.
To: <Gonzales, Alberto R.>; <Kavanaugh, Brett M.>
Sent: 6/16/2003 10:34:43 AM
Subject:

Goldstein blog reporting 4 opinions today and "No more opinions until next Monday." I haven't been able to access the order list yet to confirm, but I would think this makes it unlikely that next Monday will be their last day for the Term.

From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Brown, Reginald J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>
Sent: 6/16/2003 12:32:45 PM
Subject:

A helpful summary from Bashman of what's left this Term:

A quick look at the ten argued cases still pending on the U.S. Supreme Court's docket: With one week remaining on the schedule for the announcement of decisions in argued cases, the following ten cases remain pending for decision before the Supreme Court of the United States:

1. *United States v. American Library Assn., Inc.*, involving the constitutionality of a federal law that requires Internet filtering in public libraries (oral argument transcript [here](#)).
2. *Wiggins v. Smith*, to what degree must defense counsel in a death penalty case investigate mitigating evidence, perhaps entitling the defendant to a sentence other than death, to be effective (oral argument transcript [here](#)).
3. *Lawrence v. Texas*, presenting a constitutional challenge to a state law prohibiting homosexual sodomy (oral argument transcript [here](#)).
4. *Stogner v. California*, may a State eliminate the statute of limitations applicable to a crime without running afoul of the constitutional rights of those offenders whose prosecution would otherwise be time-barred (oral argument transcript [here](#)).
5. *Grutter v. Bollinger*, may a state-run law school use racial preferences in deciding which students to admit (oral argument transcript [here](#)).
6. *Gratz v. Bollinger*, may a state-run undergraduate school use racial preferences in deciding which students to admit (oral argument transcript [here](#)).
7. *Green Tree Financial Corp. v. Bazzle*, does the Federal Arbitration Act prohibit a case subject to arbitration from proceeding forward in arbitration as a class action where the arbitration agreement is silent on the matter (oral argument transcript [here](#)).
8. *American Ins. Assn. v. Garamendi*, does California's Holocaust Victim Insurance Relief Act survive scrutiny under federal law (oral argument transcript [here](#)).
9. *Nike, Inc. v. Kasky*, should the "commercial speech" doctrine continue to exist under the First Amendment, and if so was it properly applied here (oral argument transcript [here](#)).
10. *Georgia v. Ashcroft*, a redistricting challenge that could become moot at any second depending on how the Supreme Court of Georgia rules in a companion case (oral argument transcript [here](#)).

From: Montiel, Charlotte L.
To: <Kavanaugh, Brett M.>
Sent: 6/16/2003 2:19:13 PM
Subject: please call

Jonathan Javitts

PRA 6

He is on the board of PITAC, the Pres'l Information and Technology Advisory Commission. He serves on this commission with out pay. He is also co-chair of MD for Bush/Cheney. There is a fundraiser **tomorrow** night and he wants to see if he can go or if his position on the board would prohibit him from raising money. Please get back to him with this information.

Charlotte

From: Kavanaugh, Brett M.
To: <Montiel, Charlotte L.>;<Kavanaugh, Brett M.>
Sent: 6/16/2003 2:26:41 PM
Subject: Re: please call

Yes m'aam.

.
----- Original Message -----

From:Charlotte L. Montiel/WHO/EOP@Exchange

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

Cc:

Date: 06/16/2003 02:19:13 PM

Subject: please call

Jonathan Javitts PRA 6

He is on the board of PITAC, the Pres'l Information and Technology Advisory Commission. He serves on this commission with out pay. He is also co-chair of MD for Bush/Cheney. There is a fundraiser tomorrow night and he wants to see if he can go or if his position on the board would prohibit him from raising money. Please get back to him with this information.

Charlotte

From: Tom Josefiak <tomj@georgewbush.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/17/2003 2:53:46 AM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tom Josefiak <tomj@georgewbush.com> (Tom Josefiak <tomj@georgewbush.com> [UNKNOWN])
CREATION DATE/TIME:17-JUN-2003 06:53:46.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

BC '04 office 703 647 2941
Fax 703 647 2991
My cell is Still the same

PRA 6

I don't have any other attorney help but my assistant is John Parker at
PRA 6 and he can always track me down

From: CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>; David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>; Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/17/2003 7:33:35 AM
Subject: : CNSS opinion
Attachments: P_2P78H003_WHO.TXT_1.pdf

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Theodore W. Ullyot (CN=Theodore W. Ullyot/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:17-JUN-2003 11:33:35.00
SUBJECT:: CNSS opinion
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached is the opinion released today in the detainees/FOIA CADC litigation. The majority opinion (Sentelle) finds that the govt properly invoked FOIA exception 7(A) (ongoing law enforcement activities), according appropriate deference to the govt's assessment of the risks that would be created by disclosure of information regarding the detainees. The CADC also rejects the plaintiffs' non-FOIA arguments, which were based on First Amendment and a common-law right of access to govt information. Tatel filed a lengthy dissent.

----- Forwarded by Theodore W. Ullyot/WHO/EOP on
06/17/2003 11:12 AM -----

"Peter.D.Keisler@usdoj.gov" <Peter.D.Keisler
06/17/2003 10:33:02 AM
Record Type: Record

To: Theodore W. Ullyot/WHO/EOP@EOP, John B. Wiegmann/NSC/EOP@EOP
cc:
Subject: CNSS opinion

Ted/Brad: Attached is the favorable decision received today from the DC Circuit in CNSS, upholding our invocation of FOIA exemption 7(A) (law enforcement) to withhold information identifying the names, etc. of detainees. Peter

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

From: Loeb, Robert
Sent: Tuesday, June 17, 2003 10:10 AM
To: Coffin, Shannen; Fbi (E-mail); Federighi, Carol; Flippin, Laura; Fuller, Christopher; Green, Joe; Huff, Richard L; Jordan, Bill; Katsas, Gregory; Keisler, Peter D; Kneedler, Edwin S; Kopp, Robert; Krigsman, Cherie; Letter, Douglas; Levey, Stuart; Levine, Larry; Lindemann, Michael; Loeb, Robert; Mathias, Susan M; Metcalfe, Daniel J; Miller, Eric; Millett, Patricia A; Nielson, Howard; Olson, Lisa; Pustay, Melanie A; Reynolds, James S.; Rosen, Scott; Schaitman, Leonard; Stern, Mark
Subject: CNSS opinion

- 02-5254a.pdf

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_2P78H003_WHO.TXT_1>

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 18, 2002

Decided June 17, 2003

No. 02-5254
& No. 02-5300

CENTER FOR NATIONAL SECURITY STUDIES, ET AL.,
APPELLANTS/CROSS-APPELLEES

v.

U.S. DEPARTMENT OF JUSTICE,
APPELLEES/CROSS-APPELLANTS

Appeals from the United States District Court
for the District of Columbia
(No. 01cv02500)

Gregory G. Katsas, Deputy Assistant Attorney General, argued the cause for appellants/cross-appellees. With him on the briefs were *Roscoe C. Howard, Jr.*, U.S. Attorney, *Mark B. Stern*, *Robert M. Loeb*, and *Eric D. Miller*, Attorneys, U.S. Department of Justice.

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Daniel J. Popeo and *Paul D. Kamenar* were on the brief for *amici curiae* Washington Legal Foundation and the Jewish Institute for National Security Affairs in support of appellant urging partial reversal.

Kate A. Martin argued the cause for appellees/cross-appellants. With her on the briefs were *David L. Sobel*, *Elliot M. Minberg*, *Arthur B. Spitzer*, *Steven R. Shapiro*, and *Lucas Guttentag*.

Laura R. Handman, *Eric N. Lieberman*, *Henry S. Hoberman*, *Nathan E. Siegel*, *Richard M. Schmidt, Jr.*, *Slade R. Metcalf*, *David E. McCraw*, *Rene Milam*, *Bruce W. Sanford* and *Robert D. Lystad* were on the brief for *amici curiae* The Washington Post Company, et al., in support of appellees/cross-appellants.

Before: SENTELLE, HENDERSON and TATEL, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* SENTELLE.

Dissenting opinion filed by *Circuit Judge* TATEL.

SENTELLE, *Circuit Judge*: Various “public interest” groups (plaintiffs) brought this Freedom of Information Act (FOIA) action against the Department of Justice (DOJ or government) seeking release of information concerning persons detained in the wake of the September 11 terrorist attacks, including: their names, their attorneys, dates of arrest and release, locations of arrest and detention, and reasons for detention. The government objected to release, and asserted numerous exceptions to FOIA requirements in order to justify withholding the information. The parties filed cross-motions for summary judgment. The district court ordered release of the names of the detainees and their attorneys, but held that the government could withhold all other detention information pursuant to FOIA Exemption 7(A), which exempts “records or information compiled for law enforcement purposes . . . to the extent that the production” of them “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A) (2000). Attorneys filed cross-appeals. Upon *de novo* review, we agree with the

district court that the detention information is properly covered by Exemption 7(A); but we further hold that Exemption 7(A) justifies withholding the names of the detainees and their attorneys. We also reject plaintiffs' alternate theories that the First Amendment and the common law mandate disclosure of the contested information. We therefore affirm in part, reverse in part, and remand the case to the district court for the entry of a judgment of dismissal.

I. Background

A. The Investigation

Consistent with the mutual decision of the parties to seek resolution to this controversy on summary judgment, the facts are not in serious dispute. In response to the terrorist attacks of September 11, 2001, President George W. Bush ordered a worldwide investigation into those attacks and into "threats, conspiracies, and attempts to perpetrate terrorist acts against United States citizens and interests." The Department of Justice, defendant in this action, has been conducting the investigation in conjunction with other federal, state and local agencies. The investigation continues today.

In the course of the post-September 11 investigation, the government interviewed over one thousand individuals about whom concern had arisen. The concerns related to some of these individuals were resolved by the interviews, and no further action was taken with respect to them. Other interviews resulted in the interviewees being detained. As relevant here, these detainees fall into three general categories.

The first category of detainees consists of individuals who were questioned in the course of the investigation and detained by the INS for violation of the immigration laws (INS detainees). INS detainees were initially questioned because there were "indications that they might have connections with, or possess information pertaining to, terrorist activity against the United States including particularly the September 11 attacks and/or the individuals or organizations who perpetrated them." Based on the initial questioning, each INS detainee was determined to have violated immigration

law; some of the INS detainees were also determined to “have links to other facets of the investigation.” Over 700 individuals were detained on INS charges. As of June 13, 2002, only seventy-four remained in custody. Many have been deported. INS detainees have had access to counsel, and the INS has provided detainees with lists of attorneys willing to represent them, as required by 8 U.S.C. § 1229(b)(2) (2000). INS detainees have had access to the courts to file *habeas corpus* petitions. They have also been free to disclose their names to the public.

The second category of detainees consists of individuals held on federal criminal charges (criminal detainees). The government asserts that none of these detainees can be eliminated as a source of probative information until after the investigation is completed. According to the most recent information released by the Department of Justice, 134 individuals have been detained on federal criminal charges in the post-September 11 investigation; 99 of these have been found guilty either through pleas or trials. While many of the crimes bear no direct connection to terrorism, several criminal detainees have been charged with terrorism-related crimes, and many others have been charged with visa or passport forgery, perjury, identification fraud, and illegal possession of weapons. Zacarias Moussaoui, presently on trial for participating in the September 11 attacks, is among those who were detained on criminal charges.

The third category consists of persons detained after a judge issued a material witness warrant to secure their testimony before a grand jury, pursuant to the material witness statute, 18 U.S.C. § 3144 (2000) (material witness detainees). Each material witness detainee was believed to have information material to the events of September 11. The district courts before which these material witnesses have appeared have issued sealing orders that prohibit the government from releasing any information about the proceedings. The government has not revealed how many individuals were detained on material witness warrants. At least two individuals initially held as material witnesses are now being held for alleged terrorist activity.

The criminal detainees and material witness detainees are free to retain counsel and have been provided court-appointed counsel if they cannot afford representation, as required by the Sixth Amendment to the Constitution. In sum, each of the detainees has had access to counsel, access to the courts, and freedom to contact the press or the public at large.

B. The Litigation

On October 29, 2001, plaintiffs submitted a FOIA request to the Department of Justice seeking the following information about each detainee: 1) name and citizenship status; 2) location of arrest and place of detention; 3) date of detention/arrest, date any charges were filed, and the date of release; 4) nature of charges or basis for detention, and the disposition of such charges or basis; 5) names and addresses of lawyers representing any detainees; 6) identities of any courts which have been requested to enter orders sealing any proceedings in connection with any detainees, copies of any such orders, and the legal authorities relied upon by the government in seeking the sealing orders; 7) all policy directives or guidance issued to officials about making public statements or disclosures about these individuals or about the sealing of judicial or immigration proceedings. To support its FOIA request, plaintiffs cited press reports about mistreatment of the detainees, which plaintiffs claimed raised serious questions about “deprivations of fundamental due process, including imprisonment without probable cause, interference with the right to counsel, and threats of serious bodily injury.”

In response to plaintiffs’ FOIA request, the government released some information, but withheld much of the information requested. As to INS detainees, the government withheld the detainees’ names, locations of arrest and detention, the dates of release, and the names of lawyers. As to criminal detainees, the government withheld the dates and locations of arrest and detention, the dates of release, and the citizenship status of each detainee. The government withheld all requested information with respect to material witnesses. Although the government has refused to disclose a compre-

hensive list of detainees' names and other detention information sought by plaintiffs, the government has from time to time publicly revealed names and information of the type sought by plaintiffs regarding a few individual detainees, particularly those found to have some connection to terrorism.

On December 5, 2001, plaintiffs filed this action in district court seeking to compel release of the withheld information pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Plaintiffs also argued that the First Amendment, as interpreted in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) and its progeny, and the common law doctrine of access to public records require the government to disclose the names and detention information of the detainees.

The parties filed cross-motions for summary judgment. In its motion, the government contended that FOIA Exemptions 7(A), 7(C), and 7(F), 5 U.S.C. § 552(b)(7)(A), (C) & (F), allow the government to withhold the requested documents as to all three categories of detainees. These exemptions permit withholding information "compiled for law enforcement purposes" whenever disclosure:

(A) could reasonably be expected to interfere with enforcement proceedings, . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, . . . or (F) could reasonably be expected to endanger the life or physical safety of any individual.

5 U.S.C. § 552(b)(7)(A), (C), (F). As to the material witness detainees, the government also invoked Exemption 3, 5 U.S.C. § 552(b)(3), which exempts from FOIA requirements matters that are "specifically exempted from disclosure by [other statutes] . . .," contending that Federal Rule of Criminal Procedure 6(e), which limits the disclosure of grand jury matters, bars the release of information concerning material witnesses.

In support of its motion, the government submitted affidavits from James Reynolds, Director of the Terrorism and Violent Crime Section of the Department of Justice, and Dale

Watson, FBI Executive Assistant Director for Counterterrorism—officials with central responsibility for the ongoing terrorist investigation. *See* Reynolds Decl., Reynolds Supp. Decl., Reynolds Second Supp. Decl., and Watson Decl.

As to Exemption 7(A), the declarations state that release of the requested information could hamper the ongoing investigation by leading to the identification of detainees by terrorist groups, resulting in terrorists either intimidating or cutting off communication with the detainees; by revealing the progress and direction of the ongoing investigation, thus allowing terrorists to impede or evade the investigation; and by enabling terrorists to create false or misleading evidence. As to Exemption 7(C), the declarations assert that the detainees have a substantial privacy interest in their names and detention information because release of this information would associate detainees with the September 11 attacks, thus injuring detainees' reputations and possibly endangering detainees' personal safety. Finally, as to Exemption 7(F), the government's declarations contend that release of the information could endanger the public safety by making terrorist attacks more likely and could endanger the safety of individual detainees by making them more vulnerable to attack from terrorist organizations. For these same reasons, the counterterrorism officials state that the names of the detainees' lawyers should also be withheld.

C. The Judgment

On August 2, 2002, the district court rendered its decision, ruling in part for the plaintiffs and in part for the government. *Ctr. for Nat'l Sec. Studies v. United States Dep't of Justice*, 215 F. Supp. 2d 94 (D.D.C. 2002) (CNSS). Briefly put, the court ordered the government to disclose the names of the detainees and detainees' lawyers, but held that the government was entitled to withhold all other detention information under Exemptions 7(A) and 7(F). *Id.* at 113.

Addressing the names of the detainees, the court held that disclosure could not reasonably be expected to interfere with ongoing enforcement proceedings, and thus the names were not exempt under 7(A). The court rejected the government's

argument that disclosure of detainees' names would deter them from cooperating with the government because terrorist groups likely already know which of their cell members have been detained. *Id.* at 101. Moreover, the court reasoned that the government's voluntary disclosure of the names of several detainees undermined the force of its argument about the harms resulting from disclosure. *Id.* at 101–02. The court further held that “the government has not met its burden of establishing a ‘rational link’ between the harms alleged and disclosure” because its declarations provided no evidence that the detainees actually have any connection to, or knowledge of, terrorist activity. *Id.* at 102 (quoting *Crooker v. Bureau of Alcohol, Tobacco and Firearms*, 789 F.2d 64, 67 (D.C. Cir. 1986)).

The court next rejected the government's 7(A) argument that disclosure of names would allow terrorist groups to map the course of, and thus impede, its investigation. *Id.* at 103. The government had advanced a “mosaic” argument, contending that the court should consider the aggregate release of the names under 7(A) rather than the release of each in isolation, on the reasoning that the release of the names *in toto* could assist terrorists in piecing together the course, direction and focus of the investigation. *Id.* at 103. The district court rejected this argument, holding, *inter alia*, as a matter of law that FOIA Exemption 7(A) requires an individualized assessment of disclosure, and that the government's mosaic theory could not justify a blanket exclusion of information under Exemption 7(A). *Id.* at 103–04. In the district court's view, the mosaic theory is only cognizable under Exemption 1, which protects information authorized by Executive Order to be kept secret in the interest of national defense or foreign policy. *Id.* The court further rejected the government's final 7(A) argument, concluding that there was insufficient evidence that disclosure would enable terrorist groups to create false and misleading evidence. *Id.* at 104–05.

Turning to Exemptions 7(C) and 7(F), the court rejected the government's claims, holding that the admittedly substantial privacy and safety interests of the detainees do not

outweigh the vital public interest in ensuring that the government is not abusing its power. *Id.* at 105–06. The court noted that plaintiffs have raised “grave concerns” about the mistreatment of detainees and have provided evidence of alleged mistreatment in the form of media reports, and first-hand accounts given to Congress and human rights groups. *Id.* at 105 & n.17. While rejecting the government’s attempt to withhold detainees’ names, the court ruled that it would permit detainees to opt out of disclosure by submitting a signed declaration within fifteen days. *Id.* at 106. The court did not address the government’s argument that disclosure could harm public safety.

Having rejected the government’s Exemption 7 claims, the court further held that Exemption 3 does not bar the release of the names of material witnesses. *Id.* at 106–07. Specifically, the court held that Exemption 3 does not apply, reasoning Federal Rule of Criminal Procedure 6(e) does not bar the disclosure of the identities of persons detained as material witnesses, but only bars “disclosure of a matter occurring before a grand jury.” Fed. R. Crim. P. 6(e)(6). The government’s evidence did not establish that any of the detainees were actual grand jury witnesses or were scheduled to testify before a grand jury. Further, the government’s disclosure of the identities of twenty-six material witness detainees undercut its argument that disclosure is barred by statute. 215 F. Supp. 2d at 106–07. As to the government’s contention that court sealing orders prevent the government from releasing the names of material witnesses, the court ordered the government to submit such orders for *in camera* review or to submit a “supplemental affidavit explaining the nature and legal basis for these sealing orders.” *Id.* at 108.

For reasons not unlike its rejection of the government’s attempt to withhold the names of detainees, the court also held that the government must reveal the names of the detainees’ lawyers.¹ The court determined that the names of

¹ The government has withheld the names of the attorneys for both INS detainees and material witness detainees; it has revealed the names of the attorneys for the criminally charged detainees.

the attorneys were not covered by Exemptions 7(A), 7(C), or 7(F) for the same reason it had rejected the government's attempt to withhold the names of detainees; because attorneys have no expectation of anonymity; and because any concerns about physical danger were purely speculative. *Id.* at 109.

Turning to the other information sought by plaintiffs—the dates and locations of arrest, detention, and release—the court granted summary judgment for the government on its claim that such detention information was covered under 7(A) and 7(F). *Id.* at 108. The court credited the counterterrorism officials' judgment that the detention information “would be particularly valuable to anyone attempting to discern patterns in the Government's investigation and strategy,” and that disclosure would make detention facilities “vulnerable to retaliatory attacks.” *Id.* Finally, the court rejected plaintiffs' claim that the First Amendment and common law entitle them to the dates and locations of arrest, detention, and release. *Id.* at 111–12.

The court ordered the government to release the names of detainees and their lawyers in fifteen days, subject to the right of detainees to opt out of disclosure. *Id.* at 113–14. On August 15, 2002, the district court stayed its order pending appeal. The government timely appealed. Plaintiffs cross-appealed the district court's ruling that the detention information was properly withheld and the district court's ruling that detainees could opt out of disclosure. The appeals were consolidated.

II. The FOIA Claims

We review *de novo* the district court's grant of summary judgment, *Johnson v. Executive Office for United States Attorneys*, 310 F.3d 771, 774 (D.C. Cir. 2002), and therefore consider anew each of the claims and defenses advanced before the district court. We turn first to the government's claims of exemption from disclosure under FOIA of the names of the detainees and their lawyers.

A. Names of Detainees

“Public access to government documents” is the “fundamental principle” that animates FOIA. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989). “Congress recognized, however, that public disclosure is not always in the public interest.” *CIA v. Sims*, 471 U.S. 159, 166–67 (1985). Accordingly, FOIA represents a balance struck by Congress between the public’s right to know and the government’s legitimate interest in keeping certain information confidential. *John Doe Agency*, 493 U.S. at 152. To that end, FOIA mandates disclosure of government records unless the requested information falls within one of nine enumerated exemptions, *see* 5 U.S.C. § 552(b). While these exemptions are to be “narrowly construed,” *FBI v. Abramson*, 456 U.S. 615, 630 (1982), courts must not fail to give them “a meaningful reach and application,” *John Doe Agency*, 493 U.S. at 152. The government bears the burden of proving that the withheld information falls within the exemptions it invokes. 5 U.S.C. § 552(a)(4)(b).

The government invokes four exemptions—7(A), 7(C), 7(F), and 3—to shield the names of detainees from disclosure. Upon review, we hold that Exemption 7(A) was properly invoked to withhold the names of the detainees and their lawyers. Finding the names protected under 7(A), we need not address the other exemptions invoked by the government and reserve judgment on whether they too would support withholding the names.

Exemption 7(A) allows an agency to withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). In enacting this exemption, “Congress recognized that law enforcement agencies had legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations.” *NRLB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978). Exemption 7(A) does not require a presently pending “enforcement proceeding.”

Rather, as the district court correctly noted, it is sufficient that the government's ongoing September 11 terrorism investigation is likely to lead to such proceedings. *See CNSS*, 215 F. Supp. 2d at 101 n.9 (citing *Bevis v. Dep't of State*, 801 F.2d 1386 (D.C. Cir. 1986)).

The threshold question here is whether the names of detainees were "compiled for law enforcement purposes." 5 U.S.C. § 552(b)(7). Because the DOJ is an agency "specializ[ing] in law enforcement," its claim of a law enforcement purpose is entitled to deference. *Campbell v. Dep't of Justice*, 164 F.3d 20, 32 (D.C. Cir. 1998); *Quinon v. FBI*, 86 F.3d 1222, 1228 (D.C. Cir. 1996); *Pratt v. Webster*, 673 F.2d 408, 419 (D.C. Cir. 1982). To establish a law enforcement purpose, DOJ's declarations must establish (1) "a rational nexus between the investigation and one of the agency's law enforcement duties;" and (2) "a connection between an individual or incident and a possible security risk or violation of federal law." *Campbell*, 164 F.3d at 32 (citations and quotations omitted); *see also Quinon*, 86 F.3d at 1228. The government's proffer easily meets this standard. The terrorism investigation is one of DOJ's chief "law enforcement duties" at this time, *see Reynolds Decl.* ¶ 2, and the investigation concerns a heinous violation of federal law as well as a breach of this nation's security. Moreover, the names of the detainees and their connection to the investigation came to the government's attention as a result of that law enforcement investigation. *Reynolds Decl.* ¶¶ 2-5.

Nonetheless, plaintiffs contend that detainees' names fall outside Exemption 7 because the names are contained in arrest warrants, INS charging documents, and jail records. Since these documents have traditionally been public, plaintiffs contend, Exemption 7 should not be construed to allow withholding of the names. We disagree. Plaintiffs are seeking a comprehensive listing of individuals detained during the post-September 11 investigation. The names have been compiled for the "law enforcement purpose" of successfully prosecuting the terrorism investigation. As compiled, they constitute a comprehensive diagram of the law enforcement

investigation after September 11. Clearly this is information compiled for law enforcement purposes.

Next, plaintiffs urge that Exemption 7(A) does not apply because disclosure is not “reasonably likely to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). We disagree. Under Exemption 7(A), the government has the burden of demonstrating a reasonable likelihood of interference with the terrorism investigation. The government’s declarations, viewed in light of the appropriate deference to the executive on issues of national security, satisfy this burden.

It is well-established that a court may rely on government affidavits to support the withholding of documents under FOIA exemptions, *King v. United States Dep’t of Justice*, 830 F.2d 210, 217 (D.C. Cir. 1987), and that we review the government’s justifications therein *de novo*, 5 U.S.C. § 552(a)(4)(B); *Summers v. Dep’t of Justice*, 140 F.3d 1077, 1080 (D.C. Cir. 1998). It is equally well-established that the judiciary owes some measure of deference to the executive in cases implicating national security, a uniquely executive purview. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 696 (2001) (noting that “terrorism or other special circumstances” might warrant “heightened deference to the judgments of the political branches”); *Dep’t of the Navy v. Egan*, 484 U.S. 518, 530 (1988) (“courts traditionally have been reluctant to intrude upon the authority of the executive in military and national security affairs”). Indeed, both the Supreme Court and this Court have expressly recognized the propriety of deference to the executive in the context of FOIA claims which implicate national security.

In *CIA v. Sims*, 471 U.S. 159 (1985), the Supreme Court examined the CIA’s claims that the names and institutional affiliations of certain researchers in a government-sponsored behavior modification program were exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3). *Id.* at 163–64. The agency claimed that the information was protected from disclosure by a statute charging the CIA to prevent unauthorized disclosure of “intelligence sources and meth-

ods,” 50 U.S.C. § 403(d)(3). In accepting the CIA Director’s judgment that disclosure would reveal intelligence sources and methods, the Court explained that “[t]he decisions of the Director, who must of course be familiar with ‘the whole picture,’ as judges are not, are worthy of great deference given the magnitude of the national security interests and potential risks at stake.” *Sims*, 471 U.S. at 179. The Court further held that “it is the responsibility of the Director of Central Intelligence, not that of the judiciary, to weigh the variety of subtle and complex factors in determining whether disclosure of information may lead to an unacceptable risk of compromising the Agency’s intelligence-gathering process.” *Id.* at 180.

The same is true of the Justice Department officials in charge of the present investigation. We have consistently reiterated the principle of deference to the executive in the FOIA context when national security concerns are implicated. In *McGehee v. Casey*, we examined the standard of review for FOIA requests of classified documents. 718 F.2d 1137, 1148 (D.C. Cir. 1983). We observed:

[C]ourts are to “accord substantial weight to an agency’s affidavit concerning the details of the classified status of the disputed record” because “the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects [sic] might occur as a result of a particular classified record.”

Id. (quoting S. Rep. No. 1200, 93d Cong., 2d Sess. 12, U.S.C.C.A.N. 1974, p. 6267 (1974) (Conference Report on the FOIA Amendments)). Moreover, in the FOIA context, we have consistently deferred to executive affidavits predicting harm to the national security, and have found it unwise to undertake searching judicial review. *See, e.g., King*, 830 F.2d at 217 (“the court owes substantial weight to detailed agency explanations in the national security context”); *Gardels v. CIA*, 689 F.2d 1100, 1104 (D.C. Cir. 1982) (“Once satisfied that proper procedures have been followed and that the information logically falls into the exemption claimed, the

courts need not go further to test the expertise of the agency, or to question its veracity when nothing appears to raise the issue of good faith.”); *Halperin v. CIA*, 629 F.2d 144, 148 (D.C. Cir. 1980); *Weissman v. CIA*, 565 F.2d 692, 697–98 (D.C. Cir. 1977).

Given this weight of authority counseling deference in national security matters, we owe deference to the government’s judgments contained in its affidavits. Just as we have deferred to the executive when it invokes FOIA Exemptions 1 and 3, we owe the same deference under Exemption 7(A) in appropriate cases, such as this one. *Id.* Plaintiffs provide no valid reason why the general principle of deference to the executive on national security issues should apply under FOIA Exemption 3, as in *Sims* and *Halperin*, and Exemption 1, as in our earlier cases, but not under Exemption 7(A). Nor can we conceive of any reason to limit deference to the executive in its area of expertise to certain FOIA exemptions so long as the government’s declarations raise legitimate concerns that disclosure would impair national security.

The need for deference in this case is just as strong as in earlier cases. America faces an enemy just as real as its former Cold War foes, with capabilities beyond the capacity of the judiciary to explore. Exemption 7(A) explicitly requires a predictive judgment of the harm that will result from disclosure of information, permitting withholding when it “could reasonably be expected” that the harm will result. 5 U.S.C. § 552(b)(7)(A). It is abundantly clear that the government’s top counterterrorism officials are well-suited to make this predictive judgment. Conversely, the judiciary is in an extremely poor position to second-guess the executive’s judgment in this area of national security. *Cf. Krikorian v. Dep’t of State*, 984 F.2d 461, 464 (D.C. Cir. 1993) (quoting *Halperin*, 629 F.2d at 148) (“Judges . . . lack the expertise necessary to second-guess such agency opinions in the typical national security FOIA case.”). We therefore reject any attempt to artificially limit the long-recognized deference to the executive on national security issues. Judicial deference depends on the substance of the danger posed by disclosure—that is,

harm to the national security—not the FOIA exemption invoked.

In light of the deference mandated by the separation of powers and Supreme Court precedent, we hold that the government's expectation that disclosure of the detainees' names would enable al Qaeda or other terrorist groups to map the course of the investigation and thus develop the means to impede it is reasonable. A complete list of names informing terrorists of every suspect detained by the government at any point during the September 11 investigation would give terrorist organizations a composite picture of the government investigation, and since these organizations would generally know the activities and locations of its members on or about September 11, disclosure would inform terrorists of both the substantive and geographic focus of the investigation. Moreover, disclosure would inform terrorists which of their members were compromised by the investigation, and which were not. This information could allow terrorists to better evade the ongoing investigation and more easily formulate or revise counter-efforts. In short, the "records could reveal much about the focus and scope of the [agency's] investigation, and are thus precisely the sort of information exemption 7(A) allows an agency to keep secret." *Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996).

As the district court noted, courts have relied on similar mosaic arguments in the context of national security. *CNSS*, 215 F. Supp. 2d at 103 & n.13. In *Sims*, for example, the Supreme Court cautioned that "bits and pieces" of data "may aid in piecing together bits of other information even when the individual piece is not of obvious importance in itself." 471 U.S. at 178 (quoting *Halperin*, 629 F.2d at 150). Thus, "[w]hat may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context." *Id.* (quotations omitted). Such a danger is present here. While the name of any individual detainee may appear innocuous or trivial, it could be of great use to al Qaeda in plotting future terrorist attacks or intimidating witnesses in the present investigation. *Cf. United States v.*

Yunis, 867 F.2d 617, 623 (D.C. Cir. 1989) (“[t]hings that did not make sense to the District Judge would make all too much sense to a foreign counter-intelligence specialist who could learn much about this nation’s intelligence-gathering capabilities from what these documents revealed about sources and methods.”). Importantly, plaintiffs here do not request “bits and pieces” of information, but rather seek the names of every single individual detained in the course of the government’s terrorism investigation. It is more than reasonable to expect that disclosing the name of every individual detained in the post-September 11 terrorism investigation would interfere with that investigation.

Similarly, the government’s judgment that disclosure would deter or hinder cooperation by detainees is reasonable. The government reasonably predicts that if terrorists learn one of their members has been detained, they would attempt to deter any further cooperation by that member through intimidation, physical coercion, or by cutting off all contact with the detainee. A terrorist organization may even seek to hunt down detainees (or their families) who are not members of the organization, but who the terrorists know may have valuable information about the organization.

On numerous occasions, both the Supreme Court and this Court have found government declarations expressing the likelihood of witness intimidation and evidence tampering sufficient to justify withholding of witnesses’ names under Exemption 7(A). See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 239–42 (1978) (allowing withholding pursuant to Exemption 7(A) based on the risk of witness intimidation that would attend releasing witness statements prior to NLRB proceedings); *Alyeska Pipeline Serv. Co. v. EPA*, 856 F.2d 309, 312–13 (D.C. Cir. 1988) (upholding 7(A) claim based on government declaration that disclosure would enable corporation under investigation to intimidate or coerce informing employees); accord *Mapother v. Dep’t of Justice*, 3 F.3d 1533, 1542–43 (D.C. Cir. 1993) (recognizing that government affidavits predicting witness intimidation and evidence fabrication “have achieved recognition in Exemption 7 caselaw”); *Manna v. Dep’t of Justice*, 51 F.3d 1158, 1165 (3d Cir. 1995) (allowing

withholding of names of all “interviewees, informants, [and] witnesses” in criminal investigation based on fears of retaliation from organized crime). Most recently, we addressed in *Swan* a FOIA request that would have resulted in the disclosure of, *inter alia*, the identities of witnesses in an SEC investigation. 96 F.3d at 499. The SEC’s declaration alleged that disclosure would risk allowing the subjects of the investigation to “intimidate witnesses, manufacture favorable evidence, and conceal damaging evidence.” *Id.* We accepted the SEC’s declaration and allowed the documents to be withheld. *Id.* at 499, 500. The risks of witness intimidation and evidence tampering alleged here are at least as great as those in *Swan* and our other precedents. We see no reason to assume that terrorists are less likely to intimidate the detainees here than were the subjects of the SEC investigation in *Swan*. Consequently, we hold that disclosure of detainees’ names could “reasonably be expected to interfere” with the ongoing terrorism investigation.

For several reasons, plaintiffs contend that we should reject the government’s predictive judgments of the harms that would result from disclosure. First, they argue that terrorist organizations likely already know which of their members have been detained. We have no way of assessing that likelihood. Moreover, even if terrorist organizations know about some of their members who were detained, a complete list of detainees could still have great value in confirming the status of their members. *Cf. Gardels*, 689 F.2d at 1105 (rejecting a similar argument in the FOIA national security context and stating that “[o]fficial acknowledgment ends all doubt and gives the foreign organization a firmer basis for its own strategic or tactical response.”). For example, an organization may be unaware of a member who was detained briefly and then released, but remains subject to continuing government surveillance. Reynolds Supp. Decl. ¶¶ 3, 5. After disclosure, this detainee could be irreparably compromised as a source of information.

More importantly, some detainees may not be members of terrorist organizations, but may nonetheless have been detained on INS or material witness warrants as having infor-

mation about terrorists. Terrorist organizations are less likely to be aware of such individuals' status as detainees. Such detainees could be acquaintances of the September 11 terrorists, or members of the same community groups or mosques. See Rachel L. Swarns, *Oregon Muslims Protest Monthlong Detention Without a Charge*, N.Y. TIMES, April 20, 2003, at A16 (describing material witness detainee who attended same mosque as indicted terrorism suspects). These detainees, fearing retribution or stigma, would be less likely to cooperate with the investigation if their names are disclosed. Moreover, tracking down the background and location of these detainees could give terrorists insights into the investigation they would otherwise be unlikely to have. After disclosure, terrorist organizations could attempt to intimidate these detainees or their families, or feed the detainees false or misleading information. It is important to remember that many of these detainees have been released at this time and are thus especially vulnerable to intimidation or coercion. While the detainees have been free to disclose their names to the press or public, it is telling that so few have come forward, perhaps for fear of this very intimidation.

We further note the impact disclosure could have on the government's investigation going forward. A potential witness or informant may be much less likely to come forward and cooperate with the investigation if he believes his name will be made public. Cf. *Sims*, 471 U.S. at 172 (noting Congress's concern that intelligence sources will "close up like a clam" unless the government maintains complete confidentiality); *Manna*, 51 F.3d at 1165 ("disclosure . . . could result in a chilling effect upon potential cooperators and witnesses").

Plaintiffs next argue that the government's predictive judgment is undermined by the government's disclosure of some of the detainees' names. The Supreme Court confronted a similar argument in *Sims*, in which respondents contended that "because the Agency has already revealed the names of many of the institutions at which [behavior modification] research was performed, the Agency is somehow estopped from withholding the names of others." 471 U.S. at 180. In

rejecting the argument, the Court stated that “[t]his suggestion overlooks the political realities of intelligence operations in which, among other things, our Government may choose to release information deliberately to ‘send a message’ to allies or adversaries.” *Id.* We likewise reject the plaintiffs’ version of this discredited argument. The disclosure of a few pieces of information in no way lessens the government’s argument that complete disclosure would provide a composite picture of its investigation and have negative effects on the investigation. Furthermore, as the *Sims* Court recognized, strategic disclosures can be important weapons in the government’s arsenal during a law enforcement investigation. *Id.* (“The national interest sometimes makes it advisable, or even imperative, to disclose information that may lead to the identity of intelligence sources.”). The court should not second-guess the executive’s judgment in this area. “[I]t is the responsibility of the [executive] not that of the judiciary” to determine when to disclose information that may compromise intelligence sources and methods. *Id.*

Contrary to plaintiffs’ claims, the government’s submissions easily establish an adequate connection between both the material witness and the INS detainees and terrorism to warrant full application of the deference principle. First, all material witness detainees have been held on warrants issued by a federal judge pursuant to 18 U.S.C. § 3144. Reynolds Decl. ¶ 4. Under this statute, a federal judge may issue a material witness warrant based on an affidavit stating that the witness has information relevant to an ongoing criminal investigation. Consequently, material witness detainees have been found by a federal judge to have relevant knowledge about the terrorism investigation. It is therefore reasonable to assume that disclosure of their names could impede the government’s use of these potentially valuable witnesses.

As to the INS detainees, the government states that they were

originally questioned because there were indications that they might have connections with, or possess information pertaining to, terrorist activity against the United States

including particularly the September 11 attacks and/or the individuals and organizations who perpetrated them. For example, they may have been questioned because they were identified as having interacted with the hijackers, or were believed to have information relating to other aspects of the investigation.

Reynolds Decl. ¶ 10. “Other INS detainees may have been questioned because of their association with an organization believed to be involved in providing material support to terrorist organizations.” Watson Decl. ¶ 8. Moreover, “[i]n the course of questioning them, law enforcement agents determined, often from the subjects themselves, that they were in violation of federal immigration laws, and, in some instances also determined that they had links to other facets of the investigation.” Reynolds Decl. ¶ 10; Watson Decl. ¶ 8. Furthermore, the Watson Declaration speaks of the INS detainees being subject to “public hearings involving evidence about terrorist links,” ¶ 16, and states that “concerns remain” about links to terrorism, ¶ 19. The clear import of the declarations is that many of the detainees have links to terrorism. This comes as no surprise given that the detainees were apprehended during the course of a terrorism investigation, and given that several detainees have been charged with federal terrorism crimes or held as enemy combatants. Accordingly, we conclude that the evidence presented in the declarations is sufficient to show a rational link between disclosure and the harms alleged.

In support of this conclusion, we note that the Third Circuit confronted a similar issue involving the INS detainees when it considered the constitutionality of closed deportation hearings in *North Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198 (3d Cir. 2002), *cert. denied*, No. 02–1289 (May 27, 2003). The court was faced with the same Watson Declaration in evidence here and the same government prediction that harm would result from the disclosure of information about the INS detainees. *See id.* at 218. That court acknowledged that the “representations of the Watson Declaration are to some degree speculative.” *Id.* at 219. But the court did not search for specific evidence that each of the INS detainees was

involved in terrorism, nor did it embark on a probing analysis of whether the government's concerns were well-founded. *Id.* Rather, it was "quite hesitant to conduct a judicial inquiry into the credibility of these security concerns, as national security is an area where courts have traditionally extended great deference to Executive expertise." *Id.* The court concluded: "To the extent that the Attorney General's national security concerns seem credible, we will not lightly second-guess them." *Id.* We think the Third Circuit's approach was correct and we follow it here. Inasmuch as the concerns expressed in the government's declarations seem credible—and inasmuch as the declarations were made by counterterrorism experts with far greater knowledge than this Court—we hold that the disclosure of the names of the detainees could reasonably be expected to interfere with the ongoing investigation.

In upholding the government's invocation of Exemption 7(A), we observe that we are in accord with several federal courts that have wisely respected the executive's judgment in prosecuting the national response to terrorism. *See Hamdi v. Rumsfeld*, 316 F.3d 450 (4th Cir. 2003) (dismissing the *habeas corpus* petition of a United States citizen captured in Afghanistan challenging his military detention and designation as an enemy combatant); *Global Relief Found. v. O'Neill*, 315 F.3d 748 (7th Cir. 2002) (upholding against constitutional challenge a portion of the USA PATRIOT Act, 50 U.S.C. § 1702(c), which authorizes the *ex parte* use of classified evidence in proceedings to freeze the assets of terrorist organizations); *North Jersey Media Group*, 308 F.3d 198 (holding that closure of "special interest" deportation hearings involving INS detainees with alleged connections to terrorism does not violate the First Amendment); *Hamdi v. Rumsfeld*, 296 F.3d 278 (4th Cir. 2002) (reversing district court's order that allowed alleged enemy combatant unmonitored access to counsel). We realize that not all courts are in agreement. In *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002), the Sixth Circuit acknowledged the necessity of deferring to the executive on terrorism issues but held that the First Amendment prohibits a blanket closure of "special interest deportation hearings." We do not

find the Sixth Circuit's reasoning compelling, but join the Third, Fourth, and Seventh Circuits in holding that the courts must defer to the executive on decisions of national security. In so deferring, we do not abdicate the role of the judiciary. Rather, in undertaking a deferential review we simply recognize the different roles underlying the constitutional separation of powers. It is within the role of the executive to acquire and exercise the expertise of protecting national security. It is not within the role of the courts to second-guess executive judgments made in furtherance of that branch's proper role. The judgment of the district court ordering the government to disclose the names of the detainees is reversed.

B. Identity of Counsel

We next address whether the government properly withheld the names of the attorneys for INS and material witness detainees under Exemptions 7(A), 7(C), and 7(F). As with the identities of the detainees, we hold that their attorneys' names are also protected from disclosure by Exemption 7(A).

The government contends that a list of attorneys for the detainees would facilitate the easy compilation of a list of all detainees, and all of the dangers flowing therefrom. It is more than reasonable to assume that plaintiffs and *amici* press organizations would attempt to contact detainees' attorneys and compile a list of all detainees. As discussed above, if such a list fell into the hands of al Qaeda, the consequences could be disastrous. Having accepted the government's predictive judgments about the dangers of disclosing a comprehensive list of detainees, we also defer to its prediction that disclosure of attorneys' names involves the same danger. *Cf. Sims*, 471 U.S. at 179–80 (upholding under FOIA Exemption 3 the government's withholding of the institutional affiliations of researchers in a secret government program; deferring to government's judgment that disclosure would lead to identification of the researchers themselves and the consequent loss of confidential intelligence sources).

C. Other Detention Information

Having held that the government properly withheld the names of the detainees pursuant to Exemption 7(A), we easily

affirm the portion of the district court's ruling that allowed withholding, under Exemption 7(A), of the more comprehensive detention information sought by plaintiffs.

As outlined above, *supra* at 5, plaintiffs sought the dates and locations of arrest, detention, and release for each of the detainees. Even more than disclosure of the identities of detainees, the information requested here would provide a complete roadmap of the government's investigation. Knowing when and where each individual was arrested would provide a chronological and geographical picture of the government investigation. Terrorists could learn from this information not only where the government focused its investigation but how that investigation progressed step by step. Armed with that knowledge, they could then reach such conclusions as, for example, which cells had been compromised, and which individuals had been cooperative with the United States. They might well be able to derive conclusions as to how more adequately secure their clandestine operations in future terrorist undertakings. Similarly, knowing where each individual is presently held could facilitate communication between terrorist organizations and detainees and the attendant intimidation of witnesses and fabrication of evidence. As explained in detail above, these impediments to an ongoing law enforcement investigation are precisely what Exemption 7(A) was enacted to preclude. Accordingly, we affirm the district court and hold that the government properly withheld information about the dates and locations of arrest, detention, and release for each detainee.

III. Alternative Grounds

We turn now to plaintiffs' alternative grounds for seeking disclosure of the detainees' names and detention information. Although FOIA does not mandate disclosure, plaintiffs contend that disclosure is independently required by both the First Amendment and the common law right of access to government information. We address these contentions in turn, and conclude that neither is meritorious.

A. The First Amendment

As outlined above, the government voluntarily released the names of all criminally charged detainees. Therefore, as in its FOIA request, plaintiffs seek the names of INS and material witness detainees, and the dates and location of arrest, detention, and release for all detainees. Plaintiffs characterize the information they seek as “arrest records,” and contend that the public has a right of access to arrest records under the First Amendment, as interpreted in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). We disagree. Plaintiffs seek not individual arrest records, but a comprehensive listing of the individuals detained in connection with a specified law enforcement investigation as well as investigatory information about where and when each individual was arrested, held, and released. The narrow First Amendment right of access to information recognized in *Richmond Newspapers* does not extend to non-judicial documents that are not part of a criminal trial, such as the investigatory documents at issue here.

The First Amendment states that “Congress shall make no law . . . abridging the freedom of speech, or of the press.” U.S. CONST. amend. I. In accord with its plain language, the First Amendment broadly protects the freedom of individuals and the press to speak or publish. It does not expressly address the right of the public to receive information. Indeed, in contrast to FOIA’s statutory presumption of disclosure, the First Amendment does not “mandate[] a right of access to government information or sources of information within the government’s control.” *Houchins v. KQED*, 438 U.S. 1, 15 (1978) (plurality opinion); *id.* at 16 (Stewart, J., concurring in the judgment) (the First Amendment “do[es] not guarantee the public a right of access to information generated or controlled by the government”). Thus, as the Court explained in *Houchins*: “[t]he public’s interest in knowing about its government is protected by the guarantee of a Free Press, but the protection is indirect. The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act.” *Id.* at 14 (quoting Potter Stewart, *Or of the Press*, 26 HASTINGS L.J. 631, 636 (1975)). Rather, disclo-

sure of government information generally is left to the “political forces” that govern a democratic republic. *Id.* at 14–15.

Two years after *Houchins*, the Court recognized a limited First Amendment right of access to a criminal trial. *See Richmond Newspapers*, 448 U.S. 555. In *Richmond Newspapers*, the Court explained that the First Amendment “was enacted against the backdrop of the long history of trials being historically open” and thus incorporated the notion of public access to criminal trials. *Id.* at 576–77. The Court expanded this limited right somewhat in the years after *Richmond Newspapers*. *See Press–Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) (*Press–Enterprise I*) (holding that the public has a First Amendment right to attend *voir dire* examinations during criminal trial); *Press–Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (*Press–Enterprise II*) (holding that the public has a First Amendment right to access transcripts of adversarial preliminary hearings that occur prior to a criminal trial). In *Press–Enterprise II*, the Supreme Court first articulated what has come to be known as the *Richmond Newspapers* “experience and logic” test, by which the Court determines whether the public has a right of access to “criminal proceedings”:

First, because a tradition of accessibility implies the favorable judgment of experience, we have considered whether the place and process have historically been open to the press and general public. . . . Second, in this setting the Court has traditionally considered whether public access plays a significant positive role in the functioning of the particular process in question.

Id. at 8 (citations omitted).

Neither the Supreme Court nor this Court has applied the *Richmond Newspapers* test outside the context of criminal judicial proceedings or the transcripts of such proceedings. When the “experience and logic” test has been applied beyond the trial itself, as in *Press–Enterprise II*, it has been limited to judicial proceedings that are part of the criminal trial process. *See also Washington Post v. Robinson*, 935 F.2d 282, 290 (D.C. Cir. 1991) (holding that First Amendment

protects public access to plea agreement on which judgment has been entered); *but see United States v. El-Sayegh*, 131 F.3d 158, 160–61 (D.C. Cir. 1997) (applying “experience and logic test” but finding no First Amendment right of access to withdrawn plea agreement). Moreover, neither this Court nor the Supreme Court has ever *indicated* that it would apply the *Richmond Newspapers* test to anything other than criminal judicial proceedings. Indeed, there are no federal court precedents requiring, under the First Amendment, disclosure of information compiled during an Executive Branch investigation, such as the information sought in this case.

Indeed, to the extent the Supreme Court has addressed the constitutional right of access to information outside the criminal trial context, the Court has applied the general rule of *Houchins*, not *Richmond Newspapers*. *See LAPD v. United Reporting Publ'g Corp.*, 528 U.S. 32, 40 (1999) (holding that there is no First Amendment right to receive addresses of arrestees); *Houchins*, 438 U.S. at 13–15 (holding that press has no First Amendment right of access to prisons). In *Houchins*, the Court observed that the press had ample means for obtaining information about prison conditions, “albeit not as conveniently as they prefer.” *Id.* at 15. For example, the Court noted that members of the press could receive letters from inmates and interview inmates’ attorneys, prison visitors, or former inmates. *Id.* The same is true here. According to the government’s declarations, detainees are free to contact family members as well as members of the press. Detainees’ attorneys are presumably free to do the same. In *LAPD*, the Court rejected a facial challenge to a state law restricting access to the addresses of arrestees. 528 U.S. at 40. The Court explained that “this is not a case in which the government is prohibiting a speaker from conveying information that the speaker already possesses.” *Id.* Rather, “what we have before us is nothing more than a governmental denial of access to information in its possession. California could decide not to give out arrestee information at all without violating the First Amendment.” *Id.* (citing *Houchins*, 438 U.S. at 14). Similarly here, the First Amendment is not implicated by the executive’s refusal to disclose

the identities of the detainees and information concerning their detention.

We will not convert the First Amendment right of access to criminal judicial proceedings into a requirement that the government disclose information compiled during the exercise of a quintessential executive power—the investigation and prevention of terrorism. The dangers which we have catalogued above of making such release in this case provide ample evidence of the need to follow this course. *Cf. Global Relief Found.*, 315 F.3d at 754 (“The Constitution would indeed be a suicide pact . . . if the only way to curtail enemies’ access to assets were to reveal information that might cost lives.”) (citation omitted). To be sure, the Sixth Circuit recently held that the public has a constitutional right of access to INS deportation hearings involving the same INS detainees at issue in this case. *See Detroit Free Press*, 303 F.3d 681; *but see North Jersey Media Group*, 308 F.3d 198 (finding no right of access). However, the Sixth Circuit applied *Richmond Newspapers* only after extensively examining the similarity between deportation proceedings and criminal trials, *Detroit Free Press*, 303 F.3d at 696–99, and noting the crucial distinction between “*investigatory* information” and “access to information relating to a governmental *adjudicative* process,” *id.* at 699. Inasmuch as plaintiffs here request investigatory—not adjudicative—information, we find *Detroit Free Press* distinguishable. We therefore will not expand the First Amendment right of public access to require disclosure of information compiled during the government’s investigation of terrorist acts.

Accordingly, we conclude that the information sought by plaintiffs falls within the general principle announced in *Houchins* and affirmed in *LAPD*, rather than the *Richmond Newspapers* exception to that rule. Plaintiffs have no First Amendment right to receive the identities of INS and material witness detainees, nor are they entitled to receive information about the dates and locations of arrest, detention, and release for each detainee.

B. The Common Law

We also reject plaintiffs' final claim that disclosure is required by the common law right of access to public records. The Supreme Court held in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial documents." *Id.* at 597. Plaintiffs, citing several state court cases finding a common law right of access to arrest records, urge us to recognize a federal common law right to receive the information they seek. In response, the government claims that the common law right of access is limited to judicial records. Even if the common law right applies to executive records, the government contends, FOIA has displaced the common law right. While we question the government's first contention, we accept its second.

This Court has held that the common law right of access extends beyond judicial records to the "public records" of all three branches of government, *Washington Legal Found. v. United States Sentencing Commission*, 89 F.3d 897, 903-04 (D.C. Cir. 1996), and we are bound by our precedent. We need not decide, however, whether the information sought by plaintiffs is a public record. Even if it is, the common law right of access is preempted by FOIA.

In *Nixon*, the Supreme Court assumed *arguendo* that the common law right of access covered the tapes sought by the media. 435 U.S. at 599. Nonetheless, the Court denied disclosure because the Presidential Recordings Act provided a statutory scheme for seeking access to the tapes. *Id.* at 603-06. The Court held that the presence of this "alternative means for public access tip[ped] the scales in favor of denying release." *Id.* at 606. In *El-Sayegh*, this Court applied *Nixon's* principle that a statutory disclosure scheme preempts the common law right. *See* 131 F.3d at 163. The Court found no common law right of access to a withdrawn plea agreement because "[t]he appropriate device" for access to the records "is a Freedom of Information Act request

addressed to the relevant agency.” *Id.* (citing *Nixon*, 435 U.S. at 605–06).

The principles of *Nixon* and *El-Sayegh* apply with full force here. FOIA provides an extensive statutory regime for plaintiffs to request the information they seek. Not only is it uncontested that the requested information meets the general category of information for which FOIA mandates disclosure, but for the reasons set forth above, we have concluded that it falls within an express statutory exemption as well. It would make no sense for Congress to have enacted the balanced scheme of disclosure and exemption, and for the court to carefully apply that statutory scheme, and then to turn and determine that the statute had no effect on a preexisting common law right of access. Congress has provided a carefully calibrated statutory scheme, balancing the benefits and harms of disclosure. That scheme preempts any preexisting common law right.

In accordance with *Nixon* and *El-Sayegh*, we cannot craft federal common law when Congress has spoken directly to the issue at hand. *Milwaukee v. Illinois*, 451 U.S. 304, 314 (1981) (“when Congress addresses a question previously governed by a decision rested on federal common law the need for such an unusual exercise of lawmaking by federal court disappears”). Consequently, we reject plaintiffs’ claim that the common law right of access requires disclosure of the requested information.

IV. Conclusion

For the reasons set forth above, we conclude that the government was entitled to withhold under FOIA Exemption 7(A) the names of INS detainees and those detained as material witnesses in the course of the post-September 11 terrorism investigation; the dates and locations of arrest, detention, and release of all detainees, including those charged with federal crimes; and the names of counsel for detainees. Finally, neither the First Amendment nor federal

common law requires the government to disclose the information sought by plaintiffs.

Affirmed in part, reversed in part and remanded.

TATEL, *Circuit Judge, dissenting*: Disregarding settled principles governing the release of government records under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, this court holds that the government may keep secret the names of hundreds of persons whom it has detained in connection with its investigation of the September 11, 2001 terrorist attacks without distinguishing between information that can, in FOIA's words, "reasonably be expected to interfere" with the investigation and information that cannot. 5 U.S.C. § 552(b)(7)(A). While the government's reasons for withholding *some* of the information may well be legitimate, the court's uncritical deference to the government's vague, poorly explained arguments for withholding broad categories of information about the detainees, as well as its willingness to fill in the factual and logical gaps in the government's case, eviscerates both FOIA itself and the principles of openness in government that FOIA embodies.

I.

I begin with some preliminary observations about the principles that govern this case. First, no one can doubt that uniquely compelling governmental interests are at stake: the government's need to respond to the September 11 attacks—unquestionably the worst ever acts of terrorism on American soil—and its ability to defend the nation against future acts of terrorism. But although this court overlooks it, there is another compelling interest at stake in this case: the public's interest in knowing whether the government, in responding to the attacks, is violating the constitutional rights of the hundreds of persons whom it has detained in connection with its terrorism investigation—by, as the plaintiffs allege, detaining them mainly because of their religion or ethnicity, holding them in custody for extended periods without charge, or preventing them from seeking or communicating with legal counsel. The government claims that the detainees have access to counsel and freedom to contact whomever they wish, *see* Op. at 5, but the public has a fundamental interest in being able to examine the veracity of such claims. Just as the government has a compelling interest in ensuring citizens' safety, so do citizens have a compelling interest in ensuring

that their government does not, in discharging its duties, abuse one of its most awesome powers, the power to arrest and jail.

Second, while the governmental interests in this case may be uniquely compelling, the legal principles that govern its resolution are not at all unique. The court's opinion emphasizes the national-security implications of the September 11 investigation, but as the government conceded at oral argument, this case is not just about September 11. The law that governs this case is the same law that applies whenever the government's need for confidentiality in a law enforcement investigation runs up against the public's right to know "what [its] government is up to." *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989) (internal quotation marks omitted). In all such situations, FOIA fully accommodates the government's concerns about the harms that might arise from the release of information pertaining to its investigations. To be sure, the statute strongly favors openness, since Congress recognized that an informed citizenry is "vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). But Congress also recognized that "legitimate governmental and private interests could be harmed by release of certain types of information." *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (internal quotation marks omitted). It therefore "provided . . . specific exemptions under which disclosure could be refused," *id.*, including the four exemptions relevant to this case: Exemption 7(A), for information that "could reasonably be expected to" interfere with ongoing law enforcement efforts, 5 U.S.C. § 552(b)(7)(A); Exemptions 7(C) and 7(F), for information that "could reasonably be expected to" unjustifiably compromise an individual's privacy or physical safety, *id.* § 552(b)(7)(C), (b)(7)(F); and Exemption 3, for information that other statutes exempt from disclosure, *id.* § 552(b)(3). But "these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *John Doe Agency*, 493 U.S. at 152

(quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976)). Accordingly, courts must “narrowly construe[]” the exemptions, and “the burden is on the agency to sustain its action.” *Id.* (internal quotation marks and citations omitted). The government may in some situations withhold entire categories of records from disclosure, as it seeks to do here by withholding names and other information pertaining to all terrorism-investigation detainees. In order to sustain its burden, however, the government must demonstrate that “the range of circumstances included in the category ‘characteristically support[s] an inference’ that the statutory requirements for exemption are satisfied.” *Nation Magazine v. United States Customs Serv.*, 71 F.3d 885, 893 (D.C. Cir. 1995) (citing *United States v. Landano*, 508 U.S. 165, 176–80 (1993)).

The third principle relates to the level of deference we owe the government. Invoking the “heightened deference to the judgments of the political branches with respect to matters of national security,” *Zadvydas v. Davis*, 533 U.S. 678, 696 (2001), the government refuses to identify the specific categories of information that would actually interfere with its investigation, but rather asks us simply to trust its judgment. This court obeys, declaring that “the judiciary is in an extremely poor position to second-guess the executive’s judgment in this area of national security.” Op. at 15. But requiring agencies to make the detailed showing FOIA requires is not second-guessing their judgment about matters within their expertise. And in any event, this court is also in an extremely poor position to second-guess the legislature’s judgment that the judiciary must play a meaningful role in reviewing FOIA exemption requests. Neither FOIA itself nor this circuit’s interpretation of the statute authorizes the court to invoke the phrase “national security” to relieve the government of its burden of justifying its refusal to release information under FOIA.

To begin with, I think it not at all obvious that we owe heightened deference to the government in this case. Citing the legislative history of the 1974 amendments to FOIA’s Exemption 1, 5 U.S.C. § 552(b)(1), the exemption for nation-

al-security matters, we have held that in evaluating Exemption 1 claims, “‘substantial weight’ is to be accorded to detailed agency affidavits setting forth the basis for exemption.” *Weissman v. CIA*, 565 F.2d 692, 697 n.10 (D.C. Cir. 1977); *see also* S. REP. NO. 93-1200, at 12 (1974) (“[T]he conferees recognize that the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse effects might occur as a result of public disclosure of a particular classified record. Accordingly, the conferees expect that the federal courts, in making *de novo* determinations in section 552 (b)(1) cases under the Freedom of Information law, will accord substantial weight to an agency’s affidavit concerning the details of the classified status of the disputed record.”). We have also extended this heightened deference to cases involving Exemption 3 as it incorporates the National Security Act of 1947, which requires the CIA Director to protect “intelligence sources and methods” from unauthorized disclosure, 50 U.S.C § 403-3(c)(7). *E.g.*, *Halperin v. CIA*, 629 F.2d 144 (D.C. Cir. 1980) (National Security Act); *Weissman*, 565 F.2d 692 (Exemption 1 and National Security Act). The government, however, relies on neither Exemption 1 nor the National Security Act in this case, and contrary to the court’s suggestion, *see* Op. at 15, we have never held that such heightened deference is also appropriate in Exemption 7 cases. Indeed, in *Weissman*, which the court cites for the proposition that “we owe the same deference under Exemption 7(A) in appropriate cases,” we found Exemption 7 inapplicable in the case of the CIA’s investigation into the FOIA requester’s background “except under special collateral circumstances,” for instance, to protect the identities of FBI personnel named in requested materials. We instead focused on the deference owed the agency under Exemption 1, as well as Exemption 3 as it incorporates the National Security Act. 565 F.2d at 694-96, 698 & n.15.

In any event, the government’s case fails even under the heightened deference we have applied in Exemption 1 and National Security Act cases. No matter the level of deference, our review is not “vacuous.” *Pratt v. Webster*, 673 F.2d

408, 421 (D.C. Cir. 1982). Even when reviewing Exemption 1's applicability to materials classified in the interest of national security, we have made clear that no amount of deference can make up for agency allegations that display, for example, a "lack of detail and specificity, bad faith, [or] failure to account for contrary record evidence," since "deference is not equivalent to acquiescence." *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 30 (D.C. Cir. 1998). By accepting the government's vague, poorly explained allegations, and by filling in the gaps in the government's case with its own assumptions about facts absent from the record, this court has converted deference into acquiescence.

With these principles in mind, I examine each of the government's arguments for withholding the detainee information. Part II explains why Exemption 7(A), which forms the basis of the court's holding, cannot justify the government's refusal to disclose the bulk of the requested information about the detainees. Part III shows why the government's alternative arguments under Exemptions 7(C), 7(F), and 3 as it incorporates Federal Rule of Criminal Procedure 6(e) likewise fail. Finally, Part IV demonstrates why, on the basis of the record before us, the government has no basis under any exemption for withholding the names of the detainees' attorneys.

II.

Although FOIA permits agencies to craft rules exempting certain categories of records from disclosure under Exemption 7(A) instead of making a record-by-record showing, *see Robbins Tire*, 437 U.S. at 236, an agency's ability to rely on categorical rules has limits. Specifically, the government must divide information it seeks to withhold into "categories . . . [that are] sufficiently distinct to allow a court to grasp 'how each . . . category of documents, if disclosed, would interfere with the investigation.'" *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 789 F.2d 64, 67 (D.C. Cir. 1986) (quoting *Campbell v. Dep't of Health & Human Servs.*, 682 F.2d 256, 265 (D.C. Cir. 1982)). An acceptable category is

“functional,” that is, it “allows the court to trace a rational link between the nature of the document and the alleged likely interference.” *Id.*; see also *Nation Magazine*, 71 F.3d at 893 (“There are limits . . . to when categorical rules may be employed. Only when the range of circumstances included in the category ‘characteristically support[s] an inference’ that the statutory requirements for exemption are satisfied is such a rule appropriate.”).

Although I have no doubt that some of the requested information is exempt from FOIA’s mandatory disclosure requirement, the court treats disclosure as an all-or-nothing proposition, repeatedly emphasizing the breadth of the plaintiffs’ request—the fact that they seek the names and other information pertaining to “every single individual detained in the course of the government’s terrorism investigation,” *Op.* at 17—as a justification for accepting the government’s own very broad, categorical refusal to release the bulk of the requested information. This all-or-nothing approach runs directly counter to well-established principles governing FOIA requests. Nothing in the statute requires requesters to seek only information not exempt from disclosure. To the contrary, the government bears the burden of reviewing the plaintiffs’ request, identifying functional categories of information that are exempt from disclosure, and disclosing any reasonably segregable, non-exempt portion of the requested materials. 5 U.S.C. § 552(b). The government fails to satisfy that burden in this case, for the range of circumstances included in the government’s exemption request do not “characteristically support” an inference that the information would interfere with its terrorism investigation.

In support of its exemption request, the government offers declarations from two senior officials with responsibility for the terrorism investigation. One of those declarations, by Dale L. Watson, a Federal Bureau of Investigation official charged with supervising the investigation, was prepared not for this case, but for cases involving the closure of deportation hearings. See *N. Jersey Media Group, Inc. v. Ashcroft*, 308 F.3d 198 (3d Cir. 2002), *cert. denied*, 2003 WL 1191395 (May 27, 2003); *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002). Watson’s declaration thus speaks not to the harm

that would flow from disclosing detainees' names or other information, but instead to the harm that would flow from publicly airing evidence about particular detainees at such a hearing—i.e., “what evidence led to the detention of each individual,” “[i]nformation about how any given individual entered the country,” and “what evidence the United States has against members of a particular cell.” Watson Decl. ¶¶ 12–13. Plaintiffs in this case request no such information. The court nevertheless relies on the Watson declaration, as well as *North Jersey Media Group*, see Op. at 22–23, despite the fact that neither has anything to do with the release of detainee names.

The other declaration, by Department of Justice Terrorism and Violent Crime Section chief James S. Reynolds, does in fact outline the harms that might result from release of some detainee names. But it does not support the government's request for a 7(A) exemption, since that request treats all detainees the same, even though Reynolds tells us that the only common thread among the detainees is that they were “originally questioned because there were indications that they might have connections with, or possess information pertaining to, terrorist activity against the United States.” Reynolds Decl. ¶ 10; see also *id.* ¶¶ 27, 36. As Reynolds himself acknowledges, this group includes some detainees who have turned out to be innocent of any involvement with terrorist activity and have “no information useful to the investigation.” *Id.* ¶ 36.

Ignoring this important concession, the court declares that “[t]he clear import of the declarations is that many of the detainees have links to terrorism”—which the court considers “no surprise given that the detainees were apprehended during the course of a terrorism investigation, and given that several detainees have been charged with federal terrorism crimes or held as enemy combatants.” Op. at 21. The court's approach is unconvincing for two reasons.

To begin with, it rests on what seems to be a faulty assumption about facts not in evidence. As of November 5, 2001, the last time the government released a tally, there

were 1,182 detainees. See Dan Eggen & Susan Schmidt, *Count of Released Detainees Is Hard to Pin Down*, WASH. POST, Nov. 6, 2001, at A10 (quoting Justice Department spokeswoman Mindy Tucker). Nothing in the record tells us how many of those 1,182 detainees have been charged with federal terrorism crimes or held as enemy combatants. What little information the record does contain, however, suggests that the number may be relatively small. A list of federally charged detainees attached to the government's motion for summary judgment reports that as of the time this suit was filed, only one detainee had been criminally charged in the September 11 attacks and only 108 detainees had been charged with any federal crime—primarily violations of anti-fraud statutes. Reynolds Decl. ¶ 27; Def. Mot. for Summary Judgment, Ex. 8.

In any event, the court concedes the point—even if “many” of those “apprehended during the course of a terrorism investigation” have links to terrorism, not *all* of them do. As the court itself notes, the declarations establish that many of the INS detainees were held because law enforcement agents determined in the course of questioning them that they were in violation of federal laws; only “‘in some instances’” did agents “also determine[] that they had links to other facets of the investigation.” Op. at 21 (quoting Reynolds Decl. ¶ 10). Furthermore, although the court assumes that all those detained on material witness warrants “have relevant knowledge about the terrorism investigation” because a federal judge issues such warrants “based on an affidavit stating that the witness has information relevant to an ongoing criminal investigation,” Op. at 20, that assumption seems unwarranted given the government's concession that “it may turn out that these individuals have no information useful to the investigation,” Reynolds Decl. ¶ 36.

The government gives us no reason to think that releasing the names of these innocent detainees could interfere with its investigation. Indeed, the government never really asks us to believe that disclosure of the names of innocent persons having no knowledge of terrorist activity would in any way

impede its ability to gather information from those who do have such knowledge. Instead, it asserts that “a detainee who knows his name will be made public may be deterred from cooperating now or in the future for fear of retaliation by terrorist organizations against him or his family and associates.” Reynolds Decl. ¶ 15. Although the court accepts this argument, Op. at 19, it is ultimately not an argument for withholding detainees’ names, but rather for withholding the names of people who have information that might be helpful to law enforcement officials. These are two different categories of people, for as Reynolds acknowledges, many detainees have no information to provide. Reynolds Decl. ¶ 36. These two groups thus merit different treatment. In fact, several statutory provisions address precisely the problem the government identifies, but all of them are aimed at protecting the identities of those people who provide information, not people the government questions because it thinks they *might* have information but who turn out not to. FOIA Exemption 7(A) protects the identities of witnesses where disclosure might pose a risk of interference in the form of witness intimidation or coercion, *Robbins Tire*, 437 U.S. at 239–40; FOIA Exemption 7(D) protects the identities of sources who choose to provide information to law enforcement agents on a confidential basis, 5 U.S.C. § 552(b)(7)(D); and the National Security Act protects the identity of intelligence sources in order to prevent those sources from “clos[ing] up like a clam,” *CIA v. Sims*, 471 U.S. 159, 172 (1985) (internal quotation marks omitted). The government can and should rely on these provisions to protect the names of detainees who provide information to law enforcement agents or whom the government believes will be able to provide such information in the future. The government may not, however, preemptively withhold the identities of innocent detainees who do not now, and may never, have any information of use to the terrorism investigation.

The only argument that could conceivably support withholding innocent detainees’ names is the assertion that disclosure of the names “*may* reveal details about the focus and

scope of the investigation and thereby allow terrorists to counteract it.” Reynolds Decl. ¶ 16 (emphasis added). That Reynolds believes these harms *may* result from disclosure is hardly surprising—anything is possible. But before accepting the government’s argument, this court must insist on knowing whether these harms “*could reasonably be expected to*” result from disclosure—the standard Congress prescribed for exemption under 7(A). Nothing in Reynolds’s declaration suggests that these harms are in fact reasonably likely to occur.

To begin with, Reynolds never explains how a list of names of persons unknown to terrorist organizations would tell the terrorists anything at all about the investigation, much less allow them to “map [its] progress.” *Id.* For example, if the government tells us that it detained men named Mohammed Mubeen, Osama Elfar, Ghassan Dahduli, Fathi Mustafa, Nacer Fathi Mustafa, and Hady Omar, Jr., none of whom has any connection to terrorist organizations, *see* Amy Goldstein, *A Deliberate Strategy of Disruption: Massive, Secretive Detention Effort Aimed Mainly at Preventing More Terror*, WASH. POST, Nov. 4, 2001, at A1, what could that information possibly tell terrorists about the government’s investigation? Though Reynolds’s declaration provides no answer, the court speculates that the names of these innocent detainees could be valuable to terrorist organizations because “[s]uch detainees could be acquaintances of the September 11 terrorists, or members of the same community groups or mosques.” *Op.* at 19. That may well be true in some cases, but if it is, Reynolds should tell us so under oath, thus providing a record basis for the government to claim an exemption for those detainees who pose such concerns. But the court’s speculation, supported only by a newspaper article describing a single detainee who attended a mosque that two terrorism suspects also attended, *see id.* (citing Rachel L. Swarns, *Muslims Protest Monthlong Detention Without a Charge*, N.Y. TIMES, April 20, 2003, at A16), falls far short of satisfying the government’s burden under FOIA.

The government’s failure to provide an adequate explanation is all the more glaring given that the detainees represent

only a subset—and quite possibly a very small subset—of persons questioned in connection with this investigation. Reynolds Supp. Decl. ¶2. As a result, even if releasing detainee names were to provide some insight into the terrorism investigation, that insight would be limited. Releasing the names of the detainees, but not the names of those questioned in connection with the investigation, can paint only a partial—and possibly misleading—picture of the government’s investigative strategy. For example, if the government detains two people in Detroit but questions a thousand in Chicago, wouldn’t release of the detainee information wrongly lead terrorist organizations to believe that the government was focusing on Detroit, not Chicago?

The second failing in both the government’s request and the court’s analysis is that they treat all detainee information the same, despite the fact that each item of information that plaintiffs seek about the detainees—names, attorneys’ names, dates and locations of arrest, places of detention, and dates of release—is clearly of very different value to terrorists attempting to discern the scope and direction of the government’s investigation. Although the Reynolds declaration tells us that “releasing the names of the detainees who may be associated with terrorism and their place and date of arrest would reveal the direction and progress of the investigations,” Reynolds Decl. ¶16, it does not tell us, for example, whether releasing the detainees’ names and dates of arrest, but not their places of arrest—or even releasing the dates of arrest alone—would involve the same danger. The Reynolds declaration, moreover, contains no justification at all for withholding dates of release. Indeed, the government has already disclosed the release dates of detainees who had been held on federal criminal charges. *Id.* ¶8. This information may seem unimportant, but from the FOIA requesters’ point of view, it could be highly relevant to the question of how the government is treating the persons it has detained. Taken together, arrest and release dates can tell the public how long persons have been detained, raising concerns about possible constitutional violations. *See* Appellees’ Br. at 27.

The government's allegations of harm are also undercut by the fact that it has itself provided several other means by which this information can become public. Not only do detainees remain free to inform whomever they choose of their detention, Reynolds Decl. ¶ 23, but on numerous occasions since September 11, the government itself has disclosed precisely the kind of information it now refuses to provide under FOIA. For example, on April 17, 2002, the government announced the arrest of Issaya Nombo, whom government officials said they suspected of connections to terrorism, although he was arrested on immigration charges. Officials revealed Nombo's name and the date and place of his arrest. Philip Shenon, *African Held After Name Is Left in Cave*, N.Y. TIMES, Apr. 18, 2002, at A15. At a June 10, 2002 press conference, the Attorney General announced the arrest of one Abdulla Al Muhajir, born José Padilla, for suspected terrorism involvement, revealing not only Al Muhajir's two names, but also the date and place of his arrest, and the events leading to his capture. Attorney General Ashcroft News Conference, June 10, 2002, *available at* <http://www.usdoj.gov/ag/speeches/2002/061002agtranscripts.htm>. And on July 26, 2002, government officials announced they were holding Mohammad Mansur Jabarah on a material witness warrant after his arrest in connection with a terrorist plot in Singapore. William K. Rashbaum, *Captured Qaeda Member Gives Details on Group's Operations*, N.Y. TIMES, July 27, 2002, at A8.

Nothing in the record explains why the government's concerns about interference with the investigation do not apply with respect to detainees such as Abdulla Al Muhajir, Issaya Nombo, and Mohammad Mansur Jabarah, but do nevertheless apply with respect to the other detainees. In its reply brief, the government explains that it may have strategic reasons for disclosing certain information, since its disclosures to date "have identified specific individuals in a manner unlikely, in the view of the law enforcement experts, to impede the progress of the investigation." Appellant's Reply Br. at 18. While this may well be so, it is an argument of counsel, and though the court accepts it, FOIA requires that

the agency—not counsel—explain such judgments under oath. The reason for this requirement is clear: We owe deference to agency expertise, not to lawyers defending the agency in litigation. *See, e.g., Church of Scientology v. IRS*, 792 F.2d 153, 165–166 (D.C. Cir. 1986) (citing *SEC v. Chenery Corp.*, 318 U.S. 80 (1943)). If there are legitimate investigative reasons for releasing the names of some detainees, but not others, then Mr. Reynolds or others responsible for the terrorism investigation should explain those reasons under oath—in an in camera affidavit, if necessary to protect the information—and that explanation would probably warrant judicial deference.

It is true, as the court points out, that the Supreme Court in *CIA v. Sims* acknowledged “the political realities of intelligence operations in which, among other things, our Government may choose to release information deliberately to ‘send a message’ to allies or adversaries” when it upheld the CIA’s right to withhold intelligence information even if the CIA has already released some part of it. 471 U.S. at 180. Unlike this court, however, the Supreme Court did not simply assume it understood the government’s strategy; it reached its conclusion on the basis of the CIA Director’s affidavit explaining that strategy. *Id.* at 180 & n.24. The record in this case contains no similar explanation. Moreover, counsel’s argument suggests that the government itself differentiates among detainees on a case-by-case basis for purposes of assessing how disclosure might harm its investigation. If the government itself makes such distinctions in deciding what information to release, then why, particularly in light of FOIA’s exacting standards, doesn’t it make those distinctions in its exemption request before this court?

By asking these questions, the court would not, as it warns, be “second-guessing” the government’s judgments about matters of national security. *Op.* at 15. It would, rather, be doing the job Congress assigned the judiciary by insisting that the government do the job Congress assigned to it: provide a rational explanation of its reasons for claiming exemption from FOIA’s disclosure requirements.

III.

Because the court concludes that Exemption 7(A) applies to the government's entire request, it never addresses the government's alternative arguments under Exemptions 7(C), 7(F), and 3. In my view, none of these provisions supports the government's refusal to disclose the detainee information either.

Exemption 7(C)

Exemption 7(C) permits the government to withhold law enforcement records where their release "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Like Exemption 7(A), the application of Exemption 7(C) is subject to a set of well-established standards. Because the statute refers not to invasions of privacy generally, but to "unwarranted" invasions of privacy, courts evaluating claims for 7(C) exemption must do more than simply identify a privacy interest that will be compromised by disclosure of information. Instead, they must "balance the public interest in disclosure against the interest Congress intended the Exemption to protect." *Reporters Committee*, 489 U.S. at 776.

Relying on our decision in *Nation Magazine*, the government argues that the detainees have "an obvious privacy interest cognizable under Exemption 7(C) in keeping secret the fact that they were subjects of a law enforcement investigation," and that these privacy concerns are "particularly acute given the nature and magnitude of the September 11 attacks." Appellant's Br. at 39–40 (quoting *Nation Magazine*, 71 F.3d at 894). This argument is unconvincing. For one thing, if the government is so concerned with the detainees' privacy, why has it released so much information about them? What about Abdulla Al Muhajir's privacy, or Issaya Nombo's, or Mohammad Mansur Jabarah's? Nothing in the Reynolds declaration explains how the government's press conferences releasing the names of these detainees demonstrate any respect for their privacy.

In any event, we have never held that individuals who have been not only investigated, but also arrested and jailed, have a similar privacy interest in avoiding “unwarranted association with criminal activity or reputational harm.” *Nation Magazine*, 71 F.3d at 894. Even though being arrested subjects a person suspected of criminal activity to embarrassment and potentially more serious reputational harm, the law is nevertheless clear that no right of privacy “is violated by the disclosure of ‘an official act such as an arrest.’” *Am. Fed’n of Gov’t Employees, AFL-CIO v. Dept of Housing & Urban Dev.*, 118 F.3d 786, 794 (D.C. Cir. 1997) (quoting *Paul v. Davis*, 424 U.S. 693, 713 (1976)).

To be sure, detainees may have a unique interest in avoiding association with the crimes of September 11. Even so, that interest is clearly outweighed by the public interest in knowing whether the government, in investigating those heinous crimes, is violating the rights of persons it has detained. And while FOIA asks only whether the public interest in disclosure outweighs the private interest in secrecy, it bears noting that the private interests in this case weigh on both sides of the balance: Plaintiffs’ request for disclosure of the detainees’ names seeks to vindicate not only the public’s right to know what its government is up to, but also the detainees’ own rights, including the right to counsel and to speedy trial.

Nothing in *SafeCard Services, Inc. v. SEC*, 926 F.2d 1197 (D.C. Cir. 1991), requires a different result. *SafeCard* establishes that names appearing in law enforcement files will often fall within the scope of Exemption 7(C), since records containing such information are generally far less probative of an agency’s behavior or performance than of the behavior of the persons whose names appear in the records. *Id.* at 1205; see also *Nation Magazine*, 71 F.3d at 895 (“In some, perhaps many, instances where a third party asks if an agency has information regarding a named individual in law enforcement files, the cognizable public interest in that information will be negligible; the requester will be seeking records about a private citizen, not agency conduct.”). The *SafeCard* court therefore formulated a categorical rule exempting disclosure of such information unless the requester can show (1) compel-

ling evidence that the agency is engaged in illegal activity, and (2) that the information is necessary to confirm or refute that evidence. *SafeCard*, 926 F.2d at 1205–06. Plaintiffs’ FOIA request satisfies both elements of this rule.

To begin with, this case does not implicate *SafeCard*’s concern that disclosure of names in law enforcement files will generally shed less light on the government’s behavior than it does on the behavior of private citizens. In *SafeCard*, the FOIA requester sought information relating to organizations and individuals whom the SEC had suspected of manipulating the requester’s stock and who might be witnesses or litigants in the SEC’s investigations. 926 F.2d at 1200, 1205. Similarly, in many other Exemption 7(C) cases, FOIA requesters seek names in law enforcement files primarily in order to attack their convictions or otherwise exculpate themselves—a “personal stake” in disclosure that “does not count in the calculation of the public interest.” *Oguaju v. United States*, 288 F.3d 448, 450 (D.C. Cir. 2002); *see also Billington v. United States Dep’t of Justice*, 233 F.3d 581, 582 (D.C. Cir. 2000). Here, in contrast, plaintiffs have little if any personal stake in their FOIA request, which aims solely to glean information relating to the government’s conduct of its terrorism investigation and its treatment of the detainees. Designed to “shed[] light on an agency’s performance of its statutory duties,” this request implicates precisely the kind of public interest lying at the heart of Exemption 7(C)’s balancing test. *Reporters Committee*, 489 U.S. at 773.

Moreover, plaintiffs offer ample evidence of agency wrongdoing. The record includes hundreds of pages of newspaper articles, human rights reports, and congressional testimony reporting alleged governmental abuses such as holding detainees for long periods without allowing them to seek or communicate with counsel and without charging them. *See, e.g.,* Alison Leigh Cowen, *Detainees’ Lawyers Complain of Unfair Treatment*, N.Y. TIMES, Oct. 21, 2001, at B1; Richard A. Serrano, *Many Held in Terror Probe Report Rights Being Abused*, L.A. TIMES, Oct. 15, 2001, at A1; Amnesty International, *Amnesty International’s Concerns Regarding Post September 11 Detentions in the USA*, available at

http://web.amnesty.org/aidoc/aidoc_pdf.nsf; Human Rights Watch, *Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees*, available at <http://www.hrw.org/reports/2002/us911/USA0802.pdf>; *Department of Justice Oversight: Preserving Our Freedoms While Defending Against Terrorism: Hearing Before the Senate Judiciary Comm.*, 107th Cong. (2001) (statement of Gerald H. Goldstein, Attorney, National Ass'n of Criminal Defense Lawyers), available at <http://judiciary.senate.gov/hearing.cfm?=28>; *id.* (statement of Michael Boyle, Attorney, American Immigration Lawyers Ass'n). To be sure, none of this evidence has been tested and proved in a court of law. But *SafeCard* requires only “compelling” evidence—not tested evidence, and not even evidence that would be admissible at trial. If hundreds of pages of first-hand reports of governmental abuses do not qualify as “compelling” evidence sufficient to justify an investigation into the government’s conduct, then I cannot imagine what would. After all, FOIA’s purpose, as *SafeCard* recognizes, is to allow the public access to records necessary to ascertain whether the government has acted illegally. If requesters already had tried and tested proof of such illegal activity, then resort to FOIA would be unnecessary. History, moreover, is full of examples of situations in which just these sorts of allegations led to the discovery of serious government wrongdoing—from Teapot Dome in the 1920s to the FBI’s COINTELPRO counterintelligence program in the 1960s to Watergate in the 1970s.

In short, by interpreting *SafeCard* to require anything more than compelling “allegations of illegal agency activity,” *Nation Magazine*, 71 F.3d at 896, the government would transform the *SafeCard* test into a categorical ban on the disclosure of names contained in law enforcement records. That result finds justification in neither FOIA nor our cases interpreting Exemption 7(C). See *Nation Magazine*, 71 F.3d at 896 (holding that a blanket exemption for all names in law enforcement records “would be contrary to FOIA’s overall purpose of disclosure, and thus is not a permissible reading of Exemption 7(C)”); *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984) (ordering the disclosure of the name of a high-ranking FBI

official in internal reports concerning the agency's investigation of a cover-up).

Finally, plaintiffs need the information they request to confirm or refute the compelling evidence of agency wrongdoing—the *SafeCard* test's second requirement. While it is true that a list of names alone would shed no light on whether the government has respected detainees' constitutional rights, plaintiffs need the names in order to gather information about the government's treatment of the detainees. Appellees' Br. at 30. In this respect, plaintiffs' request differs from the vast majority of FOIA requests for information concerning named individuals in law enforcement files, where the only plausible public interest is knowing to what extent an agency believed the named individuals were involved in illegal activity. *Cf. Rosenfeld v. United States Dep't of Justice*, 57 F.3d 803, 812 (9th Cir. 1995) (holding that Exemption 7(C) does not justify withholding the identities of persons investigated for subversive activities in FBI files, where the names would make it possible to determine whether the FBI had investigated student activists for participating in political protests by comparing the FBI's investigations to a roster of a student activist group's leadership).

Amici Washington Legal Foundation and the Jewish Institute for National Security Affairs contend that release of the information is not necessary to evaluate whether the government is operating within the bounds of the law in detaining persons in connection with its terrorism investigation, since the public has other means of obtaining the information: Individual detainees can bring individual lawsuits, the Department's Inspector General has investigated allegations of misconduct, and media reports and congressional investigations all tell the public what its "government is up to." Washington Legal Found. Br. in Support of Appellant at 17. But *Amici's* argument has no basis in FOIA. If Congress had intended for individual lawsuits, internal investigations, or newspaper reports to relieve the government of its obligations under FOIA, then it would have expressed that intent in the law.

Exemption 7(F)

The government next invokes Exemption 7(F), which permits withholding law enforcement records where their release “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F). Here again, the government’s evidence fails to establish that the entire range of records encompassed in the plaintiffs’ FOIA request “could reasonably be expected” to endanger the detainees.

The government’s declarations tell us only that (1) “[d]etainees who are, in fact[,] affiliated with a terrorist group may be perceived by such groups as informants for the United States and be killed to preclude their future cooperation,” Reynolds Decl. ¶ 37, and (2) “[i]f prisoners learn that an individual who was detained as a result of the investigation emanating from the September 11 attacks is in their own prison facility, some may try to retaliate against this individual,” *id.* ¶ 29. The government tells us nothing about what threat, if any, disclosure would pose to detainees who are neither affiliated with a terrorist group nor currently imprisoned. And the government’s own disclosures again undermine its assertions about detainees’ safety. Plaintiffs point out that the Justice Department Inspector General himself named two of the detention centers used to house the terrorism investigation detainees, a fact that the government neither denies nor explains. Appellees’ Br. at 27. Again, the government may have had reasons for disclosing the names of only these two detention centers, but nothing in the Reynolds declaration tells us what those reasons might be.

Exemption 3

Finally, the government invokes Exemption 3, which exempts from disclosure matters that are “specifically exempted from disclosure by statute . . . , provided that such statute . . . requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3). According to the government, Exemption 3, which encompasses Federal Rule of Criminal Procedure 6(e)’s

prohibition on the disclosure of “matters occurring before the grand jury,” see *Fund for Constitutional Gov’t v. Nat’l Archives & Records Serv.*, 656 F.2d 856, 867–68 (D.C. Cir. 1981), excuses it from disclosing the names of detainees held on material witness warrants, since “each of these warrants was issued to procure a witness’s testimony before a grand jury,” Reynolds Second Supp. Decl. ¶ 4. As such, the government contends that Exemption 3 provides a ground for nondisclosure independent of Exemption 7.

Rule 6(e) forbids disclosure of “not only what has occurred and what is occurring, but also what is likely to occur” before a grand jury, including disclosure of witnesses’ identities. *In re Motions of Dow Jones & Co.*, 142 F.3d 496, 500 (D.C. Cir. 1998). Therefore, the names of persons detained on material witness warrants who have actually testified before grand juries are unquestionably exempt from disclosure. The government, however, insists that Exemption 3 also covers the names of material witness detainees who have neither testified before grand juries nor are scheduled to do so, as well as the names of detainees who were released without ever having testified, because all of these detainees were originally detained in order to “procure [their] testimony before a grand jury.” Reynolds Second Supp. Decl. ¶ 4.

Saying that the material witness detainees were held in order to secure their testimony is quite different from saying that their testimony is “likely to occur” before a grand jury. Indeed, the record indicates that at least seven material witnesses have been released without testifying before a grand jury, so in their cases, it seems more accurate to say that their testimony is quite *unlikely* to occur before a grand jury. See *Indiana Men Ordered to Testify to Return to Evansville*, ASSOC. PRESS, Oct. 25, 2001. Furthermore, although current detainees may be, on the whole, somewhat more likely to testify before grand juries, their testimony is not necessarily “likely to occur” for purposes of Rule 6(e). We have said that the “likely to occur” language must be read sensibly: It does not authorize the government to draw “a veil of secrecy . . . over all matters occurring in the world

that happen to be investigated by a grand jury.” *In re Sealed Case*, 192 F.3d 995, 1001–02 (D.C. Cir. 1999) (internal quotation marks and citation omitted). Accordingly, we have made clear that Rule 6(e) covers “testimony *about to be* presented to a grand jury” (emphasis added)—hence the “likely to occur” language—but does not cover government investigations that merely parallel grand jury investigations. *Id.* at 1002–03. Because the government fails to show that all material witness detainees are likely to testify before grand juries, it may not, on this record, withhold their names under Rule 6(e). To hold otherwise would convert this circuit’s carefully crafted standard into an absolute rule that would permit the government to keep secret the name of any witness whom it ever thought might testify at a grand jury proceeding, or who might testify at some indefinite point in the future. Neither Rule 6(e) nor the law of this circuit justifies that result.

IV.

No part of the government’s exemption request better illustrates its infirmities than its refusal to disclose the names of the detainees’ attorneys. Essentially rehashing its arguments for withholding the names of the attorneys’ clients, the government argues—and the court agrees, *see* Op. at 23—that releasing attorneys’ names would interfere with the terrorism investigation and would compromise the detainees’ privacy interests, since releasing a list of attorneys “may facilitate the identification of the detainees themselves.” Reynolds Decl. ¶ 18. The government also claims to be withholding the attorneys’ names for their own good, warning that attorneys identified as representing individuals detained in connection with the terrorism investigation “run the risk that they will be subjected to harassment or retaliation in their personal as well as professional lives.” Reynolds Decl. ¶ 26.

Both parts of this argument are not only profoundly wrong, but also reflect a complete misunderstanding of the nature of this country’s legal profession. In the first place, attorneys’

names are quite clearly not a proxy for the names of their clients. Indeed, recognizing that knowledge of the lawyer's identity does not inexorably lead to identifying the client, ethical rules forbid lawyers from identifying their clients without their consent, except in extraordinary circumstances. Rule 1.6 of the *Model Rules of Professional Conduct* provides that absent extraordinary circumstances, "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives consent after consultation"—a prohibition that generally includes disclosure of a client's identity. See *CTR. FOR PROF'L RESPONSIBILITY, AM. BAR ASS'N, ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT* 83 (4th ed. 1999). Because the decision ultimately belongs to the detainees and not their lawyers, providing a list of the lawyers' names would do little more to facilitate identification of the detainees than the government's current policy of allowing the detainees to identify themselves to the media and to whomever else they choose.

Even assuming that releasing attorneys' names will somehow facilitate identification of the detainees, the court's all-or-nothing approach again impermissibly shifts the burden of identifying exempt information from the government to plaintiffs. The government's Exemption 7(A) argument for withholding lawyers' names thus fails for the same reason as its 7(A) argument for withholding the names of all detainees. How would releasing the names of attorneys representing innocent clients with no connection to terrorist activities interfere with the government's terrorism investigation? Neither the court nor the government provides an explanation.

The government's second argument fares no better. The notion that the government must withhold the attorneys' names for their own good is flatly inconsistent with lawyers' roles as advocates and officers of the court in our fundamentally open legal system. Having voluntarily assumed this public role, lawyers have little expectation of anonymity. I, for one, know of no lawyer who has ever asked for the kind of protection the government now asserts on behalf of the detainees' lawyers. Moreover, I have no doubt that lawyers

will represent individuals associated with the terrorism investigation even without the protection the government urges. As Judge Kessler noted in her opinion in this case, the history of our profession is full of examples of brave men and women who have taken on unpopular causes in the interest of justice. *Center for Nat'l Sec. Studies v. Dep't of Justice*, 215 F. Supp. 2d 94, 109 (D.D.C. 2002). Not only do lawyers regularly represent persons accused of terrible and highly publicized crimes against individuals, but many of this country's most prominent and well-respected lawyers have defended persons accused of heinous crimes against the state, from Aaron Burr to Nazi saboteurs to Soviet spies, as well as persons merely suspected of a propensity to commit such crimes, such as Japanese internees in World War II.

In addition, the government completely fails to substantiate its concerns about releasing attorneys' names. The government insists that "[i]n light of the brutality of the acts committed against the United States, even the mere possibility of retaliation against these lawyers justifies withholding their identities." Reynolds Decl. ¶ 38. FOIA, of course, does not allow the government to withhold information based on "mere possibilities." And the Reynolds declaration fails to establish that retaliation is reasonably likely. Indeed, if the government is so worried about retaliation against lawyers, why did it release a comprehensive list of attorneys representing federally charged detainees? *See* Def. Mot. for Summary Judgment, Ex. 8. Reynolds provides no answer. And if the risk of retaliation has materialized in the case of these attorneys, Reynolds certainly does not tell us so.

If the government has legitimate concerns about the safety of one or more of the lawyers, FOIA requires it to describe those concerns with reasonable specificity—again in an in camera affidavit, if necessary—and explain why it believes the harms it fears "could reasonably be expected" to occur. Giving appropriate deference to law enforcement expertise, the district court would then be in a position to evaluate the government's concerns and determine whether withholding the attorneys' names under Exemption 7(F)—or some other, less extraordinary measures—are needed to protect the de-

tainees' attorneys. Absent such evidence, however, the government has no basis for its flat refusal to release lawyers' names.

V.

Although I think it unreasonable to infer that all of the information plaintiffs seek in their FOIA request qualifies for exemption, the government may be able to point to more narrowly defined categories of information that might justify the inference. For example, while nothing in the record supports the government's contention that releasing the names of innocent detainees would harm the investigation, perhaps the government could justify withholding the places of arrest on the ground that such information might provide terrorist organizations with some insight into the government's investigative methods and strategy. I would therefore remand to allow the government to describe, for each detainee or reasonably defined category of detainees, on what basis it may withhold their names and other information.

This "more particularized approach" comports with both "Congress' intent to provide workable rules of FOIA disclosure," *United States v. Landano*, 508 U.S. 165, 180 (1993) (internal quotation marks and citations omitted), and FOIA's ultimate aim: to give the public "access to information about how Government is exercising its trust," at a time when "Government is becoming involved in more and more aspects of every citizen's personal and business life." 112 Cong. Rec. 13654 (1966) (statement of Rep. Rumsfeld). It would also ensure that this court treat FOIA as "a disclosure statute and not as an excuse to withhold information from the public." *Id.*

Rather than hold the government to clearly established standards governing FOIA exemptions, the court sustains the government's vague, ill-explained decision to withhold information, invoking principles of deference and engaging in its own speculation to fill in the gaps in the government's showing. In my view, the court's approach drastically diminishes,

if not eliminates, the judiciary's role in FOIA cases that implicate national-security interests. Congress certainly could have written FOIA that way, but chose instead to require meaningful judicial review of all government exemption claims. If the government thinks that a new, broader FOIA exemption is needed for terrorism cases, it should ask Congress to create one, just as in the wake of September 11 it asked Congress to authorize roving wiretaps of suspected terrorists and to permit detention of non-U.S. citizens suspected of terrorism without specific charges. *See* USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 (2001). But this court may not change the law in Congress's stead. For all its concern about the separation-of-powers principles at issue in this case, the court violates those principles by essentially abdicating its responsibility to apply the law as Congress wrote it. I dissent.

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Subject: : Fw: Tucker's Whitewater Conviction Upheld

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lest you doubted that we still pay attention . . .

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From: Dad

Vindication Again

Tucker's Whitewater Conviction Upheld

By CARYN ROUSSEAU
Associated Press Writer

June 16, 2003, 10:37 PM EDT

LITTLE ROCK, Ark. -- A federal judge on Monday upheld the Whitewater fraud conviction of former Gov. Jim Guy Tucker, rejecting his claim that the government withheld information about benefits afforded a key witness.

In a telephone interview Monday, Tucker said he wouldn't make a decision to appeal the ruling until after he had reviewed it and sought counsel from his attorney.

The decision by U.S. District Judge George Howard Jr. was the latest ruling in the long-running Whitewater saga, the Arkansas land deal that also involved Bill and Hillary Clinton.

REV_00237927

Tucker's appeal attacked the credibility of David Hale, who was the primary witness in the government's case against Tucker and James and Susan McDougal. The McDougals were business partners with the Clintons in the Whitewater partnership.

Tucker claimed Whitewater prosecutor Kenneth Starr knew that Hale was receiving assistance from people who opposed him and President Clinton, and failed to disclose the aid. At the time, the FBI and the Office of Independent Counsel were supervising Hale.

Tucker was convicted on bank fraud and conspiracy charges and sentenced to 18 months home detention.

In a 47-page decision, Howard wrote that Tucker failed to show a reason to set aside the sentence but even if he had provided evidence to back his claim, "it would not in the least have changed the outcome of the trial."

Howard noted that jurors split on the indictment's allegations against Tucker and acquitted the ex-governor on charges that relied solely on Hale's testimony.

The judge also rejected Tucker's claim that Starr was biased against him because Starr had once represented the Republican National Committee. Tucker is a Democrat.

Tucker resigned in July 1996, six weeks after his conviction, and later pleaded guilty in an unrelated tax case. He was disbarred and claimed in his motion that his resulting inability to practice law or work at a financial institution prevents him from seeking employment in his field.

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READ:UNKNOWN
TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

The 10 o'clock hour is better for me. I already have a meeting scheduled for 2:45. I think it is a good idea.

William

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

From: Miranda, Manuel (Frist)
Sent: Tuesday, June 17, 2003 10:06 AM
To: Comisac, RenaJohnson (Judiciary); Brett M. Kavanaugh@who.eop.gov; Brian.A.Benczkowski@usdoj.gov; Smith, William (Judiciary)
Subject: Pryor briefing

I would like to schedule a briefing on Pryor for all staff before Senators get bombarded with calls and to give staffs a chance to prepare their Senators with TP's for recess.

The earliest I can do is next Tuesday. Would you all be able to share the presentation if we scheduled it for Tuesday the 22nd at 10:00 or 3:00?

At that time we can give staffs a heads up about the post recess schedule and rally them a bit.

- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_6E28H003_WHO.TXT_1>

REV_00237949

The 10 o'clock

William

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

From: Miranda, Manuel (Frist)

Sent: Tuesday, June 17, 2003 10:06 AM

To: Comisac, RenaJohnson (Judiciary); Brett_M._Kavanaugh@who.eop.gov; Brian.A.Benczkowski@usdoj.gov; Smith, William (Judiciary)

Subject: Pryor briefing

I would like to schedule a briefing on Pryor for all staff before Senators get bombarded with calls and to give staffs a chance to prepare their Senators with TP's for recess.

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From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Lewis Libby/OVP/EOP@EOP [OVP] <Lewis Libby>; David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/17/2003 7:03:15 AM
Subject: : State by State Judicial Workload
Attachments: P_ED28H003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME:17-JUN-2003 11:03:15.00
SUBJECT:: State by State Judicial Workload
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached below is a state by state chart of judicial workload comparisons between state and federal courts in our target states and several other states we selected for specific reasons. As you know, there have been editorials and op-eds in a number of papers that have included allegations the bill will further clog overburdened federal courts.

The chart shows that the case workload of state court judges is anywhere from 2 to 4 times that of federal judges in the same state. Some might argue that state courts also include some very minor cases....you can counter that with a number of things including that the fact that federal court judges also hear thousands of student loan default cases.

- state caseload stats.doc
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_ED28H003_WHO.TXT_1>

Document Produced Natively

From: Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>
To: Smith, William (Judiciary) <William_Smith@Judiciary.senate.gov>; Brett M. Kavanaugh/WHO /EOP@EOP [WHO] <Brett M. Kavanaugh>; Brian.A.Benczkowski@usdoj.gov [UNKNOWN] <Brian.A.Benczkowski@usdoj.gov>; Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
Sent: 6/17/2003 7:03:21 AM
Subject: : Re: Pryor briefing

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME:17-JUN-2003 11:03:21.00

SUBJECT:: Re: Pryor briefing

TO:"Smith, William (Judiciary)" <William_Smith@Judiciary.senate.gov> ("Smith, William (Judiciary)" <William_Smith@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brian.A.Benczkowski@usdoj.gov (Brian.A.Benczkowski@usdoj.gov [UNKNOWN])

READ:UNKNOWN

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

I can do Tuesday June 24 in the afternoon but not the morning.

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

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>

To: Comisac, RenaJohnson (Judiciary)

<Rena_Johnson_Comisac@Judiciary.senate.gov>;

Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>;

Brian.A.Benczkowski@usdoj.gov <Brian.A.Benczkowski@usdoj.gov>; Smith,

William (Judiciary) <William_Smith@Judiciary.senate.gov>

Sent: Tue Jun 17 10:05:47 2003

Subject: Pryor briefing

I would like to schedule a briefing on Pryor for all staff before Senators get bombarded with calls and to give staffs a chance to prepare their Senators with TP's for recess.

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REV_00237953

From: Brian.A.Benczkowski@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Rena_Johnson_Comisac@Judiciary.senate.gov <Rena_Johnson_Comisac@Judiciary.senate.gov>; 'Manuel_Miranda@frist.senate.gov' <Manuel_Miranda@frist.senate.gov>; 'William_Smith@Judiciary.senate.gov' <William_Smith@Judiciary.senate.gov>
Sent: 6/17/2003 7:03:19 AM
Subject: : RE: Pryor briefing

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: "Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> ("Brian.A.Benczkowski@usdoj.gov" <Brian.A.Benczkowski@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:17-JUN-2003 11:03:19.00
SUBJECT:: RE: Pryor briefing
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:"Rena_Johnson_Comisac@Judiciary.senate.gov" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Rena_Johnson_Comisac@Judiciary.senate.gov" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"'Manuel_Miranda@frist.senate.gov'" <Manuel_Miranda@frist.senate.gov> ("'Manuel_Miranda@frist.senate.gov'" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
READ:UNKNOWN
TO:"'William_Smith@Judiciary.senate.gov'" <William_Smith@Judiciary.senate.gov> ("'William_Smith@Judiciary.senate.gov'" <William_Smith@Judiciary.senate.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Sounds like a good plan. Happy to participate.

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

From: Manuel_Miranda@frist.senate.gov
[mailto:Manuel_Miranda@frist.senate.gov]
Sent: Tuesday, June 17, 2003 10:06 AM
To: Benczkowski, Brian A; Rena_Johnson_Comisac@Judiciary.senate.gov;
Brett_M._Kavanaugh@who.eop.gov; William_Smith@Judiciary.senate.gov
Subject: Pryor briefing

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From: CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/17/2003 8:16:40 AM
Subject: : FW: 4 PM Today Deadline - LRM LJM44 - - TREASURY Report on HR1528 Taxpayer Protection and IRS Accountability Act of 2003
Attachments: P_SMA8H003_WHO.TXT_1.doc; P_SMA8H003_WHO.TXT_2.pdf; P_SMA8H003_WHO.TXT_3.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:17-JUN-2003 12:16:40.00
SUBJECT:: FW: 4 PM Today Deadline - LRM LJM44 - - TREASURY Report on HR1528 Taxpayer Protection and IRS Accountability Act of 2003
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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

From: MacEcevic, Lisa J.
Sent: Tuesday, June 17, 2003 11:37 AM
To: lrm@hhs.gov
Cc: Capretta, James C.; Dooley, Karen S.; Clendenin, Barry T.; Fontenot, Keith J.; Huang, Ai-ju; Bassano, Amy; Garufi, Marc; McMillin, Stephen S.; Roberson, Halley M.; Rhinesmith, Alan B.; Schwartz, Mark J.; Gillis, Ursula S.; Forman, Mark A.; Chenok, Daniel J.; White, Kamela G.; Perry, Philip J.; Wood, John F.; Luczynski, Kimberley S.; Foster, James D.; Rossman, Elizabeth L.; Dove, Stephen W.; Lobrano, Lauren C.; Whgc Lrm; Chadwick, Kirsten; Keniry, Daniel ; Pelletier, Eric C.; Nec Lrm; Reardon, Brian; Pellicci, Robert J.; Schroeder, Ingrid M.; Green, Richard E.; Jukes, James J.; Jensen, Amy; Badger, William D.; White, Chiquita
Subject: 4 PM Today Deadline - LRM LJM44 - - TREASURY Report on HR1528 Taxpayer Protection and IRS Accountability Act of 2003

Treasury would like to send the attached letter on an amendment related to Health Coverage Tax Credit waivers, which they advise will be offered to H.R. 1528 when that bill is brought to the House floor for a vote tomorrow. The amendment and underlying bill text are attached. Please note: Treasury advises that the amendment's expiration date, set at July 31, 2005, will be changed to December 31, 2004, which the Department supports. Please respond with any comments on the letter by 4:00 P.M. TODAY - Tuesday, June 17th. Thank you.

Treasury Letter ---> - hr1528awithadv.doc
Proposed Amendment ---> - hr1528aamd.pdf
Reported Text of H.R. 1528 --->

LRM ID: LJM44
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, June 17, 2003

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Lisa J. Macecevic
PHONE: (202)395-1092 FAX: (202)395-3109
SUBJECT: TREASURY Report on HR1528 Taxpayer Protection and IRS Accountability Act of 2003

REV_00237963

DEADLINE: 4:00 P.M. TODAY Tuesday, June 17, 2003

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts.

COMMENTS: Treasury would like to send the attached letter on an amendment related to Health Coverage Tax Credit waivers, which they advise will be offered to H.R. 1528 when that bill is brought to the House floor for a vote tomorrow. The amendment and underlying bill text are attached. Please note: Treasury advises that the amendment's expiration date, set at July 31, 2005, will be changed to December 31, 2004, which the Department supports. Please respond with any comments on the letter by 4:00 P.M. TODAY - Tuesday, June 17th. Thank you.

DISTRIBUTION LIST

AGENCIES:

052-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7773

EOP:

James C. Capretta
Karen S. Dooley
Barry T. Clendenin
Keith J. Fontenot
Ai-Ju Huang
Amy Bassano
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NEC LRM
Brian Reardon
Robert J. Pellicci
Ingrid M. Schroeder
Richard E. Green
James J. Jukes
Amy Jensen
William D. Badger

LRM ID: LJM44 SUBJECT: TREASURY Report on HR1528 Taxpayer
Protection and IRS Accountability Act of 2003
RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) faxing us a memo or letter.

Please include the LRM number and subject shown above.

TO: Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_SMA8H003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_SMA8H003_WHO.TXT_2>

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_SMA8H003_WHO.TXT_3>

June 17, 2003

The Honorable William M. Thomas
Chairman, Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Taxpayer Protection and IRS Accountability Act of 2003

Dear Chairman Thomas:

Thank you for giving us the opportunity to review the draft amendment to section 309 of H.R. 1528, the Taxpayer Protection and IRS Accountability Act of 2003, providing the opportunity for a waiver for certain individuals to enable coverage under the Health Coverage Tax Credit (HCTC).

The Administration certainly believes that those retirees and displaced workers who are eligible for the credit must have access to coverage that will qualify them for the credit. We have been actively working with the states to assist them in establishing state-based programs qualifying for the HCTC. We anticipate that a number of states will adopt qualifying state-based programs by August 1, 2003. However, even with this substantial progress, it is possible that more than one-third of the states will not have a state-based program meeting the HCTC requirements by this date. Given the absence of qualifying state-based programs in many states, we would favor giving individuals alternative options for accessing the credit for a limited period of time while states have a reasonable period to adopt a qualifying program.

We believe the health coverage tax credit waiver, as a short transition measure, would increase the availability of qualified health insurance for many credit-eligible individuals who would otherwise not have access to qualified coverage. All states have some mechanism to deliver coverage to individuals who have 18 months of creditable coverage and who have exhausted their COBRA continuation coverage eligibility. Other states have requirements that allow for fewer months of prior creditable coverage with direct access to a high risk pool. Thus, at a minimum all individuals who have 18 months of creditable coverage and who have exhausted their eligibility for COBRA continuation coverage would be able to find some coverage that will qualify them for the new credit. These individuals, under the waiver provision, could therefore apply the HCTC against this alternative state-based insurance. In addition to expanding coverage options for HIPAA-eligible individuals on a transitional basis, we would welcome the opportunity to work with you to find a method of making qualified health insurance readily available to all credit-eligible individuals.

Again, we appreciate this opportunity to address these issues. Please contact me if you have any questions or require any additional information.

OMB has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Pamela F. Olson
Assistant Secretary (Tax Policy)

AMENDMENT

OFFERED BY _____

Strike section 309 of the bill and insert the following:

1 SEC. 309. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

2 (a) CONSUMER OPTIONS.—

3 (1) IN GENERAL.—Paragraph (2) of section
4 35(e) is amended by inserting at the end the following new subparagraphs:

5 “(C) WAIVER BY ELIGIBLE INDIVIDUALS.—With respect to any month, clauses (i)
6 and (ii) of subparagraph (A) shall not apply with respect to any eligible individual and such
7 individual’s qualifying family members if such
8 individual—

9 “(i) does not reside in a State which
10 the Secretary has identified by regulation, guidance, or otherwise as a State in which
11 any coverage which—

12 “(I) is described in any of subparagraphs (C) through (H) of paragraph (1), and
13



1 “(II) meets the requirements of
 2 subparagraphs (A) and (B) of this
 3 paragraph,

4 is available to eligible individuals (and
 5 their qualifying family members) residing
 6 in the State, and

7 “(ii) elects to waive the application of
 8 clauses (i) and (ii) of subparagraph (A) of
 9 this paragraph.

10 “(D) ELECTION.—Any election made
 11 under subparagraph (C) (ii) shall be effective for
 12 the month for which such election is made and
 13 for all subsequent months.

14 “(E) TERMINATION.—Subparagraphs (C)
 15 and (D) shall not apply to any month beginning
 16 after the earlier of—

17 “(i) the date which is 2 years after
 18 the date of the enactment of this subpara-
 19 graph, or

20 “(ii) July 31, 2005.”.

21 (2) NO IMPACT ON STATE CONSUMER PROTEC-
 22 TIONS.—Nothing in the amendment made by para-
 23 graph (1) supercedes or otherwise affects the appli-
 24 cation of State law relating to consumer insurance
 25 protections (including State law implementing the



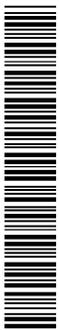
1 requirements of part B of title XXVII of the Public
2 Health Service Act).

3 (b) STATE-BASED CONTINUATION COVERAGE NOT
4 SUBJECT TO REQUIREMENTS.—Subparagraphs (A) and
5 (B)(i) of section 35(e)(2) are each amended by striking
6 “subparagraphs (B) through (H)” and inserting “sub-
7 paragraphs (C) through (H)”.

8 (c) EFFECTIVE DATE.—

9 (1) CONSUMER OPTIONS.—The amendment
10 made by subsection (a) shall apply to months begin-
11 ning after the date of the enactment of this Act.

12 (2) STATE-BASED CONTINUATION COVERAGE.—
13 The amendments made by subsection (b) shall take
14 effect as if included in section 201(a) of the Trade
15 Act of 2002.



HR 1528 RH

Union Calendar No. 39
108th CONGRESS
1st Session
H. R. 1528
[Report No. 108-61]

To amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.

IN THE HOUSE OF REPRESENTATIVES

April 1, 2003

Mr. PORTMAN introduced the following bill; which was referred to the Committee on Ways and Means

April 8, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 1, 2003]

A BILL

To amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE- This Act may be cited as the 'Taxpayer Protection and IRS Accountability Act of 2003'.

(b) AMENDMENT OF 1986 CODE- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS-

Sec. 1. Short title; etc.

TITLE I--PENALTY AND INTEREST REFORMS

Sec. 101. Failure to pay estimated tax penalty converted to interest charge on accumulated unpaid balance.

Sec. 102. Exclusion from gross income for interest on overpayments of income tax by individuals.

Sec. 103. Abatement of interest.

Sec. 104. Deposits made to suspend running of interest on potential underpayments.

Sec. 105. Expansion of interest netting for individuals.

Sec. 106. Waiver of certain penalties for first-time unintentional minor errors.

Sec. 107. Frivolous tax submissions.

Sec. 108. Clarification of application of Federal tax deposit penalty.

TITLE II--FAIRNESS OF COLLECTION PROCEDURES

Sec. 201. Partial payment of tax liability in installment agreements.

Sec. 202. Extension of time for return of property.

Sec. 203. Individuals held harmless on wrongful levy, etc., on individual retirement plan.

Sec. 204. Seven-day threshold on tolling of statute of limitations during tax review.

Sec. 205. Study of liens and levies.

TITLE III--TAX ADMINISTRATION REFORMS

Sec. 301. Revisions relating to termination of employment of Internal Revenue Service employees for misconduct.

Sec. 302. Confirmation of authority of tax court to apply doctrine of equitable recoupment.

Sec. 303. Jurisdiction of tax court over collection due process cases.

Sec. 304. Office of Chief Counsel review of offers in compromise.

Sec. 305. 15-day delay in due date for electronically filed individual income tax returns.

Sec. 306. Access of National Taxpayer Advocate to independent legal counsel.

Sec. 307. Payment of motor fuel excise tax refunds by direct deposit.

Sec. 308. Family business tax simplification.

Sec. 309. Health insurance costs of eligible individuals.

Sec. 310. Suspension of tax-exempt status of terrorist organizations.

TITLE IV--CONFIDENTIALITY AND DISCLOSURE

Sec. 401. Collection activities with respect to joint return disclosable to either spouse based on oral request.
Sec. 402. Taxpayer representatives not subject to examination on sole basis of representation of taxpayers.
Sec. 403. Disclosure in judicial or administrative tax proceedings of return and return information of persons who are not party to such proceedings.
Sec. 404. Prohibition of disclosure of taxpayer identification information with respect to disclosure of accepted offers-in-compromise.
Sec. 405. Compliance by contractors with confidentiality safeguards.
Sec. 406. Higher standards for requests for and consents to disclosure.
Sec. 407. Notice to taxpayer concerning administrative determination of browsing; annual report.
Sec. 408. Expanded disclosure in emergency circumstances.
Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
Sec. 410. Disclosure to State officials of proposed actions related to section 501(c)(3) organizations.
Sec. 411. Confidentiality of taxpayer communications with the Office of the Taxpayer Advocate.

TITLE V--MISCELLANEOUS

Sec. 501. Clarification of definition of church tax inquiry.
Sec. 502. Expansion of declaratory judgment remedy to tax-exempt organizations.
Sec. 503. Employee misconduct report to include summary of complaints by category.
Sec. 504. Annual report on awards of costs and certain fees in administrative and court proceedings.
Sec. 505. Annual report on abatement of penalties.
Sec. 506. Better means of communicating with taxpayers.
Sec. 507. Explanation of statute of limitations and consequences of failure to file.
Sec. 508. Amendment to treasury auction reforms.
Sec. 509. Enrolled agents.
Sec. 510. Financial management service fees.
Sec. 511. Extension of Internal Revenue Service user fees.

TITLE VI--LOW-INCOME TAXPAYER CLINICS

Sec. 601. Low-income taxpayer clinics.

TITLE VII--FEDERAL-STATE UNEMPLOYMENT ASSISTANCE AGREEMENTS.

Sec. 701. Applicability of certain Federal-State agreements relating to unemployment assistance.

TITLE I--PENALTY AND INTEREST REFORMS

SEC. 101. FAILURE TO PAY ESTIMATED TAX PENALTY CONVERTED TO INTEREST CHARGE ON ACCUMULATED UNPAID BALANCE.

(a) PENALTY MOVED TO INTEREST CHAPTER OF CODE- The Internal Revenue Code of 1986 is amended by redesignating section 6654 as section 6641 and by moving section 6641 (as so redesignated) from part I of subchapter A of chapter 68 to the end of subchapter E of chapter 67 (as added by subsection (e)(1) of this section).

(b) PENALTY CONVERTED TO INTEREST CHARGE- The heading and subsections (a) and (b) of section 6641 (as so redesignated) are amended to read as follows:

SEC. 6641. INTEREST ON FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) IN GENERAL- Interest shall be paid on any underpayment of estimated tax by an individual for a taxable year for each day of such underpayment. The amount of such interest for any day shall be the product of the underpayment rate established under subsection (b)(2) multiplied by the amount of the underpayment.

(b) AMOUNT OF UNDERPAYMENT; INTEREST RATE- For purposes of subsection (a)--

(1) AMOUNT- The amount of the underpayment on any day shall be the excess of--

(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over

(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.

(2) DETERMINATION OF INTEREST RATE-

(A) IN GENERAL- The underpayment rate with respect to any day in an installment underpayment period shall be the underpayment rate established under section 6621 for the first day of the calendar quarter in which such installment underpayment period begins.

(B) INSTALLMENT UNDERPAYMENT PERIOD- For purposes of subparagraph (A), the term 'installment underpayment period' means the period beginning on the day after the due date for a required installment and ending on the due date for the subsequent required installment (or in the case of the 4th required installment, the 15th day of the 4th month following the close of a taxable year).

`(C) DAILY RATE- The rate determined under subparagraph (A) shall be applied on a daily basis and shall be based on the assumption of 365 days in a calendar year.

`(3) TERMINATION OF ESTIMATED TAX INTEREST- No day after the end of the installment underpayment period for the 4th required installment specified in paragraph (2)(B) for a taxable year shall be treated as a day of underpayment with respect to such taxable year.'

(c) INCREASE IN SAFE HARBOR WHERE TAX IS SMALL-

(1) IN GENERAL- Clause (i) of section 6641(d)(1)(B) (as so redesignated) is amended to read as follows:

`(i) the lesser of--

`(I) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

`(II) the tax shown on the return for the taxable year (or, if no return is filed, the tax for such year) reduced (but not below zero) by \$1,600, or'

(2) CONFORMING AMENDMENT- Subsection (e) of section 6641 (as so redesignated) is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(d) CONFORMING AMENDMENTS-

(1) Paragraphs (1) and (2) of subsection (e) (as redesignated by subsection (c)(2)) and subsection (h) of section 6641 (as so designated) are each amended by striking 'addition to tax' each place it occurs and inserting 'interest'.

(2) Section 167(g)(5)(D) is amended by striking '6654' and inserting '6641'.

(3) Section 460(b)(1) is amended by striking '6654' and inserting '6641'.

(4) Section 3510(b) is amended--

(A) by striking 'section 6654' in paragraph (1) and inserting 'section 6641';

(B) by amending paragraph (2)(B) to read as follows:

`(B) no interest would be required to be paid (but for this section) under 6641 for such taxable year by reason of the \$1,600 amount specified in section 6641(d)(1)(B)(i)(II).';

(C) by striking 'section 6654(d)(2)' in paragraph (3) and inserting 'section 6641(d)(2)'; and

(D) by striking paragraph (4).

(5) Section 6201(b)(1) is amended by striking '6654' and inserting '6641'.

(6) Section 6601(h) is amended by striking '6654' and inserting '6641'.

(7) Section 6621(b)(2)(B) is amended by striking 'addition to tax under section 6654' and inserting 'interest required to be paid under section 6641'.

(8) Section 6622(b) is amended--

(A) by striking 'PENALTY FOR' in the heading; and

(B) by striking `addition to tax under section 6654 or 6655' and inserting `interest required to be paid under section 6641 or addition to tax under section 6655'.

(9) Section 6658(a) is amended--

(A) by striking `6654, or 6655' and inserting `or 6655, and no interest shall be required to be paid under section 6641,'; and
(B) by inserting `or paying interest' after `the tax' in paragraph (2)(B)(ii).

(10) Section 6665(b) is amended--

(A) in the matter preceding paragraph (1) by striking `, 6654,'; and
(B) in paragraph (2) by striking `6654 or'.

(11) Section 7203 is amended by striking `section 6654 or 6655' and inserting `section 6655 or interest required to be paid under section 6641'.

(e) CLERICAL AMENDMENTS-

(1) Chapter 67 is amended by inserting after subchapter D the following:

`Subchapter E--Interest on Failure by Individual to Pay Estimated Income Tax

`Sec. 6641. Interest on failure by individual to pay estimated income tax.'.

(2) The table of subchapters for chapter 67 is amended by adding at the end the following new items:

`Subchapter D. Notice requirements.

`Subchapter E. Interest on failure by individual to pay estimated income tax.'.

(3) The table of sections for part I of subchapter A of chapter 68 is amended by striking the item relating to section 6654.

(f) EFFECTIVE DATE- The amendments made by this section shall apply to installment payments for taxable years beginning after December 31, 2003.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

(a) IN GENERAL- Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting after section 139 the following new section:

`SEC. 139A. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

¶(a) IN GENERAL- In the case of an individual, gross income shall not include interest paid under section 6611 on any overpayment of tax imposed by this subtitle.

¶(b) EXCEPTION- Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of subsection (a).

¶(c) SPECIAL RULE FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME- For purposes of this title, interest not included in gross income under subsection (a) shall not be treated as interest which is exempt from tax for purposes of sections 32(i)(2)(B) and 6012(d) or any computation in which interest exempt from tax under this title is added to adjusted gross income.'

¶(b) CLERICAL AMENDMENT- The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139 the following new item:

¶Sec. 139A. Exclusion from gross income for interest on overpayments of income tax by individuals.'

¶(c) EFFECTIVE DATE- The amendments made by this section shall apply to interest received in calendar years beginning after the date of the enactment of this Act.

SEC. 103. ABATEMENT OF INTEREST.

¶(a) ABATEMENT OF INTEREST WITH RESPECT TO ERRONEOUS REFUND CHECK WITHOUT REGARD TO SIZE OF REFUND- Paragraph (2) of section 6404(e) is amended by striking 'unless--' and all that follows and inserting 'unless the taxpayer (or a related party) has in any way caused such erroneous refund.'

¶(b) ABATEMENT OF INTEREST TO EXTENT INTEREST IS ATTRIBUTABLE TO TAXPAYER RELIANCE ON WRITTEN STATEMENTS OF THE IRS-

Subsection (f) of section 6404 is amended--

(1) in the subsection heading, by striking 'PENALTY OR ADDITION' and inserting 'INTEREST, PENALTY, OR ADDITION'; and

(2) in paragraph (1) and in subparagraph (B) of paragraph (2), by striking 'penalty or addition' and inserting 'interest, penalty, or addition'.

¶(c) EFFECTIVE DATE- The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 104. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

¶(a) IN GENERAL- Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX- A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

(b) NO INTEREST IMPOSED- To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

(c) RETURN OF DEPOSIT- Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

(d) PAYMENT OF INTEREST-

(1) IN GENERAL- For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

(2) DISPUTABLE TAX-

(A) IN GENERAL- For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

(B) SAFE HARBOR BASED ON 30-DAY LETTER- In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

(3) OTHER DEFINITIONS- For purposes of paragraph (2)--

(A) DISPUTABLE ITEM- The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer--

(i) has a reasonable basis for its treatment of such item, and

(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

(B) 30-DAY LETTER- The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(4) RATE OF INTEREST- The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

}(e) USE OF DEPOSITS-

}(1) PAYMENT OF TAX- Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

}(2) RETURNS OF DEPOSITS- Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.'

(b) CLERICAL AMENDMENT- The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

'Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.'

(c) EFFECTIVE DATE-

(1) IN GENERAL- The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84-58- In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 105. EXPANSION OF INTEREST NETTING FOR INDIVIDUALS.

(a) IN GENERAL- Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: 'Solely for purposes of the preceding sentence, section 6611(e) shall not apply in the case of an individual.'

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to interest accrued after December 31, 2003.

SEC. 106. WAIVER OF CERTAIN PENALTIES FOR FIRST-TIME UNINTENTIONAL MINOR ERRORS.

(a) IN GENERAL- Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

}(i) TREATMENT OF FIRST-TIME UNINTENTIONAL MINOR ERRORS-

}(1) IN GENERAL- In the case of a return of tax imposed by subtitle A filed by an individual, the Secretary may waive an addition to tax under subsection (a) if--

}(A) the individual has a history of compliance with the requirements of this title,

}(B) it is shown that the failure is due to an unintentional minor error,

*`(C) the penalty would be grossly disproportionate to the action or expense that would have been needed to avoid the error, and imposing the penalty would be against equity and good conscience,`
*`(D) waiving the penalty would promote compliance with the requirements of this title and effective tax administration, and`
*`(E) the taxpayer took all reasonable steps to remedy the error promptly after discovering it.***

`(2) EXCEPTIONS- Paragraph (1) shall not apply if--

*`(A) the Secretary has waived any addition to tax under this subsection with respect to any prior failure by such individual,`
*`(B) the failure is a mathematical or clerical error (as defined in section 6213(g)(2)), or`
*`(C) the failure is the lack of a required signature.'***

(b) EFFECTIVE DATE- The amendment made by this section shall take effect on January 1, 2004.

SEC. 107. FRIVOLOUS TAX SUBMISSIONS.

(a) CIVIL PENALTIES- Section 6702 is amended to read as follows:

`SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

`(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS- A person shall pay a penalty of \$5,000 if--

`(1) such person files what purports to be a return of a tax imposed by this title but which--

`(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

`(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

`(2) the conduct referred to in paragraph (1)--

`(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

`(B) reflects a desire to delay or impede the administration of Federal tax laws.

`(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS-

`(1) IMPOSITION OF PENALTY- Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

`(2) SPECIFIED FRIVOLOUS SUBMISSION- For purposes of this section--

`(A) SPECIFIED FRIVOLOUS SUBMISSION- The term `specified frivolous submission' means a specified submission if any portion of such submission is based on a position which the Secretary has identified as frivolous under subsection (c).

`(B) SPECIFIED SUBMISSION- The term `specified submission' means--

`(i) a request for a hearing under--

`(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

`(II) section 6330 (relating to notice and opportunity for hearing before levy), and

`(ii) an application under--

`(I) section 7811 (relating to taxpayer assistance orders),

`(II) section 6159 (relating to agreements for payment of tax liability in installments), or

`(III) section 7122 (relating to compromises).

`(3) OPPORTUNITY TO WITHDRAW SUBMISSION- If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

`(c) LISTING OF FRIVOLOUS POSITIONS- The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

`(d) REDUCTION OF PENALTY- The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

`(e) PENALTIES IN ADDITION TO OTHER PENALTIES- The penalties imposed by this section shall be in addition to any other penalty provided by law.'

(b) CLERICAL AMENDMENT- The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

`Sec. 6702. Frivolous tax submissions.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

SEC. 108. CLARIFICATION OF APPLICATION OF FEDERAL TAX DEPOSIT PENALTY.

Nothing in section 6656 of the Internal Revenue Code of 1986 shall be construed to permit the percentage specified in subsection (b)(1)(A)(iii) thereof to apply other than in a case where the failure is for more than 15 days.

TITLE II--FAIRNESS OF COLLECTION PROCEDURES

SEC. 201. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL-

*(1) Section 6159(a) (relating to authorization of agreements) is amended--
(A) by striking 'satisfy liability for payment of' and inserting 'make payment on', and*

(B) by inserting 'full or partial' after 'facilitate'.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting 'full' before 'payment'.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS- Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

'(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS- In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 202. EXTENSION OF TIME FOR RETURN OF PROPERTY.

(a) EXTENSION OF TIME FOR RETURN OF PROPERTY SUBJECT TO LEVY- Subsection (b) of section 6343 (relating to return of property) is amended by striking '9 months' and inserting '2 years'.

(b) PERIOD OF LIMITATION ON SUITS- Subsection (c) of section 6532 (relating to suits by persons other than taxpayers) is amended--

(1) in paragraph (1) by striking '9 months' and inserting '2 years', and

(2) in paragraph (2) by striking '9-month' and inserting '2-year'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to--

(1) levies made after the date of the enactment of this Act, and

(2) levies made on or before such date if the 9-month period has not expired under section 6343(b) of the Internal Revenue Code of 1986 (without regard to this section) as of such date.

SEC. 203. INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC., ON INDIVIDUAL RETIREMENT PLAN.

(a) IN GENERAL- Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

'(f) INDIVIDUALS HELD HARMLESS ON WRONGFUL LEVY, ETC. ON INDIVIDUAL RETIREMENT PLAN-

`(1) IN GENERAL- If the Secretary determines that an individual retirement plan has been levied upon in a case to which subsection (b) or (d)(2)(A) applies, an amount equal to the sum of--

`(A) the amount of money returned by the Secretary on account of such levy, and

`(B) interest paid under subsection (c) on such amount of money, may be deposited into an individual retirement plan (other than an endowment contract) to which a rollover from the plan levied upon is permitted.

`(2) TREATMENT AS ROLLOVER- The distribution on account of the levy and any deposit under paragraph (1) with respect to such distribution shall be treated for purposes of this title as if such distribution and deposit were part of a rollover described in section 408(d)(3)(A)(i); except that--

`(A) interest paid under subsection (c) shall be treated as part of such distribution and as not includible in gross income,

`(B) the 60-day requirement in such section shall be treated as met if the deposit is made not later than the 60th day after the day on which the individual receives an amount under paragraph (1) from the Secretary, and

`(C) such deposit shall not be taken into account under section 408(d)(3)(B).

`(3) REFUND, ETC., OF INCOME TAX ON LEVY- If any amount is includible in gross income for a taxable year by reason of a levy referred to in paragraph (1) and any portion of such amount is treated as a rollover under paragraph (2), any tax imposed by chapter 1 on such portion shall not be assessed, and if assessed shall be abated, and if collected shall be credited or refunded as an overpayment made on the due date for filing the return of tax for such taxable year.

`(4) INTEREST- Notwithstanding subsection (d), interest shall be allowed under subsection (c) in a case in which the Secretary makes a determination described in subsection (d)(2)(A) with respect to a levy upon an individual retirement plan.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply to amounts paid under subsections (b), (c), and (d)(2)(A) of section 6343 of the Internal Revenue Code of 1986 after December 31, 2003.

SEC. 204. SEVEN-DAY THRESHOLD ON TOLLING OF STATUTE OF LIMITATIONS DURING TAX REVIEW.

(a) IN GENERAL- Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after 'application,' the following: 'but only if the date of such decision is at least 7 days after the date of the taxpayer's application,'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 205. STUDY OF LIENS AND LEVIES.

The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the practices of the Internal Revenue Service concerning liens and levies. The study shall examine--

- (1) the declining use of liens and levies by the Internal Revenue Service, and*
- (2) the practicality of recording liens and levying against property in cases in which the cost of such actions exceeds the amount to be realized from such property.*

Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III--TAX ADMINISTRATION REFORMS

SEC. 301. REVISIONS RELATING TO TERMINATION OF EMPLOYMENT OF INTERNAL REVENUE SERVICE EMPLOYEES FOR MISCONDUCT.

(a) IN GENERAL- Subchapter A of chapter 80 (relating to application of internal revenue laws) is amended by inserting after section 7804 the following new section:

SEC. 7804A. DISCIPLINARY ACTIONS FOR MISCONDUCT.

(a) DISCIPLINARY ACTIONS-

(1) IN GENERAL- Subject to subsection (c), the Commissioner shall take an action in accordance with the guidelines established under paragraph (2) against any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties or where a nexus to the employee's position exists.

(2) GUIDELINES- The Commissioner shall issue guidelines for determining the appropriate level of discipline, up to and including termination of employment, for committing any act or omission described under subsection (b).

(b) ACTS OR OMISSIONS- The acts or omissions described under this subsection are--

(1) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

(2) willfully providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

`(3) with respect to a taxpayer or taxpayer representative, the willful violation of--

`(A) any right under the Constitution of the United States;

`(B) any civil right established under--

`(i) title VI or VII of the Civil Rights Act of 1964;

`(ii) title IX of the Education Amendments of 1972;

`(iii) the Age Discrimination in Employment Act of 1967;

`(iv) the Age Discrimination Act of 1975;

`(v) section 501 or 504 of the Rehabilitation Act of 1973; or

`(vi) title I of the Americans with Disabilities Act of 1990;

or

`(C) the Internal Revenue Service policy on unauthorized inspection of returns or return information;

`(4) willfully falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

`(5) assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction, or a final adverse judgment by a court in a civil case, with respect to the assault or battery;

`(6) willful violations of this title, Department of the Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer or taxpayer representative;

`(7) willful misuse of the provisions of section 6103 for the purpose of concealing information from a congressional inquiry;

`(8) willful failure to file any return of tax required under this title on or before the date prescribed therefor (including any extensions) when a tax is due and owing, unless such failure is due to reasonable cause and not due to willful neglect;

`(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not due to willful neglect; and

`(10) threatening to audit a taxpayer, or to take other action under this title, for the purpose of extracting personal gain or benefit.

`(c) DETERMINATIONS OF COMMISSIONER-

`(1) IN GENERAL- The Commissioner may take a personnel action other than a disciplinary action provided for in the guidelines under subsection (a)(2) for an act or omission described under subsection (b).

`(2) DISCRETION- The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may not be delegated to any other officer. The Commissioner, in his sole discretion, may establish a procedure to determine if an individual should be referred to the Commissioner for a determination by the Commissioner under paragraph (1).

“(3) NO APPEAL- Notwithstanding any other provision of law, any determination of the Commissioner under this subsection may not be reviewed in any administrative or judicial proceeding. A finding

that an act or omission described under subsection (b) occurred may be reviewed.

“(d) DEFINITION- For the purposes of the provisions described in clauses (i), (ii), and (iv) of subsection (b)(3)(B), references to a program or activity regarding Federal financial assistance or an education program or activity receiving Federal financial assistance shall include any program or activity conducted by the Internal Revenue Service for a taxpayer.

“(e) ANNUAL REPORT- The Commissioner shall submit to Congress annually a report on disciplinary actions under this section.’

(b) CLERICAL AMENDMENT- The table of sections for chapter 80 is amended by inserting after the item relating to section 7804 the following new item:

‘Sec. 7804A. Disciplinary actions for misconduct.’

(c) REPEAL OF SUPERSEDED SECTION- Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206; 112 Stat. 720) is repealed.

(d) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 302. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT- Subsection (b) of section 6214 (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ‘Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.’

(b) EFFECTIVE DATE- The amendments made by this section shall apply to any action or proceeding in the Tax Court with respect to which a decision has not become final (as determined under section 7481 of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 303. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL- Section 6330(d)(1) (relating to judicial review of determination) is amended to read as follows:

“(1) JUDICIAL REVIEW OF DETERMINATION- The person may, within 30 days of a determination under this section, appeal such determination

to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).'

(b) *EFFECTIVE DATE*- The amendment made by subsection (a) shall apply to judicial appeals filed after the date of the enactment of this Act.

SEC. 304. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) *IN GENERAL*- Section 7122(b) (relating to record) is amended by striking 'Whenever a compromise' and all that follows through 'his delegate' and inserting 'If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel's delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion'.

(b) *CONFORMING AMENDMENTS*- Section 7122(b) is amended by striking the second and third sentences.

(c) *EFFECTIVE DATE*- The amendments made by this section shall apply to offers-in-compromise submitted or pending on or after the date of the enactment of this Act.

SEC. 305. 15-DAY DELAY IN DUE DATE FOR ELECTRONICALLY FILED INDIVIDUAL INCOME TAX RETURNS.

(a) *IN GENERAL*- Section 6072 (relating to time for filing income tax returns) is amended by adding at the end the following new subsection:

(f) ELECTRONICALLY FILED RETURNS OF INDIVIDUALS-

(1) IN GENERAL- Returns of an individual under section 6012 or 6013 (other than an individual to whom subsection (c) applies) which are filed electronically--

(A) in the case of returns filed on the basis of a calendar year, shall be filed on or before the 30th day of April following the close of the calendar year, and

(B) in the case of returns filed on the basis of a fiscal year, shall be filed on or before the last day of the 4th month following the close of the fiscal year.

(2) ELECTRONIC FILING- Paragraph (1) shall not apply to any return unless--

(A) such return is accepted by the Secretary, and

(B) the balance due (if any) shown on such return is paid electronically in a manner prescribed by the Secretary.

(3) SPECIAL RULES-

(A) ESTIMATED TAX- If--

(i) paragraph (1) applies to an individual for any taxable year, and

`(ii) there is an overpayment of tax shown on the return for such year which the individual allows against the individual's obligation under section 6641, then, with respect to the amount so allowed, any reference in section 6641 to the April 15 following such taxable year shall be treated as a reference to April 30.

`(B) REFERENCES TO DUE DATE- Paragraph (1) shall apply solely for purposes of determining the due date for the individual's obligation to file and pay tax and, except as otherwise provided by the Secretary, shall be treated as an extension of the due date for any other purpose under this title.

`(4) TERMINATION- This subsection shall not apply to any return filed with respect to a taxable year which begins after December 31, 2007.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply to returns filed with respect to taxable years beginning after December 31, 2002.

SEC. 306. ACCESS OF NATIONAL TAXPAYER ADVOCATE TO INDEPENDENT LEGAL COUNSEL.

Clause (i) of section 7803(c)(2)(D) (relating to personnel actions) is amended by striking `and' at the end

of subclause (I), by striking the period at the end of subclause (II) and inserting `, and', and by adding at the end the following new subclause:

`(III) appoint a counsel in the Office of the Taxpayer Advocate to report solely to the National Taxpayer Advocate.'

SEC. 307. PAYMENT OF MOTOR FUEL EXCISE TAX REFUNDS BY DIRECT DEPOSIT.

(a) IN GENERAL- Subchapter II of chapter 33 of title 31, United States Code, is amended by adding at the end the following new section:

`Sec. 3337. Payment of motor fuel excise tax refunds by direct deposit

`The Secretary of the Treasury shall make payments under sections 6420, 6421, and 6427 of the Internal Revenue Code of 1986 by electronic funds transfer (as defined in section 3332(j)(1)) if the person who is entitled to the payment--

`(1) elects to receive the payment by electronic funds transfer; and

`(2) satisfies the requirements of section 3332(g) with respect to such payment at such time and in such manner as the Secretary may require.'

(b) CLERICAL AMENDMENT- The table of sections for subchapter II of chapter 33 of title 31, United States Code, is amended by adding at the end the following new item:

'3337. Payment of motor fuel excise tax refunds by direct deposit.'

SEC. 308. FAMILY BUSINESS TAX SIMPLIFICATION.

(a) IN GENERAL- Section 761 (defining terms for purposes of partnerships) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

'(f) QUALIFIED JOINT VENTURE-

'(1) IN GENERAL- In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title--

'(A) such joint venture shall not be treated as a partnership,

'(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

'(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

'(2) QUALIFIED JOINT VENTURE- For purposes of paragraph (1), the term 'qualified joint venture' means any joint venture involving the conduct of a trade or business if--

'(A) the only members of such joint venture are a husband and wife,

'(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

'(C) both spouses elect the application of this subsection.'

(b) NET EARNINGS FROM SELF-EMPLOYMENT-

(1) Subsection (a) of section 1402 (defining net earnings from self-employment) is amended by striking 'and' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '; and', and by inserting after paragraph (15) the following new paragraph:

'(16) notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) in determining net earnings from self-employment of such spouse.'

(2) Subsection (a) of section 211 of the Social Security Act (defining net earnings from self-employment) is amended by striking 'and' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '; and', and by inserting after paragraph (15) the following new paragraph:

'(16) Notwithstanding the preceding provisions of this subsection, each spouse's share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) of the Internal Revenue Code of 1986 in determining net earnings from self-employment of such spouse.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 309. HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIDUALS.

(a) CONSUMER OPTIONS- Paragraph (2) of section 35(e) is amended by inserting at the end the following new subparagraph:

`(C) WAIVER BY ELIGIBLE INDIVIDUALS- With respect to any month which ends before January 1, 2006, subparagraphs (A) and (B) shall not apply with respect to any eligible individual and such individual's qualifying family members if such eligible individual elects to waive the application of such subparagraphs with respect to such month.'

(b) NO IMPACT ON STATE CONSUMER PROTECTIONS- Nothing in the amendment made by subsection (a) supercedes or otherwise affects the application of State law relating to consumer insurance protections (including State law implementing the requirements of part B of title XXVII of the Public Health Service Act).

(c) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to months beginning after the date of the enactment of this Act.

SEC. 310. SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS.

(a) IN GENERAL- Section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

`(p) SUSPENSION OF TAX-EXEMPT STATUS OF TERRORIST ORGANIZATIONS-

`(1) IN GENERAL- The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall

be suspended during the period described in paragraph (3).

`(2) TERRORIST ORGANIZATIONS- An organization is described in this paragraph if such organization is designated or otherwise individually identified--

`(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

`(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United

Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

`(C) in or pursuant to an Executive order issued under the authority of any Federal law if--

`(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

`(ii) such Executive order refers to this subsection.

`(3) PERIOD OF SUSPENSION- With respect to any organization described in paragraph (2), the period of suspension--

`(A) begins on the later of--

`(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

`(ii) the date of the enactment of this subsection, and

`(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

`(4) DENIAL OF DEDUCTION- No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization described in paragraph (2) during the period described in paragraph (3).

`(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION- Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

`(6) ERRONEOUS DESIGNATION-

`(A) IN GENERAL- If--

`(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

`(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

`(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

`(B) WAIVER OF LIMITATIONS- If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

`(7) NOTICE OF SUSPENSIONS- If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.'

(b) EFFECTIVE DATE- The amendments made by this section shall apply to designations made before, on, or after the date of the enactment of this Act.

TITLE IV--CONFIDENTIALITY AND DISCLOSURE

SEC. 401. COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN DISCLOSABLE TO EITHER SPOUSE BASED ON ORAL REQUEST.

(a) IN GENERAL- Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking 'in writing' the first place it appears.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 402. TAXPAYER REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYERS.

(a) IN GENERAL- Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended--

(1) by striking 'Returns' and inserting the following:

`(A) IN GENERAL- Returns', and

(2) by adding at the end the following new subparagraph:

`(B) TAXPAYER REPRESENTATIVES- Notwithstanding subparagraph (A), the return of the representative of a taxpayer whose return is being examined by an officer or employee of the

Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return of such representative on a basis other than by reason of such relationship.'.

(b) EFFECTIVE DATE- The amendment made by this section shall take effect on the date which is 180 days after the date of the enactment of this Act.

SEC. 403. DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS WHO ARE NOT PARTY TO SUCH PROCEEDINGS.

(a) IN GENERAL- Paragraph (4) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new subparagraph:

`(B) DISCLOSURE IN JUDICIAL OR ADMINISTRATIVE TAX PROCEEDINGS OF RETURN AND RETURN INFORMATION OF PERSONS NOT PARTY TO SUCH PROCEEDINGS-

`(i) NOTICE- Return or return information of any person who is not a party to a judicial or administrative proceeding described in this paragraph shall not be disclosed under clause (ii) or (iii) of subparagraph (A) until after the Secretary makes a reasonable effort to give notice to such person and an opportunity for such person to request the deletion of matter from such return or return information, including any of the items referred to in paragraphs (1) through (7) of section 6110(c). Such notice shall include a statement of the issue or issues the resolution of which is the reason such return or return information is sought. In the case of S corporations, partnerships, estates, and trusts, such notice shall be made at the entity level.

`(ii) DISCLOSURE LIMITED TO PERTINENT PORTION- The only portion of a return or return information described in clause (i) which may be disclosed under subparagraph (A) is that portion of such return or return information that directly relates to the resolution of an issue in such proceeding.

`(iii) EXCEPTIONS- Clause (i) shall not apply--

`(I) to any civil action under section 7407, 7408, or 7409,

`(II) to any ex parte proceeding for obtaining a search warrant, order for entry on premises or safe deposit boxes, or similar ex parte proceeding,

*`(III) to disclosure of third party return information by indictment or criminal information, or
` (IV) if the Attorney General or the Attorney General's delegate determines that the application of such clause would seriously impair a criminal tax investigation or proceeding.'.*

(b) CONFORMING AMENDMENTS- Paragraph (4) of section 6103(h) is amended by--

(1) by striking 'PROCEEDINGS- A return' and inserting 'PROCEEDINGS-

`(A) IN GENERAL- Except as provided in subparagraph (B), a return';

(2) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively, and by moving such clauses 2 ems to the right; and

(3) in the matter following clause (iv) (as so redesignated), by striking 'subparagraph (A), (B), or (C)' and inserting 'clause (i), (ii), or (iii)' and by moving such matter 2 ems to the right.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

SEC. 404. PROHIBITION OF DISCLOSURE OF TAXPAYER IDENTIFICATION INFORMATION WITH RESPECT TO DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.

(a) GENERAL- Paragraph (1) of section 6103(k) (relating to disclosure of certain returns and return information for tax administrative purposes) is amended by inserting '(other than the taxpayer's address and TIN)' after 'Return information'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to disclosures made after the date of the enactment of this Act.

SEC. 405. COMPLIANCE BY CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL- Section 6103(p) (relating to State law requirements) is amended by adding at the end the following new paragraph:

`(9) DISCLOSURE TO CONTRACTORS AND OTHER AGENTS-

Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor or other agent of a Federal, State, or local agency unless such agency, to the satisfaction of the Secretary--

`(A) has requirements in effect which require each such contractor or other agent which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information,

`(B) agrees to conduct an annual, on-site review (mid-point review in the case of contracts of less than 1 year in duration) of each such contractor or other agent to determine compliance with such requirements,

`(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

`(D) certifies to the Secretary for the most recent annual period that each such contractor or other agent is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor and other agent, a description of the contract of the contractor or other agent with the agency, and the duration of such contract.'

(b) CONFORMING AMENDMENT- Subparagraph (B) of section 6103(p)(8) is amended by inserting `or paragraph (9)' after `subparagraph (A).'

(c) EFFECTIVE DATE-

(1) IN GENERAL- The amendments made by this section shall apply to disclosures made after December 31, 2003.

(2) CERTIFICATIONS- The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (a), shall be made with respect to calendar year 2004.

SEC. 406. HIGHER STANDARDS FOR REQUESTS FOR AND CONSENTS TO DISCLOSURE.

(a) IN GENERAL- Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended by adding at the end the following new paragraphs:

`(2) REQUIREMENTS FOR VALID REQUESTS AND CONSENTS- A request for or consent to disclosure under paragraph (1) shall only be valid for purposes of this section, sections 7213, 7213A, and 7431 if--

`(A) at the time of execution, such request or consent designates a recipient of such disclosure and is dated, and

`(B) at the time such request or consent is submitted to the Secretary, the submitter of such request or consent certifies, under penalty of perjury, that such request or consent complied with subparagraph (A).

`(3) RESTRICTIONS ON PERSONS OBTAINING INFORMATION- Any person shall, as a condition for receiving return or return information under paragraph (1)--

`(A) ensure that such return and return information is kept confidential,

`(B) use such return and return information only for the purpose for which it was requested, and

`(C) not disclose such return and return information except to accomplish the purpose for which it was requested, unless a separate consent from the taxpayer is obtained.

`(4) REQUIREMENTS FOR FORM PRESCRIBED BY SECRETARY- For purposes of this subsection, the Secretary shall prescribe a form for requests and consents which shall--

- `(A) contain a warning, prominently displayed, informing the taxpayer that the form should not be signed unless it is completed,*
- `(B) state that if the taxpayer believes there is an attempt to coerce him to sign an incomplete or blank form, the taxpayer should report the matter to the Treasury Inspector General for Tax Administration, and*
- `(C) contain the address and telephone number of the Treasury Inspector General for Tax Administration.'*

(b) REPORT- Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to the Congress on compliance with the designation and certification requirements applicable to requests for or consent to disclosure of returns and return information under section 6103(c) of the Internal Revenue Code of 1986, as amended by subsection (a). Such report shall--

- (1) evaluate (on the basis of random sampling) whether--*
 - (A) the amendment made by subsection (a) is achieving the purposes of this section;*
 - (B) requesters and submitters for such disclosure are continuing to evade the purposes of this section and, if so, how; and*
 - (C) the sanctions for violations of such requirements are adequate; and*

(2) include such recommendations that the Treasury Inspector General for Tax Administration considers necessary or appropriate to better achieve the purposes of this section.

(c) CONFORMING AMENDMENTS-

(1) Section 6103(c) is amended by striking 'TAXPAYER- The Secretary' and inserting 'TAXPAYER-

'(1) IN GENERAL- The Secretary'.

(2) Section 7213(a)(1) is amended by striking 'section 6103(n)' and inserting 'subsections (c) and (n) of section 6103'.

(3) Section 7213A(a)(1)(B) is amended by striking 'subsection (l)(18) or (n) of section 6103' and inserting 'subsection (c), (l)(18), or (n) of section 6103'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to requests and consents made after 3 months after the date of the enactment of this Act.

SEC. 407. NOTICE TO TAXPAYER CONCERNING ADMINISTRATIVE DETERMINATION OF BROWSING; ANNUAL REPORT.

(a) NOTICE TO TAXPAYER- Subsection (e) of section 7431 (relating to notification of unlawful inspection and disclosure) is amended by adding at the end the following: 'The Secretary shall also notify such taxpayer if the Treasury Inspector General for Tax Administration substantiates that such taxpayer's return or return information was inspected or disclosed in violation of any of the provisions specified in paragraph (1), (2), or (3).'

(b) REPORTS- Subsection (p) of section 6103 (relating to procedure and recordkeeping), as amended by section 405, is further amended by adding at the end the following new paragraph:

“(10) REPORT ON UNAUTHORIZED DISCLOSURE AND INSPECTION- As part of the report required by paragraph (3)(C) for each calendar year, the Secretary shall furnish information regarding the unauthorized disclosure and inspection of returns and return information, including the number, status, and results of--

“(A) administrative investigations,

“(B) civil lawsuits brought under section 7431 (including the amounts for which such lawsuits were settled and the amounts of damages awarded), and

“(C) criminal prosecutions.’

(c) EFFECTIVE DATE-

(1) NOTICE- The amendment made by subsection (a) shall apply to determinations made after the date of the enactment of this Act.

(2) REPORTS- The amendment made by subsection (b) shall apply to calendar years ending after the date of the enactment of this Act.

SEC. 408. EXPANDED DISCLOSURE IN EMERGENCY CIRCUMSTANCES.

(a) IN GENERAL- Section 6103(i)(3)(B) (relating to danger of death or physical injury) is amended by striking 'or State' and inserting ', State, or local'.

(b) EFFECTIVE DATE- The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 409. DISCLOSURE OF TAXPAYER IDENTITY FOR TAX REFUND PURPOSES.

(a) IN GENERAL- Paragraph (1) of section 6103(m) (relating to disclosure of taxpayer identity information) is amended by striking 'and other media' and by inserting ', other media, and through any other means of mass communication,'.

(b) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 410. DISCLOSURE TO STATE OFFICIALS OF PROPOSED ACTIONS RELATED TO SECTION 501(c)(3) ORGANIZATIONS.

(a) IN GENERAL- Subsection (c) of section 6104 is amended by striking paragraph (2) and inserting the following new paragraphs:

`(2) DISCLOSURE OF PROPOSED ACTIONS-

`(A) SPECIFIC NOTIFICATIONS- In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer--

`(i) a notice of proposed refusal to recognize such organization as an organization described in section 501(c)(3) or a notice of proposed revocation of such organization's recognition as an organization exempt from taxation,

`(ii) the issuance of a letter of proposed deficiency of tax imposed under section 507 or chapter 41 or 42, and

`(iii) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as organizations described in section 501(c)(3).

`(B) ADDITIONAL DISCLOSURES- Returns and return information of organizations with respect to which information is disclosed under subparagraph (A) may be made available for inspection by or disclosed to an appropriate State officer.

`(C) PROCEDURES FOR DISCLOSURE- Information may be inspected or disclosed under subparagraph (A) or (B) only--

`(i) upon written request by an appropriate State officer, and

`(ii) for the purpose of, and only to the extent necessary in, the administration of State laws regulating such organizations.

Such information may only be inspected by or disclosed to a person other than the appropriate State officer if such person is an officer or employee of the State and is designated by the appropriate State officer to receive the returns or return information under this paragraph on behalf of the appropriate State officer.

`(D) DISCLOSURES OTHER THAN BY REQUEST- The Secretary may make available for inspection or disclose returns and return information of an organization to which paragraph (1) applies to an appropriate State officer of any State if the Secretary determines that such inspection or disclosure may facilitate the resolution of State or Federal issues relating to the tax-exempt status of such organization.

`(3) USE IN ADMINISTRATIVE AND JUDICIAL CIVIL PROCEEDINGS- Returns and return information disclosed pursuant to this subsection may be disclosed in administrative and judicial civil proceedings pertaining to the enforcement of State laws regulating such organizations in a manner prescribed by the Secretary similar to that for tax administration proceedings under section 6103(h)(4).

`(4) NO DISCLOSURE IF IMPAIRMENT- Returns and return information shall not be disclosed under this subsection, or in any proceeding described in paragraph (3), to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration.

`(5) DEFINITIONS- For purposes of this subsection--

`(A) RETURN AND RETURN INFORMATION- The terms `return' and `return information' have the respective meanings given to such terms by section 6103(b).

`(B) APPROPRIATE STATE OFFICER- The term `appropriate State officer' means--

`(i) the State attorney general, or

`(ii) any other State official charged with overseeing organizations of the type described in section 501(c)(3).'

(b) CONFORMING AMENDMENTS-

(1) Subparagraph (A) of section 6103(p)(3) is amended by inserting `and section 6104(c)' after `section' in the first sentence.

(2) Paragraph (4) of section 6103(p) is amended--

(A) in the matter preceding subparagraph (A), by inserting `, or any appropriate State officer (as defined in section 6104(c)),' before `or any other person',

(B) in subparagraph (F)(i), by inserting `or any appropriate State officer (as defined in section 6104(c)),' before `or any other person', and

(C) in the matter following subparagraph (F), by inserting `, an appropriate State officer (as defined in section 6104(c)),' after `including an agency' each place it appears.

(3) Paragraph (2) of section 7213(a) is amended by striking `6103.' and inserting `6103 or under section 6104(c).'

(4) Paragraph (2) of section 7213A(a) is amended by inserting `or 6104(c)' after `6103'.

(5) Paragraph (2) of section 7431(a) is amended by inserting `(including any disclosure in violation of section 6104(c))' after `6103'.

(c) EFFECTIVE DATE- The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date.

SEC. 411. CONFIDENTIALITY OF TAXPAYER COMMUNICATIONS WITH THE OFFICE OF THE TAXPAYER ADVOCATE.

(a) IN GENERAL- Subsection (c) of section 7803 is amended by adding at the end the following new paragraph:

`(5) CONFIDENTIALITY OF TAXPAYER INFORMATION-

`(A) IN GENERAL- To the extent authorized by the National Taxpayer Advocate or pursuant to guidance issued under subparagraph (B), any officer or employee of the Office of the Taxpayer Advocate may withhold from the Internal Revenue

Service and the Department of Justice any information provided by, or regarding contact with, any taxpayer.

`(B) ISSUANCE OF GUIDANCE- In consultation with the Chief Counsel for the Internal Revenue Service and subject to the approval of the Commissioner of Internal Revenue, the National Taxpayer Advocate may issue guidance regarding the circumstances (including with respect to litigation) under which, and the persons to whom, employees of the Office of the Taxpayer Advocate shall not disclose information obtained from a taxpayer. To the extent to which any provision of the Internal Revenue Manual would require greater disclosure by employees of the Office of the Taxpayer Advocate than the disclosure required under such guidance, such provision shall not apply.

`(C) EMPLOYEE PROTECTION- Section 7214(a)(8) shall not apply to any failure to report knowledge or information if--

`(i) such failure to report is authorized under subparagraph (A), and

`(ii) such knowledge or information is not of fraud committed by a person against the United States under any revenue law.'.

(b) CONFORMING AMENDMENT- Subparagraph (A) of section 7803(c)(4) is amended by inserting `and' at the end of clause (ii), by striking `; and' at the end of clause (iii) and inserting a period, and by striking clause (iv).

TITLE V--MISCELLANEOUS

SEC. 501. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to section not to apply to criminal investigations, etc.) is amended by striking `or' at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting `, or', and by inserting after paragraph (5) the following:

`(6) information provided by the Secretary related to the standards for exemption from tax under this title and the requirements under this title relating to unrelated business taxable income.'.

SEC. 502. EXPANSION OF DECLARATORY JUDGMENT REMEDY TO TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL- Paragraph (1) of section 7428(a) (relating to creation of remedy) is amended--

(1) in subparagraph (B) by inserting after `509(a))' the following: `or as a private operating foundation (as defined in section 4942(j)(3))'; and

(2) by amending subparagraph (C) to read as follows:

`(C) with respect to the initial qualification or continuing qualification of an organization as an organization described in subsection (c) (other than paragraph (3)) or (d) of section 501 which is exempt from tax under section 501(a), or'.

(b) COURT JURISDICTION- Subsection (a) of section 7428 is amended in the material following paragraph (2) by striking `United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia' and inserting the following: `United States Tax Court (in the case of any such determination or failure) or the United States Claims Court or the district court of the United States for the District of Columbia (in the case of a determination or failure with respect to an issue referred to in subparagraph (A) or (B) of paragraph (1)),'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to pleadings filed with respect to determinations (or requests for determinations) made after the date of the enactment of this Act.

SEC. 503. EMPLOYEE MISCONDUCT REPORT TO INCLUDE SUMMARY OF COMPLAINTS BY CATEGORY.

(a) IN GENERAL- Clause (ii) of section 7803(d)(2)(A) is amended by inserting before the semicolon at the end the following: `, including a summary (by category) of the 10 most common complaints made and the number of such common complaints'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply with respect to reporting periods ending after the date of the enactment of this Act.

SEC. 504. ANNUAL REPORT ON AWARDS OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

Not later than 3 months after the close of each Federal fiscal year after fiscal year 2003, the Treasury Inspector General for Tax Administration shall submit a report to Congress which specifies for such year--

(1) the number of payments made by the United States pursuant to section 7430 of the Internal Revenue Code of 1986 (relating to awarding of costs and certain fees);

(2) the amount of each such payment;

(3) an analysis of any administrative issue giving rise to such payments;
and

(4) changes (if any) which will be implemented as a result of such analysis and other changes (if any) recommended by the Treasury Inspector General for Tax Administration as a result of such analysis.

SEC. 505. ANNUAL REPORT ON ABATEMENT OF PENALTIES.

Not later than 6 months after the close of each Federal fiscal year after fiscal year 2003, the Treasury Inspector General for Tax Administration shall submit a

report to Congress on abatements of penalties under the Internal Revenue Code of 1986 during such year, including information on the reasons and criteria for such abatements.

SEC. 506. BETTER MEANS OF COMMUNICATING WITH TAXPAYERS.

Not later than 18 months after the date of the enactment of this Act, the Treasury Inspector General for Tax Administration shall submit a report to Congress evaluating whether technological advances, such as e-mail and facsimile transmission, permit the use of alternative means for the Internal Revenue Service to communicate with taxpayers.

SEC. 507. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

The Secretary of the Treasury or the Secretary's delegate shall, as soon as practicable but not later than 180 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning after 2002 (including forms 1040, 1040A, 1040EZ, and any similar or successor forms relating thereto), to provide for an explanation of--

- (1) the limitations imposed by section 6511 of the Internal Revenue Code of 1986 on credits and refunds; and*
- (2) the consequences under such section 6511 of the failure to file a return of tax.*

SEC. 508. AMENDMENT TO TREASURY AUCTION REFORMS.

(a) IN GENERAL- Clause (i) of section 202(c)(4)(B) of the Government Securities Act Amendments of 1993 (31 U.S.C. 3121 note) is amended by inserting before the semicolon '(or, if earlier, at the time the Secretary releases the minutes of the meeting in accordance with paragraph (2))'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to meetings held after the date of the enactment of this Act.

SEC. 509. ENROLLED AGENTS.

(a) IN GENERAL- Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

SEC. 7528. ENROLLED AGENTS.

(a) IN GENERAL- The Secretary may prescribe such regulations as may be necessary to regulate the conduct of enrolled agents in regards to their practice before the Internal Revenue Service.

(b) USE OF CREDENTIALS- Any enrolled agents properly licensed to practice as required under rules promulgated under section (a) herein shall be allowed to use the credentials or designation as 'enrolled agent', 'EA', or 'E.A.'.

(b) CLERICAL AMENDMENT- The table of sections for chapter 77 is amended by adding at the end the following new item:

Sec. 7528. Enrolled agents.'.

(c) PRIOR REGULATIONS- Nothing in the amendments made by this section shall be construed to have any effect on part 10 of title 31, Code of Federal Regulations, or any other Federal rule or regulation issued before the date of the enactment of this Act.

SEC. 510. FINANCIAL MANAGEMENT SERVICE FEES.

Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service, and the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual levies made and shall be collected by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received by the Financial Management Service as fees under that subsection shall be deposited into the account of the Department of the Treasury under section 3711(g)(7) of title 31, United States Code, and shall be collected and accounted for in accordance with the provisions of that section. The amount credited against the taxpayer's liability on account of the continuous levy shall be the amount levied, without reduction for the amount paid to the Financial Management Service as a fee.

SEC. 511. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL- Chapter 77 (relating to miscellaneous provisions), as amended by section 509, is further amended by adding at the end the following new section:

SEC. 7529. INTERNAL REVENUE SERVICE USER FEES.

(a) GENERAL RULE- The Secretary shall establish a program requiring the payment of user fees for--

(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

(2) other similar requests.

(b) PROGRAM CRITERIA-

`(1) IN GENERAL- The fees charged under the program required by subsection (a)--

`(A) shall vary according to categories (or subcategories) established by the Secretary,

`(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

`(C) shall be payable in advance.

`(2) EXEMPTIONS, ETC-

`(A) IN GENERAL- The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

`(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS- The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request--

`(i) made after the later of--

`(I) the fifth plan year the pension benefit plan is in existence, or

`(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

`(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

`(C) DEFINITIONS AND SPECIAL RULES- For purposes of subparagraph (B)--

`(i) PENSION BENEFIT PLAN- The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

`(ii) ELIGIBLE EMPLOYER- The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

`(iii) DETERMINATION OF AVERAGE FEES CHARGED- For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

“(3) AVERAGE FEE REQUIREMENT- The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

<i>Category</i>	<i>Average Fee</i>
<i>Employee plan ruling and opinion</i>	<i>\$250</i>
<i>Exempt organization ruling</i>	<i>\$350</i>
<i>Employee plan determination</i>	<i>\$300</i>
<i>Exempt organization determination</i>	<i>\$275</i>
<i>Chief counsel ruling</i>	<i>\$200.</i>

“(c) TERMINATION- No fee shall be imposed under this section with respect to requests made after September 30, 2013.’.

(b) CONFORMING AMENDMENTS-

(1) The table of sections for chapter 77 is amended by adding at the end the following new item:

‘Sec. 7529. Internal Revenue Service user fees.’.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS- Notwithstanding any other provision of law, any fees collected pursuant to section 7527 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

TITLE VI--LOW-INCOME TAXPAYER CLINICS

SEC. 601. LOW-INCOME TAXPAYER CLINICS.

(a) LIMITATION ON AMOUNT OF GRANTS- Paragraph (1) of section 7526(c) (relating to special rules and limitations) is amended by striking ‘\$6,000,000 per year’ and inserting ‘\$9,000,000 for 2004, \$12,000,000 for 2005, and \$15,000,000 for each year thereafter’.

(b) PROMOTION OF CLINICS- Section 7526(c) is amended by adding at the end the following new paragraph:

“(6) PROMOTION OF CLINICS- The Secretary is authorized to promote the benefits of and encourage the use of low-income taxpayer clinics through the use of mass communications, referrals, and other means.’.

(c) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED- Section 7526(c), as amended by subsection (b), is further amended by adding at the end the following new paragraph:

“(7) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED- No grant made under this section may be used for the general overhead

expenses of any institution sponsoring a qualified low-income taxpayer clinic.'

(d) ELIGIBLE CLINICS-

(1) IN GENERAL- Paragraph (2) of section 7526(b) is amended to read as follows:

(2) ELIGIBLE CLINIC- The term 'eligible clinic' means--

(A) any clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title; and

(B) any organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1) through representation of taxpayers or referral of taxpayers to qualified representatives.'

(2) CONFORMING AMENDMENT- Subparagraph (A) of section 7526(b)(1) is amended by striking 'means a clinic' and inserting 'means an eligible clinic'.

TITLE VII--FEDERAL-STATE UNEMPLOYMENT ASSISTANCE AGREEMENTS

SEC. 701. APPLICABILITY OF CERTAIN FEDERAL-STATE AGREEMENTS RELATING TO UNEMPLOYMENT ASSISTANCE.

Effective as of May 25, 2003, section 208 of Public Law 107-147 is amended--

(1) in subsection (a)(2), by inserting 'on or' after 'ending'; and

(2) in subsection (b), by striking 'May 31' each place it appears and inserting 'June 1'.

Union Calendar No. 39

108th CONGRESS

1st Session

H. R. 1528

[Report No. 108-61]

A BILL

To amend the Internal Revenue Code of 1986 to protect taxpayers and ensure accountability of the Internal Revenue Service.

April 8, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

END

From: Comisac, RenaJohnson \ (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>
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Sent: 6/17/2003 2:10:10 PM
Subject: Fw: Notice of Nominations Hearing and Tentative Witness List for June 24, 2003
Attachments: NotJune 242003-noms.wpd; Tentative Agenda - June 24 hearing.rtf

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

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Lundell, Jason (Judiciary) ; Mitchell, Dorothy

REV_00238009

(Judiciary) ; O'Connor, Reed (Judiciary) ; O'Scannlain, Kevin (Judiciary) ; Prior, Swen (Judiciary) ; Seidel, Rebecca (Judiciary) ; Shen, Patrick (Judiciary) ; Snell, BethAnn (Judiciary) ; Soliemanzadeh, Payam (Judiciary) ; Stahl, Katie (Judiciary) ; Sydnor, Tom (Judiciary) ; Volkov, Michael (Judiciary) ; Judiciary, ZackG (Judiciary) ; Judiciary, AllenF (Judiciary) ; Judiciary, BrockT (Judiciary) ; Judiciary, ChrisT (Judiciary) ; Judiciary, DainaF (Judiciary) ; Judiciary, DarrellG (Judiciary) ; Judiciary, DerrickH (Judiciary) ; Judiciary, DougE (Judiciary) ; Judiciary, EricK (Judiciary) ; Judiciary, JosephS (Judiciary) ; Judiciary, KatyV (Judiciary) ; Judiciary, KirstenA (Judiciary) ; Judiciary, LincolnN (Judiciary) ; Judiciary, MikeT (Judiciary) ; Judiciary, NickT (Judiciary) ; Judiciary, RussellJ (Judiciary) ; Judiciary, ScottP (Judiciary) ; Judiciary, TomJ (Judiciary) ; Millette, Martin (Judiciary) ; Artim, Bruce (Judiciary) ; Campbell, Chris (Judiciary) ; Carlson, Mark (Judiciary) ; DeLoatche, Patricia (Judiciary)

Sent: Tue Jun 17 11:25:16 2003

Subject: Notice of Nominations Hearing and Tentative Witness List for June 24, 2003

June 17, 2003

NOTICE OF HEARING

The Senate Committee on the Judiciary will hold a hearing on Tuesday, June 24, 2003, at 10:00 a.m. in Room 226 of the Senate Dirksen Building, on "Judicial and Department of Justice Nominations."

By order of the Chairman

Tentative Agenda

Senate Judiciary Committee Hearing on Judicial Nominations

Tuesday, June 24, 2003, at 10:00 a.m.

Dirksen 226

Panel I

[senators]

Panel II

Allyson K. Duncan to be United States Circuit Judge

for the Fourth Circuit

Panel III

Samuel Der-Yeghiayan to be United States District Judge
for the Northern District of Illinois

Louise W. Flanagan to be United States District Judge
for the Eastern District of North Carolina

Lonny R. Suko to be United States District Judge
for the Eastern District of Washington

Earl Leroy Yeakel III to be United States District Judge
for the Western District of Texas

Panel IV

Karen P. Tandy to be Administrator of the
Drug Enforcement Administration,
United States Department of Justice

Christopher A. Wray to be Assistant Attorney General
for the Criminal Division,
United States Department of Justice

14248269 Allyson K. Duncan to be United States Circuit Judge
for the Fourth Circuit

7Panel III

Samuel Der-Yeghiayan to be United States District Judge
5 for the Northern District of Illinois

Louise W. Flanagan to be United States District Judge
for the Eastern District of North Carolina

Lonny R. Suko³ to be United States District Judge
for the Eastern District of Washington

Earl Leroy Yeakel III to be United States District Judge
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Karen P. Tandy to be Administrator of the
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United States Department of Justice⁴⁸²⁶⁹

June 17, 2003

NOTICE OF HEARING

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By order of the Chairman

From: Comisac, RenaJohnson (Judiciary) <Rena_Johnson_Comisac@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Jamie.E.Brown@usdoj.gov [UNKNOWN] <Jamie.E.Brown@usdoj.gov>; Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>; nancy.scottfinan@usdoj.gov [UNKNOWN] <nancy.scottfinan@usdoj.gov>; Brian.A.Benczkowski@usdoj.gov [UNKNOWN] <Brian.A.Benczkowski@usdoj.gov>
Sent: 6/17/2003 10:11:55 AM
Subject: : Fw: Notice of Nominations Hearing and Tentative Witness List for June 24, 2003
Attachments: P_MFH8H003_WHO.TXT_1.rtf; P_MFH8H003_WHO.TXT_2.wpd

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> ("Comisac, RenaJohnson (Judiciary)" <Rena_Johnson_Comisac@Judiciary.senate.gov> [UNKNOWN])

CREATION DATE/TIME:17-JUN-2003 14:11:55.00

SUBJECT:: Fw: Notice of Nominations Hearing and Tentative Witness List for June 24, 2003

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

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End Original ARMS Header

-----Original Message-----From: Butterfield, Jane (Judiciary)

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<David_Hantman@Judiciary.senate.gov>; Hughes, Dempsey (Judiciary)
<Dempsey_Hughes@Judiciary.senate.gov>; Judiciary, Feinstein1 (Judiciary)
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<Patricia_DeLoatche@Judiciary.senate.gov>

Sent: Tue Jun 17 11:25:16 2003

Subject: Notice of Nominations Hearing and Tentative Witness List for June

24, 2003

June 17, 2003

NOTICE OF HEARING

The Senate Committee on the Judiciary will hold a hearing on Tuesday, June 24, 2003, at 10:00 a.m. in Room 226 of the Senate Dirksen Building, on "Judicial and Department of Justice Nominations."

By order of the Chairman

Tentative Agenda

Senate Judiciary Committee Hearing on Judicial Nominations

Tuesday, June 24, 2003, at 10:00 a.m.

Dirksen 226

Panel I

[senators]

Panel II

Allyson K. Duncan to be United States Circuit Judge

for the Fourth Circuit

Panel III

Samuel Der-Yeghiayan to be United States District Judge

for the Northern District of Illinois

Louise W. Flanagan to be United States District Judge

for the Eastern District of North Carolina

Lonny R. Suko to be United States District Judge
for the Eastern District of Washington

Earl Leroy Yeakel III to be United States District Judge
for the Western District of Texas

Panel IV

Karen P. Tandy to be Administrator of the
Drug Enforcement Administration,
United States Department of Justice

Christopher A. Wray to be Assistant Attorney General
for the Criminal Division,
United States Department of Justice

- Tentative Agenda - June 24 hearing.rtf - NotJune 242003-noms.wpd
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File attachment <P_MFH8H003_WHO.TXT_1>

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_MFH8H003_WHO.TXT_2>

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14248269 Allyson K. Duncan to be United States Circuit Judge
for the Fourth Circuit

Panel III

Samuel Der-Yeghiayan to be United States District Judge
for the Northern District of Illinois

Louise W. Flanagan to be United States District Judge
for the Eastern District of North Carolina
insrsid3487123

Lonny R. Suko to be United States District Judge
for the Eastern District of Washington

Earl Leroy Yeakel III to be United States District Judge
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Christopher A. Wray to be Assistant Attorney General
for the Criminal Division,
United States Department of Justice

June 17, 2003

NOTICE OF HEARING

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By order of the Chairman

From: Douglass, Kimberly A.
To: <Kavanaugh, Brett M.>
Sent: 6/17/2003 4:38:19 PM
Subject: FW: Miami, FI
Attachments: miami,fl-30jun03..doc

Brett, I am in Texas and do not have access to the schedule. However, I believe this is a Bush/Cheney fundraiser in Miami. That said, even if he is doing an official event, we still consider the trip 100% political...correct? If so, doesn't the hotel need to be booked at the corporate rate and billed to the Campaign. Kathy Becker has listed it as "mixed" and booked it at gov't rate. I am assuming this is incorrect? If the advance staff is working on both events in that city, they are still billed to the campaign? I swear I will get that hang of this soon.

Thanks!

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

From: Becker, Kathy J.

Sent: Tuesday, June 17, 2003 3:54 PM

To: mnapolitano@georgewbush.com; sal@georgewbush.com; Douglass, Kimberly A.; Kalhins, Andris; [REDACTED] PRA 6; battlenco@whmo.mil; Womack, Janet; Benish, Robert; gbeltz@whmo.mil; tddriggers@whmo.mil; Field, Jeffrey; MMcmahon@whmo.mil; whmed@whmo.mil; Terrell, Eric W.; Ngo, Phong; Prendergast, Katherine M.; Kalambur, Guhan; Segovia, Mayra N.; Swallow, Urbietta A.; Howard, Rothley; bwpope@whmo.mil; Chiprowski, Thomas; Williams, Rasheed D.; Litkenhaus, Colleen; Jesmer, Kendall

Subject: Miami, FI

This is a mixed in/out for the President on 6/30. There is also a downtime suite.

<>

kjb

EASTLAKE, INC.
ARLINGTON, VIRGINIA

TIME

Miami Airport Hilton & Towers
5101 Blue Lagoon Drive
Miami, Fl 33126
ATTN: John Lacle
PHONE: 305-262-1000
FAX: 305-265-3885

Dear Mr. Lacle:

We look forward to the opportunity of staying at the Miami Airport Hilton & Towers. This letter serves to confirm our reservations and clarify the various billing arrangements.

The procedures leading up to our peak night are complex and we urge you to thoroughly review them and call me if you have any questions. ***IMPORTANT NOTE: Failure to comply with our billing instructions will result in delaying your payment. Each entity must have a separate billing master account. The Eastlake Travel Office is the clearinghouse for accommodations, therefore no room charges should be sent to this office.*** Individuals from the following organizations will arrive at varying times.

- ***Advance Staff***
- ***Security Department***
- ***Communications Agency***
- ***Operations***
- ***Media***

The Eastlake Travel Office is responsible for coordinating all travel arrangements for the groups listed above. Therefore, we request that room reservations be blocked under "Eastlake, Inc. Within this block, we have allocated rooms for each organization as listed on the attachment. Each organization will be responsible for their room block for any changes or modifications. We appreciate your assistance with these procedures to ensure adequate room for all of our personnel.

FILENAME p

REV_00238025

Guest names will be provided as they become available. Please ensure rooms are reserved by name and that the information is passed to the front desk prior to arrival dates. Staff members have been instructed to ask for their rooms by name. Please keep in mind that some dates and room requirements may change. We will keep you advised as the changes occur.

SUMMARY:

Approval must be obtained from me for any additional financial obligation. Please work through me or my assistant, Kendall Jesmer, to resolve any problems that might arise. Should you have questions about this letter please call us at the phone numbers listed below. Please do not hesitate to call one of us on our cell phones if it is after normal business hours. Your assistance is greatly appreciated, and please extend our thanks to your staff.

Kathy:
(202) 456-5202-office
PRA 6 cell

Kendall:
(202) 456-5235
PRA 6

Sincerely,

Kathy J. Becker
Hotel Program Manager

**STAFF
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc. has been quoted the following daily room rates:

**Government Rate: Single-\$115.00
Office-Complimentary
Presidential Suite-\$299.00**

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. **The hotel should note on all portfolios that incidentals may not be charged against any staff office space.**

ROOM CHARGES will be handled as follows:

STAFF:

Eastlake will only be responsible for the room charges (Government rate less taxes—**government tax exemption #9199-77489-01**), parking fees, official phone calls and facsimiles of the Eastlake Staff listed on this attachment. Payment for any other charges requires prior written approval from this office. Please fax individual room vouchers and billing information to:

**Office of Administration
Resource Management Division
ATTN: Presidential Travel Support Services
Washington, DC 20503
Phone: 202-395-7247
Fax: 202-395-7778**

STAFF:

1. Office	Long Key	24 June-30 June
2. George Gigicos	Single	24 June-30 June
3. Jose Mallea	Single	24 June-30 June
4. Frank McCarton	Single	24 June-30 June
5. TBD	Singles-2	24 June-30 June
6. Ryan Mays	Presidential Suite	29 June-1 July

FILENAME p

SECURITY
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT

As a confirmation, the White House has been quoted the following daily room rates:

Government Rate: Single-\$115.00
Suite-\$165.00
Office-Complimentary

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

SECURITY:

The Local Secret Service Field Office will contact you to arrange direct bill payment for all Secret Service rooms. These rooms should be charged at the government rate and are tax-exempt. If you have any questions, please contact the Local Secret Service Field Office for your area.

SECURITY:

- | | | |
|--------------------|---------------|-----------------|
| 1. TBD Lead/office | Suite | 24 June-30 June |
| 2. TBD | Singles-12 | 24 June-30 June |
| 3. Office | Tavernier Key | 24 June-30 June |

**COMMUNICATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc., has been quoted the following daily room rates:

***Government Rate: Single/Double-\$115.00
Office-Complimentary***

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

COMMUNICATIONS:

The Lead Communications person will contact you upon arrival and provide billing information for any communications requirements. You can expect payment via corporate credit card or through direct billing via government contract. These rooms should be charged at the government rate and are tax-exempt. Upon completion of the trip, or should you require additional assistance please contact our Communications Division at (202) 757-6842.

COMMUNICATIONS:

1. TBD	Singles-2	24 June-1 July
2. Office	Key West	24 June-1 July
3. TBD	Singles-10	25 June-1 July
4. TBD/TBD	Doubles-5	25 June-1 July
5. TBD	Singles-1	29 June-1 July
7. TBD/TBD	Doubles-2	29 June-1 July

**OPERATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc., has been quoted the following daily room rates:

Government Rate: Single-\$115.00

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

OPERATIONS:

You can expect payment via corporate credit card or through direct billing via government contract. These rooms should be charged at the government rate and are tax-exempt. Should you require additional assistance from our Operations Division, please contact Janet Womack at (202) 757-1205.

OPERATIONS:

- | | | |
|--------|-----------|-----------------|
| 1. TBD | Singles-2 | 23 June-30 June |
| 2. TBD | Singles-3 | 25 June-30 June |
| 3. TBD | Singles-3 | 27 June-30 June |
| 4. TBD | Singles-1 | 29 June-30 June |

**MEDIA
BILLING PROCEDURES
NEGOTIATED RATES/TAXABLE**

As confirmation, Eastlake, Inc. has been quoted the following daily room rates:

Corporate Rate: \$125.00

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual. Payment on incidental charges should be made by the individual incurring the charges prior to their departure from the hotel. A credit card imprint should be obtained from each individual upon check-in. The hotel should note on all portfolios that incidentals may not be charged against any staff office space.

ROOM CHARGES will be handled as follows:

MEDIA:

Media members will pay for their sleeping rooms individually at checkout using personnel or corporate credit cards. Additional costs incurred for the media, such as catering or function space, must be approved through our office. Should you require additional assistance please contact me at (202) 456-5202.

MEDIA:

- | | | |
|--------|-----------|-----------------|
| 1. TBD | Singles-3 | 29 June-30 June |
|--------|-----------|-----------------|

If you do not receive a room list, for these 3 rooms, the day prior to arrival, please cancel the rooms.

Attachment 1, Page 5 of 5

FILENAME p

REV_00238032

From: CN=Kimberly A. Douglass/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/17/2003 12:39:25 PM
Subject: : FW: Miami, Fl
Attachments: P_19R8H003_WHO.TXT_1.doc

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Kimberly A. Douglass (CN=Kimberly A. Douglass/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:17-JUN-2003 16:39:25.00

SUBJECT:: FW: Miami, Fl

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

Brett, I am in Texas and do not have access to the schedule. However, I believe this is a Bush/Cheney fundraiser in Miami. That said, even if he is doing an official event, we still consider the trip 100% political(correct? If so, doesn't the hotel need to be booked at the corporate rate and billed to the Campaign. Kathy Becker has listed it as "mixed" and booked it at gov't rate. I am assuming this is incorrect? If the advance staff is working on both events in that city, they are still billed to the campaign? I swear I will get that hang of this soon.

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Sent: Tuesday, June 17, 2003 3:54 PM

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Subject: Miami, Fl

This is a mixed in/out for the President on 6/30. There is also a downtime suite.

kjb

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_19R8H003_WHO.TXT_1>

REV_00238033

EASTLAKE, INC.
ARLINGTON, VIRGINIA

TIME

Miami Airport Hilton & Towers
5101 Blue Lagoon Drive
Miami, Fl 33126
ATTN: John Lacle
PHONE: 305-262-1000
FAX: 305-265-3885

Dear Mr. Lacle:

We look forward to the opportunity of staying at the Miami Airport Hilton & Towers. This letter serves to confirm our reservations and clarify the various billing arrangements.

The procedures leading up to our peak night are complex and we urge you to thoroughly review them and call me if you have any questions. ***IMPORTANT NOTE: Failure to comply with our billing instructions will result in delaying your payment. Each entity must have a separate billing master account. The Eastlake Travel Office is the clearinghouse for accommodations, therefore no room charges should be sent to this office.*** Individuals from the following organizations will arrive at varying times.

- ***Advance Staff***
- ***Security Department***
- ***Communications Agency***
- ***Operations***
- ***Media***

The Eastlake Travel Office is responsible for coordinating all travel arrangements for the groups listed above. Therefore, we request that room reservations be blocked under "Eastlake, Inc. Within this block, we have allocated rooms for each organization as listed on the attachment. Each organization will be responsible for their room block for any changes or modifications. We appreciate your assistance with these procedures to ensure adequate room for all of our personnel.

FILENAME p

REV_00238034

Guest names will be provided as they become available. Please ensure rooms are reserved by name and that the information is passed to the front desk prior to arrival dates. Staff members have been instructed to ask for their rooms by name. Please keep in mind that some dates and room requirements may change. We will keep you advised as the changes occur.

SUMMARY:

Approval must be obtained from me for any additional financial obligation. Please work through me or my assistant, Kendall Jesmer, to resolve any problems that might arise. Should you have questions about this letter please call us at the phone numbers listed below. Please do not hesitate to call one of us on our cell phones if it is after normal business hours. Your assistance is greatly appreciated, and please extend our thanks to your staff.

Kathy:
(202) 456-5202-office

Kendall:
(202) 456-5235

PRA 6

Sincerely,

Kathy J. Becker
Hotel Program Manager

**STAFF
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc. has been quoted the following daily room rates:

**Government Rate: Single-\$115.00
Office-Complimentary
Presidential Suite-\$299.00**

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. **The hotel should note on all portfolios that incidentals may not be charged against any staff office space.**

ROOM CHARGES will be handled as follows:

STAFF:

Eastlake will only be responsible for the room charges (Government rate less taxes—**government tax exemption #9199-77489-01**), parking fees, official phone calls and facsimiles of the Eastlake Staff listed on this attachment. Payment for any other charges requires prior written approval from this office. Please fax individual room vouchers and billing information to:

**Office of Administration
Resource Management Division
ATTN: Presidential Travel Support Services
Washington, DC 20503
Phone: 202-395-7247
Fax: 202-395-7778**

STAFF:

1. Office	Long Key	24 June-30 June
2. George Gigicos	Single	24 June-30 June
3. Jose Mallea	Single	24 June-30 June
4. Frank McCarton	Single	24 June-30 June
5. TBD	Singles-2	24 June-30 June
6. Ryan Mays	Presidential Suite	29 June-1 July

FILENAME p

SECURITY
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT

As a confirmation, the White House has been quoted the following daily room rates:

Government Rate: Single-\$115.00
Suite-\$165.00
Office-Complimentary

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

SECURITY:

The Local Secret Service Field Office will contact you to arrange direct bill payment for all Secret Service rooms. These rooms should be charged at the government rate and are tax-exempt. If you have any questions, please contact the Local Secret Service Field Office for your area.

SECURITY:

- | | | |
|--------------------|---------------|-----------------|
| 1. TBD Lead/office | Suite | 24 June-30 June |
| 2. TBD | Singles-12 | 24 June-30 June |
| 3. Office | Tavernier Key | 24 June-30 June |

**COMMUNICATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc., has been quoted the following daily room rates:

***Government Rate: Single/Double-\$115.00
Office-Complimentary***

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

COMMUNICATIONS:

The Lead Communications person will contact you upon arrival and provide billing information for any communications requirements. You can expect payment via corporate credit card or through direct billing via government contract. These rooms should be charged at the government rate and are tax-exempt. Upon completion of the trip, or should you require additional assistance please contact our Communications Division at (202) 757-6842.

COMMUNICATIONS:

1. TBD	Singles-2	24 June-1 July
2. Office	Key West	24 June-1 July
3. TBD	Singles-10	25 June-1 July
4. TBD/TBD	Doubles-5	25 June-1 July
5. TBD	Singles-1	29 June-1 July
7. TBD/TBD	Doubles-2	29 June-1 July

**OPERATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

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ROOM CHARGES will be handled as follows:

OPERATIONS:

You can expect payment via corporate credit card or through direct billing via government contract. These rooms should be charged at the government rate and are tax-exempt. Should you require additional assistance from our Operations Division, please contact Janet Womack at (202) 757-1205.

OPERATIONS:

- | | | |
|--------|-----------|-----------------|
| 1. TBD | Singles-2 | 23 June-30 June |
| 2. TBD | Singles-3 | 25 June-30 June |
| 3. TBD | Singles-3 | 27 June-30 June |
| 4. TBD | Singles-1 | 29 June-30 June |

**MEDIA
BILLING PROCEDURES
NEGOTIATED RATES/TAXABLE**

As confirmation, Eastlake, Inc. has been quoted the following daily room rates:

Corporate Rate: \$125.00

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual. Payment on incidental charges should be made by the individual incurring the charges prior to their departure from the hotel. A credit card imprint should be obtained from each individual upon check-in. The hotel should note on all portfolios that incidentals may not be charged against any staff office space.

ROOM CHARGES will be handled as follows:

MEDIA:

Media members will pay for their sleeping rooms individually at checkout using personnel or corporate credit cards. Additional costs incurred for the media, such as catering or function space, must be approved through our office. Should you require additional assistance please contact me at (202) 456-5202.

MEDIA:

- | | | |
|--------|-----------|-----------------|
| 1. TBD | Singles-3 | 29 June-30 June |
|--------|-----------|-----------------|

If you do not receive a room list, for these 3 rooms, the day prior to arrival, please cancel the rooms.

From: Kavanaugh, Brett M.
To: <Douglass, Kimberly A.>
Sent: 6/17/2003 4:49:27 PM
Subject: Re: FW: Miami, FI
Attachments: miami,fl-30jun03..doc

It should be booked at corporate rate and paid by campaign except for those travelers who are official travelers. The advance staff should be billed to campaign except for any advance folks who work exclusively on the official event, in which case they can be billed to government. You got it down!

From: Kimberly A. Douglass/WHO/EOP@Exchange on 06/17/2003 04:38:19 PM

Record Type: Record

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

cc:

Subject: FW: Miami, FI

Brett, I am in Texas and do not have access to the schedule. However, I believe this is a Bush/Cheney fundraiser in Miami. That said, even if he is doing an official event, we still consider the trip 100% political...correct? If so, doesn't the hotel need to be booked at the corporate rate and billed to the Campaign. Kathy Becker has listed it as "mixed" and booked it at gov't rate. I am assuming this is incorrect? If the advance staff is working on both events in that city, they are still billed to the campaign? I swear I will get that hang of this soon.

Thanks!

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

From: Becker, Kathy J.

Sent: Tuesday, June 17, 2003 3:54 PM

To: mnapolitano@georgewbush.com; sal@georgewbush.com; Douglass, Kimberly A.; Kalhins, Andris; PRA 6; battlenco@whmo.mil; Womack, Janet; Benish, Robert; gbeltz@whmo.mil; tddriggers@whmo.mil; Field, Jeffrey; MMcmahon@whmo.mil; whmed@whmo.mil; Terrell, Eric W.; Ngo, Phong; Prendergast, Katherine M.; Kalambur, Guhan; Segovia, Mayra N.; Swallow, Urbieta A.; Howard, Rothley; bwpopo@whmo.mil; Chiprowski, Thomas; Williams, Rasheed D.; Litkenhaus, Colleen; Jesmer, Kendall

Subject: Miami, FI

This is a mixed in/out for the President on 6/30. There is also a downtime suite.

<>

kjb

REV_00238042

EASTLAKE, INC.
ARLINGTON, VIRGINIA

TIME

Miami Airport Hilton & Towers
5101 Blue Lagoon Drive
Miami, Fl 33126
ATTN: John Lacle
PHONE: 305-262-1000
FAX: 305-265-3885

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The procedures leading up to our peak night are complex and we urge you to thoroughly review them and call me if you have any questions. ***IMPORTANT NOTE: Failure to comply with our billing instructions will result in delaying your payment. Each entity must have a separate billing master account. The Eastlake Travel Office is the clearinghouse for accommodations, therefore no room charges should be sent to this office.*** Individuals from the following organizations will arrive at varying times.

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- ***Security Department***
- ***Communications Agency***
- ***Operations***
- ***Media***

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FILENAME p

REV_00238044

Guest names will be provided as they become available. Please ensure rooms are reserved by name and that the information is passed to the front desk prior to arrival dates. Staff members have been instructed to ask for their rooms by name. Please keep in mind that some dates and room requirements may change. We will keep you advised as the changes occur.

SUMMARY:

Approval must be obtained from me for any additional financial obligation. Please work through me or my assistant, Kendall Jesmer, to resolve any problems that might arise. Should you have questions about this letter please call us at the phone numbers listed below. Please do not hesitate to call one of us on our cell phones if it is after normal business hours. Your assistance is greatly appreciated, and please extend our thanks to your staff.

Kathy:
(202) 456-5202-office
PRA 6 cell

Kendall:
(202) 456-5235
PRA 6

Sincerely,

Kathy J. Becker
Hotel Program Manager

**STAFF
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc. has been quoted the following daily room rates:

**Government Rate: Single-\$115.00
Office-Complimentary
Presidential Suite-\$299.00**

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) are the responsibility of each individual staff person. Payment on incidental charges should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. **The hotel should note on all portfolios that incidentals may not be charged against any staff office space.**

ROOM CHARGES will be handled as follows:

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Resource Management Division
ATTN: Presidential Travel Support Services
Washington, DC 20503
Phone: 202-395-7247
Fax: 202-395-7778**

STAFF:

1. Office	Long Key	24 June-30 June
2. George Gigicos	Single	24 June-30 June
3. Jose Mallea	Single	24 June-30 June
4. Frank McCarton	Single	24 June-30 June
5. TBD	Singles-2	24 June-30 June
6. Ryan Mays	Presidential Suite	29 June-1 July

FILENAME p

SECURITY
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT

As a confirmation, the White House has been quoted the following daily room rates:

Government Rate: Single-\$115.00
Suite-\$165.00
Office-Complimentary

Incidentals (room service, personal phone calls, mini-bar, movies, etc.) should be made by the staff person incurring those charges prior to their departure from the hotel. A credit card imprint should be obtained from each person upon check-in. ***The hotel should note on all portfolios that incidentals may not be charged against any staff office space.***

ROOM CHARGES will be handled as follows:

SECURITY:

The Local Secret Service Field Office will contact you to arrange direct bill payment for all Secret Service rooms. These rooms should be charged at the government rate and are tax-exempt. If you have any questions, please contact the Local Secret Service Field Office for your area.

SECURITY:

- | | | |
|--------------------|---------------|-----------------|
| 1. TBD Lead/office | Suite | 24 June-30 June |
| 2. TBD | Singles-12 | 24 June-30 June |
| 3. Office | Tavernier Key | 24 June-30 June |

**COMMUNICATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc., has been quoted the following daily room rates:

***Government Rate: Single/Double-\$115.00
Office-Complimentary***

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ROOM CHARGES will be handled as follows:

COMMUNICATIONS:

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COMMUNICATIONS:

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2. Office	Key West	24 June-1 July
3. TBD	Singles-10	25 June-1 July
4. TBD/TBD	Doubles-5	25 June-1 July
5. TBD	Singles-1	29 June-1 July
7. TBD/TBD	Doubles-2	29 June-1 July

**OPERATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

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Government Rate: Single-\$115.00

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OPERATIONS:

- | | | |
|--------|-----------|-----------------|
| 1. TBD | Singles-2 | 23 June-30 June |
| 2. TBD | Singles-3 | 25 June-30 June |
| 3. TBD | Singles-3 | 27 June-30 June |
| 4. TBD | Singles-1 | 29 June-30 June |

**MEDIA
BILLING PROCEDURES
NEGOTIATED RATES/TAXABLE**

As confirmation, Eastlake, Inc. has been quoted the following daily room rates:

Corporate Rate: \$125.00

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ROOM CHARGES will be handled as follows:

MEDIA:

Media members will pay for their sleeping rooms individually at checkout using personnel or corporate credit cards. Additional costs incurred for the media, such as catering or function space, must be approved through our office. Should you require additional assistance please contact me at (202) 456-5202.

MEDIA:

- | | | |
|--------|-----------|-----------------|
| 1. TBD | Singles-3 | 29 June-30 June |
|--------|-----------|-----------------|

If you do not receive a room list, for these 3 rooms, the day prior to arrival, please cancel the rooms.

Attachment 1, Page 5 of 5

FILENAME p

REV_00238051

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Kimberly A. Douglass/WHO/EOP@Exchange [WHO] <Kimberly A. Douglass>
Sent: 6/17/2003 12:50:27 PM
Subject: : Re: FW: Miami, Fl
Attachments: P_R2S8H003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 17-JUN-2003 16:50:27.00
SUBJECT: : Re: FW: Miami, Fl
TO: Kimberly A. Douglass (CN=Kimberly A. Douglass/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

It should be booked at corporate rate and paid by campaign except for those travelers who are official travelers. The advance staff should be billed to campaign except for any advance folks who work exclusively on the official event, in which case they can be billed to government. You got it down!

From: Kimberly A. Douglass/WHO/EOP@Exchange on 06/17/2003 04:38:19 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: Miami, Fl

Brett, I am in Texas and do not have access to the schedule. However, I believe this is a Bush/Cheney fundraiser in Miami. That said, even if he is doing an official event, we still consider the trip 100% political (correct? If so, doesn't the hotel need to be booked at the corporate rate and billed to the Campaign. Kathy Becker has listed it as "mixed" and booked it at gov't rate. I am assuming this is incorrect? If the advance staff is working on both events in that city, they are still billed to the campaign? I swear I will get that hang of this soon.

Thanks!

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

From: Becker, Kathy J.
Sent: Tuesday, June 17, 2003 3:54 PM
To: mnapolitano@georgewbush.com; sal@georgewbush.com; Douglass, Kimberly A.; Kalnins, Andris; [REDACTED] PRA 6 battlenco@whmo.mil; Womack, Janet; Benish, Robert; gbeltz@whmo.mil; tddriggers@whmo.mil; Field, Jeffrey; MMcmahon@whmo.mil; whmed@whmo.mil; Terrell, Eric W.; Ngo, Phong; Prendergast, Katherine M.; Kalambur, Guhan; Segovia, Mayra N.; Swallow, Urbieta A.; Howard, Rothley; bwpope@whmo.mil; Chiprowski, Thomas; Williams, Rasheed D.; Litkenhaus, Colleen; Jesmer, Kendall
Subject: Miami, Fl

This is a mixed in/out for the President on 6/30. There is also a downtime suite.

kjb

REV_00238052

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_R2S8H003_WHO.TXT_1>

EASTLAKE, INC.
ARLINGTON, VIRGINIA

TIME

Miami Airport Hilton & Towers
5101 Blue Lagoon Drive
Miami, Fl 33126
ATTN: John Lacle
PHONE: 305-262-1000
FAX: 305-265-3885

Dear Mr. Lacle:

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- ***Operations***
- ***Media***

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FILENAME p

REV_00238054

Guest names will be provided as they become available. Please ensure rooms are reserved by name and that the information is passed to the front desk prior to arrival dates. Staff members have been instructed to ask for their rooms by name. Please keep in mind that some dates and room requirements may change. We will keep you advised as the changes occur.

SUMMARY:

Approval must be obtained from me for any additional financial obligation. Please work through me or my assistant, Kendall Jesmer, to resolve any problems that might arise. Should you have questions about this letter please call us at the phone numbers listed below. Please do not hesitate to call one of us on our cell phones if it is after normal business hours. Your assistance is greatly appreciated, and please extend our thanks to your staff.

Kathy:
(202) 456-5202-office
PRA 6-cell

Kendall:
(202) 456-5235
PRA 6

Sincerely,

Kathy J. Becker
Hotel Program Manager

**STAFF
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

As a confirmation, Eastlake, Inc. has been quoted the following daily room rates:

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Office-Complimentary
Presidential Suite-\$299.00**

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Resource Management Division
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STAFF:

1. Office	Long Key	24 June-30 June
2. George Gigicos	Single	24 June-30 June
3. Jose Mallea	Single	24 June-30 June
4. Frank McCarton	Single	24 June-30 June
5. TBD	Singles-2	24 June-30 June
6. Ryan Mays	Presidential Suite	29 June-1 July

FILENAME p

REV_00238056

SECURITY
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT

As a confirmation, the White House has been quoted the following daily room rates:

Government Rate: Single-\$115.00
Suite-\$165.00
Office-Complimentary

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SECURITY:

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SECURITY:

- | | | |
|--------------------|---------------|-----------------|
| 1. TBD Lead/office | Suite | 24 June-30 June |
| 2. TBD | Singles-12 | 24 June-30 June |
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**COMMUNICATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

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4. TBD/TBD	Doubles-5	25 June-1 July
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**OPERATIONS
BILLING PROCEDURES
GOVERNMENT RATES/TAX EXEMPT**

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OPERATIONS:

- | | | |
|--------|-----------|-----------------|
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| 2. TBD | Singles-3 | 25 June-30 June |
| 3. TBD | Singles-3 | 27 June-30 June |
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**MEDIA
BILLING PROCEDURES
NEGOTIATED RATES/TAXABLE**

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Media members will pay for their sleeping rooms individually at checkout using personnel or corporate credit cards. Additional costs incurred for the media, such as catering or function space, must be approved through our office. Should you require additional assistance please contact me at (202) 456-5202.

MEDIA:

- | | | |
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| 1. TBD | Singles-3 | 29 June-30 June |
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If you do not receive a room list, for these 3 rooms, the day prior to arrival, please cancel the rooms.

Attachment 1, Page 5 of 5

FILENAME p

REV_00238061

From: Robert McConnell <RMcConnell@hyi-usa.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Lewis Libby/OVP /EOP@EOP [OVP] <Lewis Libby>; David W. Hobbs/WHO/EOP@EOP [WHO] <David W. Hobbs>
Sent: 6/17/2003 3:25:00 PM
Subject: : Class Actions - - The Small Business Angle

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Robert McConnell <RMcConnell@hyi-usa.com> (Robert McConnell <RMcConnell@hyi-usa.com> [UNKNOWN])
CREATION DATE/TIME:17-JUN-2003 19:25:00.00
SUBJECT:: Class Actions - - The Small Business Angle
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

We thought this might be helpful in Senate offices preparing to vote on S. 274 and in House offices that might use some of this information in responses to inquiries about class action reform.

Small Mississippi Businesses Push for Class-Action Lawsuit Reform
By Tom Wilemon, The Sun Herald, Biloxi, Miss.
Knight Ridder/Tribune Business News
561 words
17 June 2003
The Sun Herald (KRTBN)
English
Copyright (C) 2003 KRTBN Knight Ridder Tribune Business News

Jun. 17--GULFPORT, Miss.-- Small Mississippi businesses often find themselves in the cross hairs when corporations are sued even though they are not the primary target of the lawsuits.

Phillips Building Supply is a defendant in more than 39 lawsuits.

The small company, with 40 employees, is accused of selling products that have sickened workers, but the products have been manufactured by much bigger corporations. The products include lead paint, facial masks and silica materials used in sand-blasting.

Bill Hough, president of Phillips Building Supply, said trial lawyers sued his company along with the corporations simply to keep the cases in state courts, which have been more apt to award large monetary verdicts than federal courts.

"What the public doesn't understand is that this impacts every small

business in Mississippi," Hough said. "It cuts us out from paying bigger dividends and paying more taxes to the state. It affects the bottom line of the company, which affects profit-sharing and insurance benefits.

"People don't understand how much this is going on in the private sector. The small businesses in Mississippi are one lawsuit away from bankruptcy at any given time."

Many small business owners are looking to Congress for help. Last week, the House of Representatives approved legislation that would automatically put class-action lawsuits in federal court whenever damages of more than \$5 million are sought. However, the lawsuits could stay in state court if the primary defendant and more than one-third of the plaintiffs are from the same state.

Hilda Bankston, the former owner of the only drugstore in Fayette, Miss., testified before Congress last year and asked for the reforms. Her drugstore wound up being a defendant in several lawsuits against pharmaceutical companies, a legal maneuver to keep the cases in Jefferson County. Five Mississippians who claimed the diet drug fen-phen gave them heart and lung problems were awarded \$150 million in compensatory damages in 1999 by a Jefferson County jury.

"Everybody knows about the doctors and lawyers being sued," Hough said. "But they don't understand how many small businesses are getting hammered."

Phillips, which began in 1949 as a sawmill and lumber business, has divisions in Laurel and Gulfport. All 39 lawsuits have been filed against the Laurel division.

If the bill the House passed last week were law, Hough's business would be exempt from class-action lawsuits where the primary defendant, such as a major corporation, is from out-of-state.

The bill (H.R. 115), which now goes to the Senate, passed the House on Thursday by 253-170 vote.

The vote was largely divided along party lines. Republicans argued that trial lawyers increasingly abuse class-action lawsuits to profit from multimillion-dollar settlements. Democrats called the bill corporate welfare to help out big businesses that abuse the public.

However, several Democrats in the Senate have lined up behind the legislation, including Dianne Feinstein of California, Blanche Lincoln of Arkansas, Herb Kohl of Wisconsin, Zell Miller of Georgia and Thomas Carper of Delaware.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brosnahan, Jennifer R.>;<Newstead, Jennifer G.>;<Bartolomucci, H. Christopher>;<Sampson, Kyle>;<Brown, Reginald J.>;<Powell, Benjamin A.>;<Ullyot, Theodore W.>;<Addington, David S.>
Sent: 6/18/2003 8:56:48 AM
Subject: Remarks by President on judges at DC event on 6-17-03

Remarks by President on judges at DC event on 6-17-03

Speaking about legal matters, I have a responsibility as President to make sure the judicial system runs well. And I have met that duty. I have nominated superb men and women to the federal courts, people who will interpret the law, not legislate from the bench. (Applause.)

Some members of the Senate are trying to keep my nominees off the bench by blocking up or down votes. Every judicial nominee deserves a fair hearing and an up or down vote on the floor of the United States Senate. It is time for members of the Senate to stop playing politics with American justice. (Applause.)

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Newstead, Jennifer G.>
Sent: 6/18/2003 11:52:33 AM
Subject: helpful story in New York Sun

Schumer, Clinton Block N.Y. Judges

SOUTHERN DISTRICT'S MUKASEY WRITES THE SENIOR SENATOR

By **TIMOTHY STARKS** Staff Reporter of the Sun

WASHINGTON — Almost a year after President Bush nominated them, two candidates to fill federal judgeships in New York City have yet to receive endorsements from Senators Clinton and Schumer that would allow them to go forward for a Senate vote.

The situation means that other federal judges in the city are overworked and that it takes longer for some cases to be heard. The nonpartisan Administrative Office of the U.S. Courts has declared both vacancies "judicial emergencies" as a result of the heavy caseloads.

In an effort to move the situation along, the chief judge of the Southern District of New York, Michael Mukasey, recently sent a letter to Mr. Schumer asking for speedy confirmation of nominees for three vacancies in his court. One of the nominees, Richard Holwell, has been waiting since August of last year.

"Look, it's not a crisis — on the other hand, it's creating problems," Judge Mukasey told The New York Sun in a phone interview. "We need people."

Judge Mukasey said his letter to Mr. Schumer noted that all three Bush nominees to the Southern District received the highest rating possible from the American Bar Association.

And the chief judge of the Eastern District of New York, Edward Korman, said three vacancies on his court — particularly the one slated to be filled by Sandra Feuerstein, nominated in July of last year — "are really hurting."

Judge Korman said the Administrative Office of the U.S. Courts has proposed legislation adding three more active judges to the Eastern District's current 15-judge roster.

"That means we have 12 judges doing the work that the office has assumed we need 18 to do," Judge Korman told the Sun in a phone interview.

In the case of Judge Feuerstein, the vacancy existed for almost a year and a half before she was nominated by Mr. Bush. "All of the vacancies are a problem, especially hers, since she's been waiting so long," Judge Korman said.

The Southern District of New York includes Manhattan, Bronx, Westchester, and some other northern suburbs; the Eastern District includes Brooklyn, Queens, Long Island, and Staten Island.

The nominees are tied up in a complicated and long-standing feud between Governor Pataki, Mr. Schumer, the White House, and the Senate Judiciary Committee over who gets to select how many judges, sources said.

Qualifications also have factored in to the feud; last year, Mr. Schumer opposed Mr. Pataki's selection for U.S. attorney in the Northern District, he said, because she lacked experience as a prosecutor.

Only two of Mr. Bush's district court nominees across the country have been waiting longer for confirmation than Mr. Holwell and Ms. Feuerstein. Both candidates have received the highest possible "wellqualified" rating from the American Bar Association.

Both New York nominees, as well, have ties to Mr. Pataki, particularly Mr. Holwell. Mr. Holwell, a commercial litigator with the firm White and Case, graduated in 1970 from the same class as Mr. Pataki at Columbia University Law School, and the two are said to be friends. He also successfully represented the governor in court during a 1997 challenge of Mr. Pataki's authority to remove a district attorney who seemed hesitant to press the death penalty in a case involving the slaying of a police officer.

Mr. Pataki appointed Judge Feuerstein — who, before becoming a judge, ran an unsuccessful 1980 campaign as a Republican against a Long Island Assemblyman — in 1994 to a state appeals court.

A spokeswoman for the Senate Judiciary Committee, Margarita Tapia, said neither Democratic senator had turned in their "blue slips" signaling they approve of the home state judicial nominees. The traditional policy is that no hearings are held on a judicial nominee unless both home state senators turn in the blue slips first.

A spokesman for Mrs. Clinton did not respond to repeated phone calls and emails requesting comment on the reason she had not submitted her blue slips. A spokesman for Mr. Schumer said the senator was still looking at the nominations.

"Senator Schumer is still reviewing these nominations and is working with the White House to put the best qualified and fairest judges on New York's federal bench," the spokesman, Phil Singer, said.

Mr. Schumer and the White House have found increasing common ground on several nominees. Mr. Schumer has made announcements in recent months that the two parties have reached agreements on the nominations of Dora Irizarry and Richard Wesley to the Eastern District, and Stephen Robinson and Kevin Castel to the Southern District. Of those nominees, only Mr. Wesley has received a hearing in the Judiciary Committee and been confirmed.

Earlier this year, the Republican chairman of that committee, Senator Hatch of Utah, said he would consider ignoring the blue-slip policy on some judicial nominees. However, he has not done so in the case of the Mr. Holwell and Ms. Feuerstein, and Ms. Tapia declined to comment on why he had not.

A spokeswoman for the White House, Ashley Snee, said, "As the president has said, he hopes all of his nominees receive prompt up or down votes."

Neither the Alliance for Justice nor People for the American Way, two groups that have opposed many of Mr. Bush's judicial nominees, have Mr. Holwell or Ms. Feuerstein on their radar of objectionable candidates, spokeswomen for the groups said.

Mr. Holwell was first nominated on August 1, 2002, and renominated in January of this year.

Judge Feuerstein, an associate justice of the New York State Supreme Court, Appellate Division, was first nominated to the federal bench on July 26, 2002, and also renominated in January of this year.

A spokesman for Mr. Pataki did not return calls seeking comment.

From: Gumerson, Katie \RPC\ <Katie_Gumerson@RPC.Senate.Gov>
To: Alex Dahl \E-mail\ <IMCEACCMail-Alex+20Dahl+20at+20Judiciary@routing.senate.gov>; Barbara Ledeen \E-mail\ <barbara_ledeen@src.senate.gov>; Brett Kavanaugh \E-mail\ <brett_kavanaugh@who.eop.gov>; Brown, Jamie E \E-mail\ <jamie.e.brown@usdoj.gov>; Delrahim, Makan \Judiciary\ <Makan_Delrahim@Judiciary.senate.gov>; Duffield, Steven \RPC\ <Steven_Duffield@RPC.Senate.Gov>; Gary Andres \E-mail\ <gary.andres@dutkogroup.com>; John Abegg \E-mail\ <IMCEACCMail-John+20Abegg+20at+20McConnell-DC@routing.senate.gov>; Kirk, Matthew>; Matt Letourneau <matthew_letourneau@Judiciary.senate.gov>; Miranda, Manuel \Frist\ <Manuel_Miranda@frist.senate.gov>; Rena Johnson Comisac \E-mail\ <IMCEACCMail-Rena+20Johnson+20at+20Judiciary@routing.senate.gov>; Stephen Higgins \E-mail\ <IMCEACCMail-Stephen+20Higgins+20at+20Judiciary@routing.senate.gov>; Grubbs, Wendy J.>; Zomer, Bini \Nickles\ <Bini_Zomer@Nickles.senate.gov>
Sent: 6/18/2003 1:32:03 PM
Subject: From Today's Hotline

6/18/03 National Journal - The Hotline

Navarrette -- Spanish For "Ticked Off"?

Dallas Morning News' **Navarrette** writes: "In dealing with minorities, liberals have learned to try to keep a lid on their condescension. But sometimes it slips out. ... it slipped out again last week when another Democrat seeking the presidential nomination, John Edwards, dismissively boiled down the accomplishments of the highly capable **Miguel Estrada** -- President Bush's nominee to the U.S. Court of Appeals for the District of Columbia Circuit -- to Mr. Estrada having 'the right last name.' ... The implication is that, now that it is hip to be Hispanic, a person named 'Estrada' or 'Gonzalez' or 'Rodriguez' can write his or her own ticket. Awesome. I can't wait to call my parents and give them the good news. In light of the way that their generation was discriminated against and denied opportunities because of their ethnicity, it is worth taking a moment to contemplate The World According to John Edwards, where apparently being Latino is like winning the lottery. ... Talk about stepping in it. Mr. Edwards intended to tell his audience what he thought of Mr. Estrada, but instead he wound up telling the rest of us how little he thinks of Hispanics in general. ... What concerns me, though, is not Mr. Edwards' lack of insight into the Hispanic condition or even his condescension. It's his double talk. Read the quote again. At first, Mr. Edwards pays lip service to the need for diversity on the federal bench, but then immediately cancels that out by insisting that folks not be chosen or appointed based on their surname. He might just as easily have said 'skin color'" (6/18).

Katie Gumerson
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347 Russell
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From: Gumerson, Katie (RPC) <Katie_Gumerson@RPC.Senate.Gov>
To: Wendy J. Grubbs/WHO/EOP@EOP [WHO] <Wendy J. Grubbs>;Rena Johnson Comisac (E-mail) <IMCEACCMail-Rena+20Johnson+20at+20Judiciary"@routing.senate.gov>;Matt Letourneau <matthew_letourneau@Judiciary.senate.gov>;John Abegg (E-mail) <IMCEACCMail-John+20Abegg+20at+20McConnell-DC"@routing.senate.gov>;Duffield, Steven (RPC) <Steven_Duffield@RPC.Senate.Gov>;Brown, Jamie E (E-mail) <jamie.e.brown@usdoj.gov>;Barbara Ledeen (E-mail) <barbara_ledeen@src.senate.gov>;Zomer, Bini (Nickles) <Bini_Zomer@Nickles.senate.gov>;Stephen Higgins (E-mail) <IMCEACCMail-Stephen+20Higgins+20at+20Judiciary"@routing.senate.gov>;Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>;Matthew Kirk/WHO/EOP@EOP [WHO] <Matthew Kirk>;Gary Andres (E-mail) <gary.andres@dutkogroup.com>;Delrahim, Makan (Judiciary) <Makan_Delrahim@Judiciary.senate.gov>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alex Dahl (E-mail) <IMCEACCMail-Alex+20Dahl+20at+20Judiciary"@routing.senate.gov>
Sent: 6/18/2003 9:33:30 AM
Subject: : From Today's Hotline

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Gumerson, Katie (RPC)" <Katie_Gumerson@RPC.Senate.Gov> ("Gumerson, Katie (RPC)" <Katie_Gumerson@RPC.Senate.Gov> [UNKNOWN])

CREATION DATE/TIME:18-JUN-2003 13:33:30.00

SUBJECT:: From Today's Hotline

TO:Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Rena Johnson Comisac (E-mail)" <"IMCEACCMail-Rena+20Johnson+20at+20Judiciary"@routing.senate.gov> ("Rena Johnson Comisac (E-mail)" <"IMCEACCMail-Rena+20Johnson+20at+20Judiciary"@routing.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Matt Letourneau <matthew_letourneau@Judiciary.senate.gov> (Matt Letourneau <matthew_letourneau@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"John Abegg (E-mail)" <"IMCEACCMail-John+20Abegg+20at+20McConnell-DC"@routing.senate.gov> ("John Abegg (E-mail)" <"IMCEACCMail-John+20Abegg+20at+20McConnell-DC"@routing.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Duffield, Steven (RPC)" <Steven_Duffield@RPC.Senate.Gov> ("Duffield, Steven (RPC)" <Steven_Duffield@RPC.Senate.Gov> [UNKNOWN])

READ:UNKNOWN

TO:"Brown, Jamie E (E-mail)" <jamie.e.brown@usdoj.gov> ("Brown, Jamie E (E-mail)" <jamie.e.brown@usdoj.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Barbara Ledeen (E-mail)" <barbara_ledeen@src.senate.gov> ("Barbara Ledeen (E-mail)" <barbara_ledeen@src.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Zomer, Bini (Nickles)" <Bini_Zomer@Nickles.senate.gov> ("Zomer, Bini (Nickles)" <Bini_Zomer@Nickles.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Stephen Higgins (E-mail)" <"IMCEACCMail-Stephen+20Higgins+20at+20Judiciary"@routing.senate.gov> ("Stephen Higgins (E-mail)" <"IMCEACCMail-Stephen+20Higgins+20at+20Judiciary"@routing.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Matthew Kirk (CN=Matthew Kirk/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:"Gary Andres (E-mail)" <gary.andres@dutkogroup.com> ("Gary Andres (E-mail)" <gary.andres@dutkogroup.com> [UNKNOWN])

READ:UNKNOWN

TO:"Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> ("Delrahim, Makan (Judiciary)" <Makan_Delrahim@Judiciary.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
TO: "Alex Dahl (E-mail)" <"IMCEACCMail-Alex+20Dahl+20at+20Judiciary"@routing.senate.gov> ("Alex Dahl (E-mail)" <"IMCEACCMail-Alex+20Dahl+20at+20Judiciary"@routing.senate.gov> [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

6/18/03 National Journal - The Hotline

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Katie Gumerson
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From: mtoner@fec.gov
To: Jana.Toner@hq.doe.gov
<Jana.Toner@hq.doe.gov>;Katherine_Bloemendal@Judiciary.Senate.gov
<Katherine_Bloemendal@Judiciary.Senate.gov>;Emily.Carlos@mail.doc.gov
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D.>;Kevin_Murphy@ita.doc.gov <Kevin_Murphy@ita.doc.gov>;Heather.Musser@dhs.gov
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Julieanne H.>;Alex_vogel@frist.senate.gov
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Colleen>;Bruce.blakeman@mail.doc.gov <Zimmerman, Neil H.>;Bruce.blakeman@mail.doc.gov
<Hernandez, Israel>;Bruce.blakeman@mail.doc.gov <Gray, Adrian
G.>;Bruce.blakeman@mail.doc.gov <Napolitano, Michael J.>;Bruce.blakeman@mail.doc.gov
<Johnson, Collister W.>;Bruce.blakeman@mail.doc.gov <Dyck, Paul B.>;Bhester@doc.gov
<Bhester@doc.gov>;Bhester@doc.gov <Estes, Ashley>;Bhester@doc.gov <Hill, David
H.>;Bhester@doc.gov <Hagin, Joseph W.>;Bhester@doc.gov <Guerra, Abel>;Bhester@doc.gov
<Clark, Alicia P.>;Bhester@doc.gov <Davis, Alicia W.>;Bhester@doc.gov <Snee,
Ashley>;Bhester@doc.gov <Jackson, Barry S.>;Bhester@doc.gov <Gottesman,

Blake>;Bhester@doc.gov <Thompson, Carol Jean>;Bhester@doc.gov <Hoelscher, Douglas L.>;Gordon_D._Johndroe@who.eop.gov <Gordon_D._Johndroe@who.eop.gov>;Gordon_D._Johndroe@who.eop.gov <Steen, Gretchen P.>;Gordon_D._Johndroe@who.eop.gov <Lisaius, Kenneth A.>;Kreaves@doc.gov <Kreaves@doc.gov>;Kreaves@doc.gov <Silverberg, Kristen>;Kreaves@doc.gov <Fleischer, Lawrence A.>;Kreaves@doc.gov <Rodriguez, Leonard B.>;Kreaves@doc.gov <Terpeluk, Meredith A.>;Rachel_L._Sunbarger@who.eop.gov <Rachel_L._Sunbarger@who.eop.gov>;Ray_Joiner@ios.doi.gov <Ray_Joiner@ios.doi.gov>;Sarah_M._Taylor@who.eop.gov <Sarah_M._Taylor@who.eop.gov>;Scarlson@akingump.com <Scarlson@akingump.com>;Scarlson@akingump.com <Sforza, Scott N.>;Scarlson@akingump.com <Eskew, Tucker A.>;Wgaynor@GeorgeWBush.com <Wgaynor@GeorgeWBush.com>;Wgaynor@GeorgeWBush.com <Kaplan, Joel>;Csimon@doc.gov <Csimon@doc.gov>;Sevans@hud.gov <Sevans@hud.gov>
6/18/2003 2:22:39 PM
Happy Hour Friday

Sent:
Subject:

Come celebrate the beginning of summer and catch up with old friends this Friday June 20th starting at 6:30pm at Gordon Biersch (900 F Street, N.W.).

Please feel free to invite anyone who you think might be interested.
Everyone is welcome.

From: mtoner@fec.gov@EOP
To: Jana.Toner@hq.doe.gov
<Jana.Toner@hq.doe.gov>;Katherine_Bloemendal@Judiciary.Senate.gov
<Katherine_Bloemendal@Judiciary.Senate.gov>;Emily.Carlos@mail.doc.gov
<Emily.Carlos@mail.doc.gov>;Emily.Carlos@mail.doc.gov <Devenish,
Nicolle>;Christidoenges@earthlink.net
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Elizabeth>;Cjennings@doc.gov <Cjennings@doc.gov>;Cjennings@doc.gov <Johnson, Collister
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D.>;Kevin_Murphy@ita.doc.gov <Kevin_Murphy@ita.doc.gov>;Heather.Musser@dhs.gov
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Blake>;Bhester@doc.gov <Thompson, Carol J.>;Bhester@doc.gov <Hoelscher, Douglas L.>;Gordon_D._Johndroe@who.eop.gov <Gordon_D._Johndroe@who.eop.gov>;Gordon_D._Johndroe@who.eop.gov <Steen, Gretchen P.>;Gordon_D._Johndroe@who.eop.gov <Lisaius, Kenneth A.>;Kreaves@doc.gov <Kreaves@doc.gov>;Kreaves@doc.gov <Silverberg, Kristen>;Kreaves@doc.gov <Fleischer, Lawrence A.>;Kreaves@doc.gov <Rodriguez, Leonard B.>;Kreaves@doc.gov <Terpeluk, Meredith A.>;Rachel_L._Sunbarger@who.eop.gov <Rachel_L._Sunbarger@who.eop.gov>;Ray_Joiner@ios.doi.gov <Ray_Joiner@ios.doi.gov>;Sarah_M._Taylor@who.eop.gov <Sarah_M._Taylor@who.eop.gov>;Scarlson@akingump.com <Scarlson@akingump.com>;Scarlson@akingump.com <Sforza, Scott N.>;Scarlson@akingump.com <Eskew, Tucker A.>;Wgaynor@GeorgeWBush.com <Wgaynor@GeorgeWBush.com>;Wgaynor@GeorgeWBush.com <Kaplan, Joel>;Csimon@doc.gov <Csimon@doc.gov>;Sevans@hud.gov <Sevans@hud.gov>

Sent: 6/18/2003 2:22:39 PM
Subject: Happy Hour Friday
Attachments: att1.eml

Come celebrate the beginning of summer and catch up with old friends this Friday June 20th starting at 6:30pm at Gordon Biersch (900 F Street, N.W.). Please feel free to invite anyone who you think might be interested. Everyone is welcome.

- att1.eml <>

From: mtoner@fec.gov
To: Jana.Toner@hq.doe.gov; Katherine_Bloemendal@Judiciary.Senate.gov; Emily.Carlos@mail.doc.gov; Nicolle_Devenish@who.eop.gov; Christidoenges@earthlink.net; Adam_B._Goldman@who.eop.gov; Dgrubb@doc.gov; Elizabeth_Hogan@who.eop.gov; Cjennings@doc.gov; Collister_W._Johnson@who.eop.gov; Cjohnson@GeorgeWBush.com; Kalexandrajohnson@earthlink.net; Kcjones@rnchq.org; Brett_M._Kavanaugh@who.eop.gov; Emily.kertz@ed.gov; Mlampkin@QuinnGillespie.com; Kmartin@fcc.gov; Caroline.McCall@mail.doc.gov; WMcGinley@Pattonboggs.com; Aameece@qgadc.com; Mmeece@who.eop.gov; Kmehlman@GeorgeWBush.com; Bmontgomery@who.eop.gov; Kevin_Murphy@ita.doc.gov; Heather.Musser@dhs.gov; Jack@GeorgeWBush.com; Joliver@rnchq.org; Rachelholiver@Yahoo.com; Joschal@dcigroup.com; Kristen.Palasciano@HQ.doc.gov; patrick.rhode@fema.gov; Marcieridgway@hotmail.com; Heidi_M._Smith@who.eop.gov; Eric_W._Terrell@who.eop.gov; Julieanne_H._Thomas@who.eop.gov; Alex_vogel@frist.senate.gov; Mark.d.Wallace@usdoj.gov; Katherine_M._Walters@who.eop.gov; Logan.Walters@hq.doe.gov; Swatts@doc.gov; Ewillefo@fcc.gov; Jwillis@doc.gov; Catherine_J._Martin@ovp.eop.gov; Daniel_J._Bartlett@who.eop.gov; Abartlett@kineticventures.com; Kblalock@fierce-isakowitz.com; Heidi.cruz@do.treas.gov; Stephen.everett@dhs.gov; Dpsmitt@hotmail.com; jgw@cwdc.com; Staylor@GeorgeWBush.com; Mdowd@rnchq.org; Tfeather@gopphones.com; Mschlapp@GeorgeWBush.com; Bginsberg@Pattonboggs.com; Reed.galen@do.treas.gov; afleischer@doc.gov; Cgilbert@doc.gov; Maria.cino@mail.doc.gov; Pdoerr@doc.gov; neal.burnham@mail.doc.gov; Bradley_e._hester@who.eop.gov; scott_mcclellan@who.eop.gov; scott_stanzel@who.eop.gov; Bruce.blakeman@mail.doc.gov; Colleen_Litkenhaus@who.eop.gov; Neil_H._Zimmerman@who.eop.gov; Israel_Hernandez@who.eop.gov; Adrian_G._Gray@who.eop.gov; Michael_J._Napolitano@who.eop.gov; Collister_W._Johnson@who.eop.gov; Paul_B._Dyck@who.eop.gov; Bhester@doc.gov; Ashley_Estes@who.eop.gov; David_H._Hill@who.eop.gov; Joseph_W._Hagin@who.eop.gov; Abel_Guerra@who.eop.gov; Alicia_P._Clark@who.eop.gov; Alicia_W._Davis@who.eop.gov; Ashley_Snee@who.eop.gov; Barry_S._jackson@who.eop.gov; Blake_Gottesman@who.eop.gov; Carol_J._Thompson@who.eop.gov; Douglas_L._Hoelscher@who.eop.gov; Gordon_D._Johndroe@who.eop.gov; Gretchen_P._Steen@who.eop.gov; Kenneth_A._Lisaius@who.eop.gov; Kreaves@doc.gov; Kristen_Silverberg@who.eop.gov; Lawrence_A._Fleischer@who.eop.gov; Leonard_B._Rodriguez@who.eop.gov; Meredith_A._Terpeluk@who.eop.gov; Rachel_L._Sunbarger@who.eop.gov; Ray_Joiner@ios.doi.gov; Sarah_M._Taylor@who.eop.gov; Scarlson@akingump.com; Scott_N._Sforza@who.eop.gov; Tucker_A._Eskew@who.eop.gov; Wgaynor@GeorgeWBush.com; Joel_D._Kaplan@who.eop.gov; Csimon@doc.gov; Sevans@hud.gov
Sent: 6/18/2003 2:22:39 PM
Subject: Happy Hour Friday

Come celebrate the beginning of summer and catch up with old friends this Friday June 20th starting at 6:30pm at Gordon Biersch (900 F Street, N.W.).

Please feel free to invite anyone who you think might be interested. Everyone is welcome.

From: Newstead, Jennifer G.
To: <Gonzales, Alberto R.>;<Leitch, David G.>;<Brown, Reginald J.>;<Kavanaugh, Brett M.>;<Powell, Benjamin A.>;<Brosnahan, Jennifer R.>;<Sampson, Kyle>;<Schlapp, Matthew A.>;<Bartolomucci, H. Christopher>;<Ulyot, Theodore W.>
Sent: 6/18/2003 5:20:38 PM
Subject: FYI

----- Forwarded by Jennifer G. Newstead/WHO/EOP on 06/18/2003 05:20 PM -----

Richard.Platkin@chamber.state.ny.us

06/18/2003 04:04:38 PM

Record Type: Record

To: Jennifer G. Newstead/WHO/EOP@EOP

cc:

Subject: FYI

fyi

----- Forwarded by Richard Platkin/NYEC on 06/18/03 03:59 PM -----

Mike Elmendorf

To: cos/NYEC@NYEC, Richard Platkin/NYEC@NYEC,
06/18/03 03:59 PM Executive/NYEC@NYEC
cc:
Subject: FYI

WASHINGTON (AP) _ Sen. Charles Schumer said Wednesday that he still supported judicial nominee Dora Irizarry after the former prosecutor was reportedly voted ``unqualified" by the Association

REV_00238139

of the Bar of the City of New York.

Irizarry, supported by both Gov. George Pataki, a Republican, and Schumer, D-N.Y., is awaiting a confirmation hearing before the U.S. Senate.

Schumer, who has met with Irizarry previously, said he would stand by the nomination and noted that Irizarry had the support of Pataki and the White House.

``If they'll stick with her, so will I," Schumer said. ``I think she'll be a fine addition to the bench."

A former candidate for New York state attorney general, Irizarry has been nominated by President Bush to the Eastern District of New York. A native of Puerto Rico, she would be the first Hispanic judge on that district's bench.

The City Bar's Judiciary Committee voted Monday night, and the vote was so lopsided Irizarry will not be able to appeal, the New York Law Journal reported in Wednesday's editions.

Jane Bigelsen, a spokeswoman for the association, declined to comment, saying the group's recommendations are meant to be private.

``It's confidential," she said.

Irizarry did not return a call seeking comment.

From: Kavanaugh, Brett M.
To: <Estes, Ashley>
Sent: 6/18/2003 10:07:37 PM
Subject:

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/18/2003 10:07 PM -----

Mike Allen

06/18/2003 08:17:38 PM

Record Type: Record

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

cc:

Subject:

By Mike Allen

Washington Post Staff Writer

President Bush plans to nominate White House lawyer Brett M. Kavanaugh, an author of independent counsel Kenneth W. Starr's report on President Bill Clinton, for a seat on the U.S. Court of Appeals for the D.C. Circuit, Republican sources said yesterday.

The disclosure came as Bush issued a curt rejection to Democratic senators who had offered to alleviate a fight over a future Supreme Court vacancy by working with him to find a nominee both sides could accept.

Kavanaugh's nomination would suggest Bush is spoiling for a fight with Senate Democrats while the administration's selection of judges is already a raw issue between the parties. The D.C. Circuit court is considered the second most powerful in the land. Kavanaugh, 38, was involved in many of

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the Clinton administration's legal controversies, and he has played a key role in choosing Bush's judicial nominees.

Kavanaugh is undergoing an FBI background check in preparation for his nomination, which will not be announced immediately. He was an appellate expert in Starr's office from 1994 to 1998, and worked on the investigation of Monica S. Lewinsky. He represented Starr in efforts to obtain notes from Hillary Rodham Clinton, now a senator, relating to the suicide of deputy White House counsel Vincent Foster. Kavanaugh's contribution to the Starr report was the section that outlined possible legal grounds for impeachment.

Kavanaugh was a partner with Kirkland & Ellis before becoming an associate White House counsel in January 2001. He has undergraduate and law degrees from Yale, and was a clerk for Justice Anthony M. Kennedy.

The D.C. Circuit court has openings on its 11th and 12th seats, and Republicans blocked Clinton from filling at least one of them by arguing that additional judges were not needed.

Bush's rebuff of the overture by Senate Democrats, a departure from his frequent contention that he is eager to work with Congress, is part of intense positioning by both parties for the possibility that a Supreme Court justice will retire at the end of this term. Senate Minority Leader Thomas A. Daschle (D-S.D.) wrote to Bush on Tuesday to recommend that the president convene a meeting of Senate leaders to begin a bipartisan process of consultation.

White House press secretary Ari Fleischer called the idea a novel new approach to how the Constitution guides the appointment process, and said Bush plans no such meeting. The Constitution gives the president sole power to nominate justices, and then the Senate decides whether to confirm them.

The Constitution is clear, the Constitution will be followed, Fleischer said. We always welcome thoughts, but certainly no one wants to suggest that the Constitution be altered.

Fleischer said White House Counsel Alberto R. Gonzales is always happy to meet and talk with these individual senators. A twist is that Gonzales,

a former justice of the Texas Supreme Court, is one of Bush's most obvious potential nominees.

Gonzales wrote to Daschle yesterday that in case of a vacancy, the Senate will have an opportunity to assess the president's nominee and exercise its constitutional responsibility. He has sent similar letters to other Senate Democrats.

The selection of judges, from federal district courts to the Supreme Court, is always a bitterly contested issue for the most ideologically committed wings of both parties. It is even more so now because of the GOP's narrow hold on the Senate, and because of rumors about the possible retirement of Chief Justice William H. Rehnquist, 78, or Justice Sandra Day O'Connor, 73 or even both.

A group called Faith2Action is linking with some of the nation's best-known conservative organizations for Project Rosebud, which plans to deliver thousands of roses to the White House next week in support of an antiabortion nominee for any Supreme Court vacancy.

Sen. Charles E. Schumer (D-N.Y.), a Judiciary Committee member, wrote Bush last week to suggest potential consensus nominees. Schumer suggested five moderate Republicans, including Sen. Arlen Specter (Pa.).

Sen. Patrick J. Leahy (Vt.), ranking Democrat on the Judiciary Committee, had first suggested the bipartisan summit in a separate letter to Bush last week. Leahy said that Democrats were ready to work with you to help select a nominee or nominees to the Supreme Court behind which all Americans, and all senators, can unite.

Bradford A. Berenson, a former associate White House counsel for Bush, called the letters a political stunt to help Democrats blame the president for the ugly confirmation fight it appears they already have planned.

Democrats, who contend they are not proposing anything radical, are circulating pages from a book by Senate Judiciary Committee Chairman Orrin G. Hatch (R-Utah) in which he takes credit for suggesting to Clinton the nomination of two sitting justices, Ruth Bader Ginsburg and Stephen G. Breyer.

Hatch wrote last year in his memoir, "Square Peg," that he had asked Clinton whether he had considered Breyer or Ginsburg. "President Clinton indicated he had heard Breyer's name but had not thought about Judge Ginsburg," Hatch recounted.

Hatch said Tuesday on C-SPAN that Democrats were trying to preempt a conservative nominee. "Even though President Clinton did consult with me as chairman of the committee, he made the final decisions," Hatch said.

Sen. Edward M. Kennedy (Mass.) said the best way for Bush to avoid a major fight would be to consult with the Senate and send up nominees "without ideological chips on their shoulders."

"But if this president wants a battle," Kennedy said, "he'll get it."

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: PRA 6
BCC: Carolyn Nelson (Carolyn Nelson/WHO/EOP@Exchange [WHO])
Sent: 6/18/2003 8:23:49 PM
Subject: : Hello

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 00:23:49.00
SUBJECT: : Hello
TO: PRA 6 [UNKNOWN])
READ: UNKNOWN
BCC: Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

Sorry to be difficult to reach on this one. We would like to do this again, preferably in July (unless there is a high court vacancy, in which case it likely will be postponed for a bit). How does July 10 or 17 look for your group as a tentative date to meet with Judge and me? We would like to broaden the discussion out and perhaps get ideas from you all on several things. One, how would you all would improve the PRA (not the order) and FOIA if you could. Second, as a discussion item, how would you all would design a system of disclosure for Presidential/Executive records, Congressional records, and Justice/Judge records if you were starting from scratch. Finally, we would like to get your thoughts about Presidential libraries; what makes them good, what makes them difficult. I think this kind of dialogue could be useful for both of us and broader than ones we had most recently. These ideas are all just for discussion and thought; we are not planning anything along these lines, but we just think this would be useful for you and us to discuss. Let me know.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Benjamin A. Powell/WHO/EOP@EOP [WHO] <Benjamin A. Powell>;David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>;Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>;Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>;H. Christopher Bartolomucci/WHO/EOP@EOP [WHO] <H. Christopher Bartolomucci>;Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [WHO] <Jennifer G. Newstead>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;James W. Carroll/WHO/EOP@EOP [WHO] <James W. Carroll>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>
CC: Ashley Snee/WHO/EOP@Exchange [WHO] <Ashley Snee>;Patrick J. Bumatay/WHO/EOP@Exchange [WHO] <Patrick J. Bumatay>
Sent: 6/19/2003 4:10:52 AM
Subject: : Judge's response letters to Schumer, Leahy, and Daschle
Attachments: P_9DJBH003_WHO.TXT_1.pdf; P_9DJBH003_WHO.TXT_2.pdf; P_9DJBH003_WHO.TXT_3.pdf

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME:19-JUN-2003 08:10:52.00

SUBJECT:: Judge's response letters to Schumer, Leahy, and Daschle

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READ:UNKNOWN

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

CC:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [WHO])

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THE WHITE HOUSE

WASHINGTON

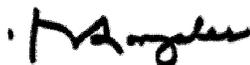
June 18, 2003

Dear Senator Daschle:

Thank you for your letter of June 17 to the President. As I have informed Senator Leahy and Senator Schumer, if a Supreme Court vacancy arises during his Presidency, President Bush will nominate an individual of high integrity, intellect, and experience. The Senate will have an opportunity to assess the President's nominee and exercise its constitutional responsibility to vote up or down on the nominee.

I have already visited with Senator Leahy about this matter and would be pleased to visit with you about the process and to consider suggestions you or others may have.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable Thomas Daschle
United States Senate

Copy: The Honorable Bill Frist
 The Honorable Orrin Hatch
 The Honorable Patrick Leahy

THE WHITE HOUSE

WASHINGTON

June 17, 2003

Dear Senator Leahy:

Thank you for your letter of May 14 to the President, which we received recently due to screening procedures for regular White House mail.

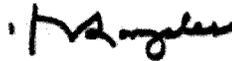
Your letter first suggests that the Senate has moved with appropriate dispatch in considering the President's judicial nominees. We respectfully disagree with respect to appeals court nominees. While the Senate has confirmed 105 district court judges, the Senate has voted on only 26 of the President's 42 appeals court nominees. Of the 16 appeals court nominees who still have not received votes, 8 have been waiting since 2001. More than 10% of the 167 regional appeals court seats still remain vacant, including a dozen that have been declared "judicial emergencies" by the Judicial Conference of the United States.

Delays in Senate votes on appeals court nominees are not new: In the last three Administrations, too many appeals court nominees have had to wait years for a vote, and some have never received votes. As President Bush has stated repeatedly since the 2000 campaign (and as the Chief Justice and the American Bar Association have also advocated), every judicial nominee should receive a timely hearing and vote. In speeches on the Senate floor, you agreed with then-Governor Bush on this principle in 2000. But the problem of delayed and denied votes for appeals court nominees unfortunately has not improved in his Administration. More appeals court nominees had to wait at least a year for a hearing in the 107th Congress than in the last 50 years combined. Only 53% of President Bush's appeals court nominees in the 107th Congress received votes, compared to more than 90% in the last three Presidents' first two years. Judicial historian Sheldon Goldman independently examined the statistics and concluded that the 107th Congress was the least efficient in modern history in holding hearings and votes on appeals court nominees.

We acknowledge the work of the Senate on district court nominees, but more has to be done to address circuit vacancies and to end the delays in consideration of appeals court nominees, which have been the persistent problem in the last three Administrations. To ensure a fair and orderly process no matter who is President or which party controls the Senate, the President has respectfully urged the Senate to seek bipartisan agreement on a process that will provide every judicial nominee a timely up or down vote.

Your letter also references the possibility of a Supreme Court vacancy. If such a vacancy arises during his Presidency, President Bush will nominate an individual of high integrity, intellect, and experience. The Senate will have an opportunity to assess the President's nominee and exercise its constitutional responsibility to vote up or down on the nominee. I would be pleased to visit with you about the process and to consider suggestions you or others may have.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510

Copy: The Honorable Bill Frist
 The Honorable Thomas Daschle
 The Honorable Orrin Hatch

THE WHITE HOUSE

WASHINGTON

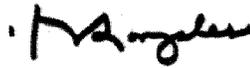
June 17, 2003

Dear Senator Schumer:

Thank you for your letter of June 10 to the President. If a Supreme Court vacancy arises during his Presidency, President Bush will nominate an individual of the highest integrity, intellect, and experience. The Senate will have an opportunity to assess the President's nominee and exercise its constitutional responsibility to vote up or down on the nominee.

I would be pleased to visit with you about the process and to consider suggestions you or others may have.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable Charles Schumer
United States Senate

Copy: The Honorable Bill Frist
 The Honorable Thomas Daschle
 The Honorable Orrin Hatch
 The Honorable Patrick Leahy

From: Kavanaugh, Brett M.
To: <Shattan, Joseph J.>
Sent: 6/19/2003 8:58:41 AM
Subject: stats

President has nominated 42 to the courts of appeals, 16 still await confirmation, and 8 of them has been waiting since 2001. Moreover, more nominees had to wait a year for a hearing in the last Congress than in last 50 years combined. Only 53% of appeals court nominees were confirmed in the first 2 years of this Presidency compared to more than 90% of the nominees in the first 2 years of last 3 Presidents. Senate Democrats are now using filibusters to deny votes on multiple appeals court nominees for the first time in American history. Finally, a leading judicial historian (Sheldon Goldman) concluded that the last Congress was the least efficient in modern history in holding hearings and votes on appeals court nominees.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 5:15:55 AM
Subject: : RE: meetings needed

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:19-JUN-2003 09:15:55.00
SUBJECT:: RE: meetings needed
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

First meeting is set for tomorrow afternoon at 2. We'll have to do meeting two early Tues as Judge leaves for California Tues afternoon and will be out through Friday.

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

From: Kavanaugh, Brett M.
Sent: Thursday, June 19, 2003 12:03 AM
To: Nelson, Carolyn
Cc: Gonzales, Alberto R.; Leitch, David G.
Subject: meetings needed

Carrie: Per Judge, please set up meeting for Friday afternoon with (i) Judge, David, and me, (ii) Karl and his one or two designees in public liaison/political who will work on a Supreme Court nomination if there is one, (iii) Dan Bartlett and his one or two designees who will work on a Supreme Court nomination, (iv) Hobbs, Z, and Wendy Grubbs; and (v) Joel Kaplan. Topic is post-nomination process and plan in event of a Supreme Court vacancy. We should probably try to assemble the same group again Tuesday afternoon and Wednesday afternoon as well. Meeting times should be 30 minutes. Thanks.

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 5:18:56 AM
Subject: : FW: Hello

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:19-JUN-2003 09:18:56.00
SUBJECT:: FW: Hello
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

What is this?

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

From: Kavanaugh, Brett M.
Sent: Thursday, June 19, 2003 12:23 AM
To: [REDACTED] PRA 6
Subject: Hello

Sorry to be difficult to reach on this one. We would like to do this again, preferably in July (unless there is a high court vacancy, in which case it likely will be postponed for a bit). How does July 10 or 17 look for your group as a tentative date to meet with Judge and me? We would like to broaden the discussion out and perhaps get ideas from you all on several things. One, how would you all would improve the PRA (not the order) and FOIA if you could. Second, as a discussion item, how would you all would design a system of disclosure for Presidential/Executive records, Congressional records, and Justice/Judge records if you were starting from scratch. Finally, we would like to get your thoughts about Presidential libraries; what makes them good, what makes them difficult. I think this kind of dialogue could be useful for both of us and broader than ones we had most recently. These ideas are all just for discussion and thought; we are not planning anything along these lines, but we just think this would be useful for you and us to discuss. Let me know.

From: kannon_shanmugam@dc.kirkland.com [UNKNOWN]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 6:34:37 AM
Subject: :

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:kannon_shanmugam@dc.kirkland.com (kannon_shanmugam@dc.kirkland.com [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 10:34:37.00
SUBJECT: :
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Trust you saw this, but just in case. K,

http://abcnews.go.com/sections/politics/2020/scotusabortion030619_poll.html

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From: CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 6:41:57 AM
Subject: : FW: Sen. McConnell's staffer
Attachments: P_84SBH003_WHO.TXT_1.doc

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:19-JUN-2003 10:41:57.00
SUBJECT:: FW: Sen. McConnell's staffer
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

fyi

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

From: Johnson III, Clay
Sent: Thursday, June 19, 2003 9:52 AM
To: Shea, Robert J.
Cc: Powell, Dina
Subject: FW: Sen. McConnell's staffer

I told him what we were thinking about, in general, and mentioned that we had shared our thinking with Voinovich's staff late last fall. I also mentioned that a draft of a "Streamlined Presidential Appointments Act of 2003" had been developed and I would have you contact him by COB tomorrow to let him know who you were working with and to give him a copy. His email is: john_abegg@mccconnell.senate.gov. If you want to share with him my initial ideas, they are attached.

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

From: Kavanaugh, Brett M.
Sent: Thursday, June 19, 2003 12:34 AM
To: Johnson III, Clay ; Powell, Dina
Subject: Sen. McConnell's staffer

John Abegg, 224-8290. I told him that one of you would be in touch soon to discuss. Thanks very much.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_84SBH003_WHO.TXT_1>

Reasonable Goal

Cabinet and Subcabinet selected, nominated and confirmed by August recess

Good Ideas

Fewer Presidential appointments to require Senate confirmation: administration, leg affairs, public affairs, etc. (about 65? of 350 positions, plus some part-time boards)

Different levels of FBI background check for different positions: full-field only for DOD, DOS, DOJ and most senior/sensitive positions in other agencies. Two-thirds (10 instead of 30) fewer interviews, plus use of phone, for vast majority of appointees?

No duplicative paperwork. (less nuisance, but no faster process)

FBI to commit (be given?) SIGNIFICANT additional resources during the first 6 months of an administration, to provide _____ day turnaround on background checks. Identify alternative background check resource (OPM?) for all but most sensitive posts?

Provide additional EOP monies at start of administration for extra PPO staffing (10 to 15 people) for first 9 months.

Between nomination and August recess, all nominees for subcabinet positions able to begin serving upon nomination; confirmation to address continued service vs. removal.

(Conflicts of interest?)

Bad Ideas

Fewer Presidential appointments

Permanent career administrative staff for the office of Presidential Personnel.

Ideas Internal to the Senate

Limit the imposition of “holds” by all Senators to a total of not more than 14 days on any single nominee.

Mandate a confirmation vote on every nominee no later than the 45th day after receipt of a nomination, unless a majority of the Senate decides to postpone the confirmation vote.

Permit nominations to be reported out of committee without a hearing, upon the written concurrence of a majority of committee members of each party.

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 7:22:11 AM
Subject: : FW: National Journal question from Alexis

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:19-JUN-2003 11:22:11.00
SUBJECT:: FW: National Journal question from Alexis
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett - here is what Alexis sent to Ari.

Ari...Counsel Gonzales (Brett Kavanaugh) at the end of May/early June sent a memo (standard practice) to the White House staff and others describing what the law permits in terms of political activity, and what the President expects. You know the memo, since you got it. This follows memos of a similar nature from previous White House counsels (Fred Fielding, Boyden Gray, Ab Mikva) -- all of which we have seen in public over the years.

Since President Bush promised to restore dignity to the White House and have the most ethically high-minded crew on the planet, I was initially confident that no one in the West Wing would resist my efforts to write a story about how the President wants everyone to conduct themselves beyond reproach between now and November 2004, if they are on the federal payroll. We all remember the fun we had with the previous White House on this subject....

I was wrong; help from the Bush White House appears stuck somewhere. Here's what I need: a copy of the Gonzales memo (or someone to read it to me, or funnel it outside to an intermediary who will give it to me, or some hand to fax it anonymously to me -- AND someone to describe how it compares with, say, the Mikva memo); someone for an interview to describe in detail how the White House and administration staff are to juggle governing and re-election/political activities (Mr. Rove's procedures are of particular interest here in accordance with Hatch Act and presidential expectations, so if he wants to take the high road and chat with NJ, that would be delightful); and related information from Cheney's office (I have talked to Jennifer M. about my questions, but have not heard back). An article is going into the magazine next week one way or another, so perhaps you can persuade the reluctant into being helpful???

Thanks,
Alexis

PRA 6
Fax: 202-833-8069

From: Tara Ryan <tryan@natcad.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 11:38:09 AM
Subject: : Congratulations!

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tara Ryan <tryan@natcad.org> (Tara Ryan <tryan@natcad.org> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 15:38:09.00
SUBJECT:: Congratulations!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Hey Brett,

Congratulations!
I just read all about in the daily news! Glad to see that you are moving on up. Good luck. I'm rooting for ya! (If I had any connections I would put a good word in for you.)

I moved back to the area a couple of months ago and am finally getting settled. I am trying to reconnect with old friends. I would love to take you to lunch and catch up.

Talk to you soon.

Tara Fettig

Tara C. F. Ryan, Esq.
NATCA
Labor Relations Staff Representative
202-628-5451 x4850
Fax 202-628-7286

From: Andrea Lafferty <alafferty@traditionalvalues.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 8:14:26 AM
Subject: : Congratulations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Andrea Lafferty <alafferty@traditionalvalues.org> (Andrea Lafferty
<alafferty@traditionalvalues.org> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 12:14:26.00
SUBJECT:: Congratulations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Bret-

Congratulations on your nomination.

Andrea Lafferty

From: Judge Carolyn Kuhl <CKuhl@LASuperiorCourt.org>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 10:19:51 AM
Subject: : Hope the Wash Post story is true!
Attachments: P_VE6CH003_WHO.TXT_1.htm

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Judge Carolyn Kuhl <CKuhl@LASuperiorCourt.org> (Judge Carolyn Kuhl
<CKuhl@LASuperiorCourt.org> [UNKNOWN])
CREATION DATE/TIME: 19-JUN-2003 14:19:51.00
SUBJECT: : Hope the Wash Post story is true!
TO: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Congratulations! I meant what I said to Judge Gonzales a couple of
weeks ago.
Carolyn
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_VE6CH003_WHO.TXT_1>

Congratulations! I meant what I said to Judge Gonzales a couple of weeks ago.
Carolyn

From: Simmons, Kyle (McConnell) <Kyle_Simmons@mcconnell.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 10:34:16 AM
Subject: : RE:

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Simmons, Kyle (McConnell)" <Kyle_Simmons@mcconnell.senate.gov> ("Simmons, Kyle (McConnell)" <Kyle_Simmons@mcconnell.senate.gov> [UNKNOWN])

CREATION DATE/TIME:19-JUN-2003 14:34:16.00

SUBJECT:: RE:

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

congratulations and let me know if i can help in any way.

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Tim Goeglein/WHO/EOP@EOP [WHO] <Tim Goeglein>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 10:34:51 AM
Subject: : nyt

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:19-JUN-2003 14:34:51.00
SUBJECT:: nyt
TO:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I just spoke with one of the NYT White House guys and he doesn't know anything about a story on the Judge.; (if one of our guys were doing it, he would probably know.) But, he is going to ask around and get back to me.

From: CN=P. Thaddeus Messenger/OU=OMB/O=EOP [OMB]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 2:42:31 PM
Subject: : Thad Messenger is out of the office.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:P. Thaddeus Messenger (CN=P. Thaddeus Messenger/OU=OMB/O=EOP [OMB])
CREATION DATE/TIME:19-JUN-2003 18:42:31.00
SUBJECT:: Thad Messenger is out of the office.
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I will be out of the office from 06/19/2003 until 06/23/2003.

If you need immediate assistance, please contact Andrew Mees at (202) 395-6148.

Otherwise, if your note requires a response, I will be able to respond when I return to the office on Monday.

Thanks,
Thad

From: Sara Taylor <Staylor@georgewbush.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 11:05:56 AM
Subject: : Hey!
Attachments: P_N89CH003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Sara Taylor <Staylor@georgewbush.com> (Sara Taylor <Staylor@georgewbush.com> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 15:05:56.00
SUBJECT:: Hey!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

I don't know if it's true and I'm not asking you to confirm, but I'm very excited for the news about you being an D.C. Court of Appeals Judge. Couldn't happen to a better person.....Good luck!
- att1.htm
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_N89CH003_WHO.TXT_1>

I don't know if it's true and I'm not asking you to confirm, but I'm very excited for the news about you being an D.C. Court of Appeals Judge. Cou ldn't happen to a better person.....Good luck!

From: Besanceney, Brian R. <bbesance@WHO.eop.gov>
To: joe.allbaugh@theallbaughcompany.com
<joe.allbaugh@theallbaughcompany.com>;sue.hensley@sba.gov
<sue.hensley@sba.gov>;Wilkinjr@centcom.mil
<Wilkinjr@centcom.mil>;Gordon.Johndroe@dhs.gov
<Gordon.Johndroe@dhs.gov>;Susan.Neely@dhs.gov
<Susan.Neely@dhs.gov>;Albert.Hawkins@hhsc.state.tx.us
<Albert.Hawkins@hhsc.state.tx.us>;Brandon.Grometer@mail.house.gov
<Brandon.Grometer@mail.house.gov>;Rebecca_Cotton@src.senate.gov
<Rebecca_Cotton@src.senate.gov>;peter.reid@fco.gov.uk
<peter.reid@fco.gov.uk>;todd@jeb.org <todd@jeb.org>;tara.bradshaw@do.treas.gov
<tara.bradshaw@do.treas.gov>;cangelo@pstrategies.com
<cangelo@pstrategies.com>;jgw@cwdc.com <jgw@cwdc.com>;william.steiger@hhs.gov
<william.steiger@hhs.gov>;McGrath, Charles D.
<Charles_D._McGrath_Jr@ovp.eop.gov>;Mayfield, Jennifer H.
<Jennifer_H._Mayfield@ovp.eop.gov>;Addington, David S. <daddingt@OVP.eop.gov>;Conda,
Cesar <Cesar_Conda@ovp.eop.gov>;Kleppe, Elizabeth W. <ekleppe@OVP.eop.gov>;Pelletier,
Eric C. <Eric_C._Pelletier@who.eop.gov>;Smythe, Augustine T.
<asmythe@OMB.eop.gov>;Bridgeland, John M. <jbridgel@OPD.eop.gov>;Otto, Eric H.
<Eric_H._Otto@opd.eop.gov>;edgillespie@quinngillespie.com
<edgillespie@quinngillespie.com>;Bennett, Melissa S.
<Melissa_S._Bennett@who.eop.gov>;Kaplan, Joel <Joel_Kaplan@who.eop.gov>;Litkenhaus,
Colleen <Colleen_Litkenhaus@who.eop.gov>;Gottesman, Blake
<Blake_Gottesman@who.eop.gov>;charles.yoder@mail.va.gov
<charles.yoder@mail.va.gov>;terrell.halaska@hhs.gov
<terrell.halaska@hhs.gov>;kreisher.tina@epa.gov <kreisher.tina@epa.gov>;Ryun, Catharine A.
<cryun@WHO.eop.gov>;mmckinnon@pstrategies.com <mmckinnon@pstrategies.com>;Gray,
Adrian G. <agray@WHO.eop.gov>;chet.lunner@ost.dot.gov
<chet.lunner@ost.dot.gov>;moridanis@state.gov
<moridanis@state.gov>;Jeanne.lopatto@hq.doe.gov
<Jeanne.lopatto@hq.doe.gov>;craig.quigley@osd.mil <craig.quigley@osd.mil>;Trenolone, Anne
<Anne_Trenolone@who.eop.gov>;Jackson, Barry S.
<bjackson@WHO.eop.gov>;POnnuru@ix.netcom.com <POnnuru@ix.netcom.com>;Besanceney,
Brian R. <bbesance@WHO.eop.gov>;kmclane@pstrategies.com
<kmclane@pstrategies.com>;Estes, John D. <jestes@WHO.eop.gov>;Estes, Ashley
<Ashley_Estes@who.eop.gov>;Barrales, Ruben S. <rbarrale@WHO.eop.gov>;blewis@rnchq.org
<blewis@rnchq.org>;Blahous, Charles P. <cblahous@OPD.eop.gov>;Maria.Cino@mail.doc.gov
<Maria.Cino@mail.doc.gov>;Pratt Jr, Robert T. <rprattjr@WHO.eop.gov>;Kavanaugh, Brett M.
<bkavanau@WHO.eop.gov>;john.feehery@mail.house.gov
<john.feehery@mail.house.gov>;Viana, Mercedes M. <mviana@WHO.eop.gov>;dallen@nrsc.org
<dallen@nrsc.org>;Zimmerman, Neil H. <nzimmerm@WHO.eop.gov>;Dyck, Paul B.
<pdyck@WHO.eop.gov>;Bird, Debra D. <Debra_D._Bird@who.eop.gov>;Powell, Dina
<Dina_Powell@who.eop.gov>;Thomas, Julieanne H. <jthomas@WHO.eop.gov>;Sayle, Desiree
T. <dsayle@WHO.eop.gov>;Johnson, Sydney R. <Sydney_R._Johnson@who.eop.gov>;Kuo,
David <dkuo@WHO.eop.gov>;dhermer@no10.x.gsi.gov.uk
<dhermer@no10.x.gsi.gov.uk>;ChapmanJ@state.gov
<ChapmanJ@state.gov>;rich@mullings.com <rich@mullings.com>;Doric@hawaii.edu
<Doric@hawaii.edu>;Malphrus, Garry <gmalphru@OPD.eop.gov>;Millerwise, Jennifer
<Jennifer_Millerwise@ovp.eop.gov>;Snee, Ashley
<Ashley_M._Snee@who.eop.gov>;laura.brookshire@mail.house.gov
<laura.brookshire@mail.house.gov>;Reynolds, Tim <Tim_Reynolds@who.eop.gov>;Mallea, Jose
<Jose_Mallea@who.eop.gov>;chris.smith@do.treas.gov
<chris.smith@do.treas.gov>;mcrow@eda.doc.gov <mcrow@eda.doc.gov>;mniemeyer@ustr.gov
<mniemeyer@ustr.gov>;russ_keene@dal.bm.com <russ_keene@dal.bm.com>;arispz@odci.gov
<arispz@odci.gov>;matt.lloyd@usda.gov <matt.lloyd@usda.gov>;jmyers@iiaa.net
<jmyers@iiaa.net>;Ellison, Kimberly <kellison@WHO.eop.gov>;Machida, Ado A.
<Ado_A._Machida@ovp.eop.gov>;mmiller@winstongroup.net
<mmiller@winstongroup.net>;rgardner@amtonline.org
<rgardner@amtonline.org>;jbarsa@hq.nasa.gov
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<HowardMortman@msn.com>;joshhollydc@yahoo.com

<joshhollydc@yahoo.com>;monican@NATMEDIA.com
<monican@NATMEDIA.com>;Barbara_Ledeen@src.senate.gov
<Barbara_Ledeen@src.senate.gov>;michaelpshannon@yahoo.com
<michaelpshannon@yahoo.com>;Greene, William <wgreene@WHO.eop.gov>;Doty, Joan R.
<Joan_R_Doty@who.eop.gov>;Everson, Nanette
<neverson@WHO.eop.gov>;crnshaw@comcast.net <crnshaw@comcast.net>;Tucker, Kirstie W.
<ktucker@WHO.eop.gov>;lauraw@gatesfoundation.org
<lauraw@gatesfoundation.org>;Dan_Bloom@ita.doc.gov
<Dan_Bloom@ita.doc.gov>;lucretia.mcclenney@mail.va.gov
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<CLederer@comdt.uscg.mil>;FiskDW@state.gov
<FiskDW@state.gov>;leadmonjt@navsea.navy.mil
<leadmonjt@navsea.navy.mil>;rob.gould@fra.dot.gov <rob.gould@fra.dot.gov>;Hennessey, Keith
<Keith_Hennessey@opd.eop.gov>;Brian.Gaston@mail.house.gov
<Brian.Gaston@mail.house.gov>;Hilary.White@usda.gov
<Hilary.White@usda.gov>;PedrosaNR@state.gov <PedrosaNR@state.gov>;law-steven@dol.gov
<law-steven@dol.gov>;ngarcia@allianceai.org <ngarcia@allianceai.org>;DeFrancis, Suzy
<Suzy_DeFrancis@who.eop.gov>;chase.hutto@hq.doe.gov
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<rajesh.bharwani@mail.house.gov>;WHR@nrc.gov <WHR@nrc.gov>;Willie.Clark@nnsa.doe.gov
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<dheerwagen@fs.fed.us>;gibson@dkcg.net <gibson@dkcg.net>;ericjw@hillsolutions.net
<ericjw@hillsolutions.net>;Michael_Brumas@sessions.senate.gov
<Michael_Brumas@sessions.senate.gov>;Jeff_Turcotte@gregg.senate.gov
<Jeff_Turcotte@gregg.senate.gov>;Karen.Weiss@ed.gov <Karen.Weiss@ed.gov>;Neusner,
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Sent: 6/19/2003 3:43:03 PM
Subject: TALKING POINTS on Medicare Reform

Talking Points: The President's Framework to Strengthen & Improve Medicare

Private Health Care Choices within Medicare — a Major Step in Medicare Reform

America has the world's best health care system because it relies on the innovations of the private sector. A competitive free market system provides incentives to develop better drugs, better treatments, better care, and better forms of health care delivery.

The President's Framework for Medicare reform would apply the best practices of the private health care market to Medicare. As successful as Medicare has been, it has not kept pace with dramatic improvements in health care because it is a government program immune to many market forces. Medicare still does not provide seniors with an outpatient prescription drug benefit, full coverage for preventive care, or limits on high out of pocket expenses. As a result, seniors lack many of the choices and benefits available to millions of Americans who have private health insurance.

The President's goal is a strong, up-to-date Medicare system that relies on innovation and competition, not bureaucratic rules and regulations. This would allow seniors more choices and better benefits. It would also help modernize the program and improve its long-term finances.

The leading Medicare bills in the House and Senate include the following key elements of reform from the President's Framework:

Individual Choice vs. One-size-fits-all

Seniors would be able to choose the health plan that best meets their own personal health needs—rather than having only the choice of a one-size-fits-all government plan. There would be flexibility for private plans to offer a variety of benefit designs, not just standard coverage.

Providing seniors with more choices will give them—not the government—more control. When seniors retain the power of choice, there will be competition among health care providers and insurers. The result? Seniors will get the best coverage, services and quality of care.

Private Sector Competition vs. Government Price Setting and Price Controls

Private insurers would deliver drug benefits to seniors, and costs would be controlled using marketplace competition, not government price setting. This is a fundamental departure from the current Medicare command and control pricing system.

Under the President's Framework and the House and Senate bills, health plans would compete for seniors' business on the basis of quality and price. Federal employees and members of Congress enjoy the benefits of a competitive market for their health insurance, as do millions of working Americans. Seniors should have the same opportunity.

Currently, Medicare fixes payments to doctors and hospitals. The result is that Medicare does not often cover the true cost of care. Under the President's Framework, private plans would bid against one another and then the government will select the lowest three bids that qualify. Such competition will be good for seniors and for taxpayers.

Innovation vs. Bureaucratic Delays

Whenever government gets involved in the business of micromanaging health care, innovation suffers and access to the newest and most effective treatments depends on the often arbitrary decisions of a slow-moving bureaucracy. When prescription drugs and medical devices are approved by the Food and Drug Administration, private insurers can adopt them for use soon after—but not Medicare. For example, Medicare did not cover mammograms until nearly a decade after private insurers made them a standard benefit. It even took an act of Congress to get Medicare to cover mammograms.

The participation of private health plans in Medicare will help ensure more up-to-date coverage for breakthrough medical technologies. This is a significant improvement over the way benefits are provided in the traditional Medicare program today—where politicians and regulators, rather than the market, decide what is covered.

Long-Term Savings vs. Spiraling Costs

The President and Congress have budgeted \$400 billion over 10 years to make these reforms a reality. By contrast, Democratic leadership proposals in both the House and Senate would likely cost more than double the amount—perhaps nearly \$1 trillion—pumped into an unreformed, one-size-fits-all government-run system.

Over time, reforming the Medicare system to allow more choices and private sector competition is expected to bring savings to the program. Medicare actuaries estimate that the most efficient private plans have the potential to beat Medicare's costs by an average of 2.3 percent.

Far from being an open-ended entitlement, most seniors will be responsible for a deductible, and co-pays, and, for the first time, the Medicare Part B deductible would be indexed to inflation, which will help reduce government expenditures. At the same time, seniors with the lowest incomes and the highest prescription drug bills will receive the most assistance and protection under the bill. This focuses resources on those individuals who need the most help.

Free Market vs. Government Dictates

The President's vision for a reformed Medicare stands in stark contrast to a centralized, government-run health care system that dictates coverage and stifles innovation and quality.

The President's Framework for Medicare reform would combine the best practices of traditional Medicare with those of the competitive free market system that benefits Americans so well. By keeping the existing government system, building on its strengths and incorporating the best ideas of the private sector, we can create a modern and efficient Medicare program for the 21st century.

The President is encouraged by the bipartisan progress that has been made to date and is urging Congress to seize the opportunity to pass legislation this year that will reform Medicare for the first time in its 38-year history.

White House Office of Communications

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White House Office of Communications

From: Parell, Christie
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>;<Oca - Office Of Cabinet Affairs>
Sent: 6/19/2003 4:13:53 PM
Subject: Agency FOIA Requests
Attachments: FOIA 06-19-03.doc

<>

06/19/03

AGENCY FOIA REQUESTS

DOC

Received 6/9/03, from **Kim Liberty**, *The Broward Alliance*, requesting a list of Broward County (Florida) exporters.

Received 6/10/03, from **Jason T. Sauer**, requesting copies of all correspondence between ITA officials and USPTO officials, and Representative Ernest L. Fletcher (R-KY) from 1/1/99 through 6/1/03.

Received 6/10/03, from **Cathy Goeggel**, **Animal Rights Hawaii**, requesting records regarding the transfer of captive dolphins to public display.

Received 6/10/03, from **Patti Goldman**, **Earthjustice**, requesting records concerning Section 7 consultations regarding pesticides and endangered or threatened species.

Received 6/11/03, from **Melanie Sloan**, Citizens for **Responsibilities and Ethics in Washington (CREW)**, requesting documents related to the "Bacardi," "Havana Club," trademark dispute.

Received 6/12/03, from **Angie Pearson**, **Marriott**, requesting purchase orders and contracts between NOAA and any lodging facility.

DoEd

Meghann K. Peterlin has submitted a FOIA request for copies of Congressional correspondence and related documents between the Department and Senators Boxer, Daschle, Dodd, Dorgan, Feingold, Hollings, Leahy, Lincoln, Milkulski, Murray, Reid, and Schumer for the period January 1997 through May 2003.

Charles Edwards, representing the **Education Funding Research Council**, has requested copies of all correspondence related to the NCLB accountability workbooks.

David J. Huff, representing **Education Week**, has requested copies of all documents related to the competition for funds under the Voluntary School Choice Program in Fiscal Year 2002.

HHS

7/2/03

The Detroit Free Press requested grant applications and HRSA communications regarding unsuccessful Federally Qualified Health Center applicants from the Detroit area during the past 5 years.

REV_00238250

EPA

During the week of June 9, 2003, the Agency received 245 FOIA requests. Of the total, 38 were received in Headquarters. Year-to-date totals are 1,677 for Headquarters and 8,994 agency-wide. Significant FOIA requests received this week include:

- 1) **Thomas W. Wetterer of Greenpeace** has requested a copy of the Office of Enforcement and Compliance Assurance's National Pollutant Discharge Elimination System Report Analysis by Amy Porter of the Office of Water;
- 2) **Alison Cassady of the U.S. Public Interest Research Group** has requested the underlying data that was used to compile the water compliance facility reports in EPA's ECHO database;
- 3) **Tom Lyden of KMSP-TV Fox 9** has requested the names of chemical plants or facilities in Minnesota that are on the EPA's "Worst Case Scenario List" and relevant reports including Risk Management Plans or Off-Site Consequence Analyses;
- 4) **Mal Leary of the Maine Capitol News Service** has requested a copy of the February 2003 internal report on compliance conducted by the EPA's Office of Enforcement and Compliance Assurance;
- 5) **James Pew of EarthJustice** has requested certain records of communication between the Assistant Administrator for the Office of Solid Waste and Emergency Response and others pertaining to revisions to the definition of solid waste.

DOI

Meyer & Glitzenstein, on Behalf of the Fund for Animals. Request the following records: On March 1, 2002, Debra Hecox of the Department of the Interior Solicitor's Office issued a Memorandum entitled "Authority for Employees of Yellowstone National Park to Cooperate with the State of Montana in Implementing the Long-term Bison Management Plan." In that Memorandum, the Solicitor's Office concluded that is "well within the authority of the National Park Service employees to participate in the bison management activities" – including "lethally removing bison" – "outside the boundaries of Yellowstone National Park to conserve the bison in the Yellowstone Herd." The fund requests a copy of all records upon which Ms. Hecox, and the Park Service, bases this conclusion" etc.

DOJ

Christopher J. Farrell, of Judicial Watch, Inc., has requested all records pertaining to (1) "[t]he decision of Michael Chertoff not to recuse himself in any matter involving Peter F. Paul and Stanley Myatt," and (2) "[a]llegations of Justice Department misuse of an organized crime operative within the jurisdiction of the United States Attorney's Office for the state of New Jersey."

DOL

Dale Kasofsky, Esq., Law Offices of Kittleman, Thomas, Ramirez and Gonzales, McAllen, TX, is seeking:

to determine whether or not Omar Rodriguez, of Lexington, KY has ever been certified and/or registered pursuant to the Migrant and Seasonal Agricultural Worker Protection Act found at 29 U.S.C. Section 18, et al. and the regulations promulgated located at 29 C.F.R. Section 500. Kasofsky also seeks to determine if any agency's action occurred effecting Mr. Rodriguez' standing to perform farm labor contracting activities.

Kasofsky is also interested in any investigations or actions taken pursuant to these acts and regulations concerning the following tobacco warehouses that are also located in Lexington, KY: Burley Services, Inc.; Southwestern Tobacco Company, Inc.; Universal Leaf North American NC, Inc.; Southwestern Tobacco Company, Inc.; Golden Burley Tobacco Warehouse

Violet Law, Editor, Pittsburgh Tribune-Review, Pittsburgh, PA, is seeking:

all records pertaining to the Department of Labor's 1985 judgment against the Salvation Army's violation of the Fair Labor Standards Act and all correspondence between the Salvation Army and the Department of Labor with regard to this judgment.

Timothy Baker, Department of Occupational Health and Safety, United Mine Workers of America, Fairfax, VA, is seeking:

copies of logs, appointment calendars, calendar markings, notes, correspondence and travel vouchers of MSHA officials indicating contact or meetings with representatives from Murray Energy Corporation, Ohio Valley Coal Company, or Powhatan #6 Mine regarding matters referencing the Powhatan #6 Mine. Baker also seeks copies of sign-in sheets showing the names of representatives from those companies for meetings with MSHA officials. Further, Baker also seeks copies records, correspondence and travel vouchers of the personal staff to David Lauriski, John Caylor, Mark Ellis, Timothy Thompson, William McGilton and any other MSHA officials indicating contact or meetings with representatives from Murray Energy Corporation, Ohio Valley Coal Company or Powhatan #6 Mine.

In addition to his request concerning Powhatan #6 mine, **Baker** also seeks information concerning the 100 most frequently cited surface mines and underground mines in the U.S. for 2002, ranked by total number of violations. Specifically, he is requesting the total violations and orders by type, both nationwide and for the specific operation, and by regulation cited.

Joseph Main, Administrator, Department of Occupational Health and Safety, United Mine Workers of America, Fairfax, VA, is seeking:

a list of mine operators consulted by MSHA contractor ICF Consulting during the preparation of a program evaluation of MSHA's current inspection program and the dates mine operators were consulted. He is also seeking a copy of the evaluation report when completed.

OPM

Reporter Tim Kauffman (*Federal Times*) submitted a FOIA request for “all of the raw data collected for inclusion in the 2003 Federal Human Capital Survey or (if that is ‘exceptionally onerous’) all of the data broken out by all of the subagencies, bureaus and, offices that participated, and all of the data broken out by individual occupations, occupational categories or job series of respondents.” The reporter requested the data in electronic format.

DOT

The St. Lawrence Seaway Development Corporation received a FOIA request from a private citizen for information or studies concerning the Seaway System’s economic impact on Buffalo, NY, from 1959 through the present.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Adrian G. Gray/WHO/EOP@EOP [WHO] <Adrian G. Gray>
Sent: 6/19/2003 12:37:19 PM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 16:37:19.00
SUBJECT: : Re:
TO: Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

and . . .

From: Adrian G. Gray on 06/19/2003 04:33:17 PM
Record Type: Record

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

they are debating you on crossfire.

From: Alice Starr <ASTARR@west-group.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 12:39:56 PM
Subject: : Congratulations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Alice Starr <ASTARR@west-group.com> (Alice Starr <ASTARR@west-group.com> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 16:39:56.00
SUBJECT:: Congratulations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Now I know why you cannot appear on June 30!!! We are so happy for you and will hope for the best!!!

-Alice

From: CN=Adrian G. Gray/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 1:23:31 PM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-JUN-2003 17:23:31.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Begala was saying your were a smut peddler for the starr report....novak was saying you are a fine lawyer.

I'm sure bravo could get the transcript for you

Brett M. Kavanaugh
06/19/2003 04:36:18 PM
Record Type: Record

To: Adrian G. Gray/WHO/EOP@EOP
cc:
bcc:
Subject: Re:

and . . .

From: Adrian G. Gray on 06/19/2003 04:33:17 PM
Record Type: Record

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

they are debating you on crossfire.

From: CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 1:40:59 PM
Subject: : Re: tomorrow

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-JUN-2003 17:40:59.00
SUBJECT:: Re: tomorrow
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Will you extend invite to Tim or do you want me to mention it to him?
Thank you

Brett M. Kavanaugh
06/19/2003 04:42:01 PM
Record Type: Record

To: Lezlee J. Westine/WHO/EOP@EOP
cc:
Subject: tomorrow

We were going to invite Tim Goeglein tomorrow. Does that make sense?

From: CN=Jonathan F. Ganter/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 1:47:25 PM
Subject: : EMAIL

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:19-JUN-2003 17:47:25.00
SUBJECT:: EMAIL
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

They are currently working on you. Good news is you aren't going to lose any documents that are coming in. We will both get an email (your blackberry should still be working) when everything is completed.

Jon

From: Adam.Charnes@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 2:14:26 PM
Subject: : Post

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Adam.Charnes@usdoj.gov" <Adam.Charnes@usdoj.gov> ("Adam.Charnes@usdoj.gov"
<Adam.Charnes@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 18:14:26.00
SUBJECT:: Post
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Dude, you need a new press photo.

From: Jeffrey.B.Clark@usdoj.gov
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 2:54:51 PM
Subject: : Congratulations!

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Jeffrey.B.Clark@usdoj.gov" <Jeffrey.B.Clark@usdoj.gov> (
"Jeffrey.B.Clark@usdoj.gov" <Jeffrey.B.Clark@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 18:54:51.00
SUBJECT:: Congratulations!
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Hey Brett, very glad to see the article in the Post today! The D.C.
Circuit needs you.

From: [REDACTED] **PRA 6**
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/19/2003 3:10:47 PM
Subject: : July 17th

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: [REDACTED] **PRA 6** [UNKNOWN])
CREATION DATE/TIME:19-JUN-2003 19:10:47.00
SUBJECT:: July 17th
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

That is the best day for us, Brett. I assume it will be in late afternoon.
I will send you all a list of the people and the Social Security numbers.
It will be the same basic crowd.

Warm Wishes,

Martha

Dr. Martha Joynt Kumar
Director, White House 2001 Project
www.whitehouse2001.org

[REDACTED] **PRA 6**

Department of Political Science
Towson University
Towson, Maryland 21252
410 704-2955 / 202 639-8734 /

[REDACTED] **PRA 6**

[REDACTED] **PRA 6**

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rebecca L. Willis/OA/EOP [OA] <Rebecca L. Willis>
Sent: 6/19/2003 4:01:19 PM
Subject: RECEIVED: Help Desk ticket 59711

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 20:01:19.00
SUBJECT: RECEIVED: Help Desk ticket 59711
TO: Rebecca L. Willis (CN=Rebecca L. Willis/OU=OA/O=EOP [OA])
READ: UNKNOWN
End Original ARMS Header

RETURN RECEIPT

Your Document:
Help Desk ticket 59711
was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
06/19/2003 08:00:17 PM

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Rebecca L. Willis/OA/EOP [OA] <Rebecca L. Willis>
Sent: 6/19/2003 4:01:19 PM
Subject: RECEIVED: Help Desk ticket 59711

Begin Original ARMS Header #####
RECORD TYPE: FEDERAL (NOTES READ RECEIPT)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 20:01:19.00
SUBJECT: RECEIVED: Help Desk ticket 59711
TO: Rebecca L. Willis (CN=Rebecca L. Willis/OU=OA/O=EOP [OA])
READ: UNKNOWN
End Original ARMS Header

RETURN RECEIPT

Your Document:
Help Desk ticket 59711
was successfully received by:
CN=Brett M. Kavanaugh/OU=WHO/O=EOP
at:
06/19/2003 08:00:17 PM

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>
Sent: 6/19/2003 4:17:30 PM
Subject: : Re: tomorrow

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 19-JUN-2003 20:17:30.00
SUBJECT: : Re: tomorrow
TO: Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Why don't you mention it to him if you can do so. Thanks.

Lezlee J. Westine
06/19/2003 05:39:59 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: tomorrow

Will you extend invite to Tim or do you want me to mention it to him?
Thank you

Brett M. Kavanaugh
06/19/2003 04:42:01 PM
Record Type: Record

To: Lezlee J. Westine/WHO/EOP@EOP
cc:
Subject: tomorrow

We were going to invite Tim Goeglein tomorrow. Does that make sense?

From: Leitch, David G.
To: <Kavanaugh, Brett M.>
Sent: 6/20/2003 8:04:10 AM
Subject:

From looking at the White House news page on the web site, it appears that no announcement has been made that the Titus nomination went to the Senate on Wednesday. I know the Senate received it, but isn't it our usual practice to post these under "Nominations Sent to the Senate" or "Personnel Announcements"?

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Wendy J. Grubbs/WHO/EOP@Exchange@EOP [WHO] <Wendy J. Grubbs>
Sent: 6/20/2003 4:49:48 AM
Subject: : Makan meeting . . .

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 20-JUN-2003 08:49:48.00
SUBJECT: : Makan meeting . . .
TO: Wendy J. Grubbs (CN=Wendy J. Grubbs/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

Is there one? I cannot attend.

From: CN=Kyle Sampson/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;David G. Leitch/WHO/EOP@Exchange@EOP [WHO] <David G. Leitch>
Sent: 6/20/2003 5:07:51 AM
Subject: : Gonzales-related post on Owen

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-JUN-2003 09:07:51.00
SUBJECT:: Gonzales-related post on Owen
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

In Defense of Owen:

Lou Dubose has a one-sided hatchet-job in the LA Weekly on Justice Priscilla Owen of the Supreme Court of Texas*one of two nominees to the federal appellate courts currently being filibustered by Senate Democrats. (Link via How Appealing.) This is not Dubose,s first crack at Owen. He previously attacked her in The Texas Observer.

Dubose,s stories both principally revolve around a single case: Ford Motor Co. v. Miles, 967 S.W.2d 377 (Tex. 1998). The main issue in Miles was the propriety of venue. Unfortunately, the factual context was tragic: Willie Searcy, only fourteen years old at the time of the auto accident that formed the basis of the suit, was rendered a quadriplegic who required the assistance of a ventilator to breath. Id. at 379.

Dubose,s LA Weekly story opens with a reference to the plaintiff,s attorney, Jack Ayers. I assume that Ayers was a source for Dubose,s pieces. Why? Because I have heard Ayers tell this story before. He spoke to my class in Professor Alex Albright,s Texas Trial & Appellate Procedure course at The University of Texas School of Law some time ago.

I have no reason to doubt Ayers integrity. If I needed a trial lawyer, I would be comfortable relying on his advocacy skills before a jury. But Jack Ayers is a true believer. He lives in a world of good and evil. And he,s on the side of the angels, you see.

There,s a saying among lawyers: If the law is on your side, pound the law; if the facts are on your side, pound the facts; and if neither is on your side, then pound the podium. Ayers primarily pounded the facts during his talk at UT*or rather, he pounded selective facts. Searcy,s story inspires sympathy, and Ayers made sure we knew his story in detail. But Ayers also pounded the podium a bit; in particular, he criticized a judge.

Justice Owen, however, was not the villain he singled out that day*at least not by name. Although he lambasted the Supreme Court of Texas,s decision, Ayers focused much of his criticism on Judge David Godbey, who was then a Texas state district judge and handled the case on remand from the Supreme Court. Godbey has since been nominated and confirmed as a federal district judge.

Dubose also pounds the facts and the podium, but shifts gears and attacks Owen in lieu of Godbey. There is a lot that is wrong with Dubose,s telling though.

The accident, a head-on collision precipitated by another vehicle, took place in Dallas County. Miles, 967 S.W.2d at 379. Likewise, the plaintiffs resided in Dallas County. Id. However, the vehicle in which they traveled was sold from a dealership in Rusk County, which is where Ayers brought suit, notwithstanding the fact that the dealership was in no way connected with the events forming the basis of the action. Id. Ford moved to transfer venue to Dallas County, but that motion was denied, trial ensued

in Rusk County, and plaintiffs obtained a large verdict. Id. A little general background is in order. Texas has a well-known history of venue abuse (i.e., lawyers manufacturing venue in fora that they feel are more plaintiff-friendly). As a result, Texas law has undergone various reforms to curb venue-shopping. Venue in Texas law is a big deal: a finding on appeal that venue was improper in the trial court will result in reversal and remand with instructions to transfer to the appropriate district court. Accordingly, it behooves lawyers not to try to manipulate venue.

The Supreme Court of Texas, with Justice Owen writing for the court,s majority, found that venue had been improper in Rusk County and therefore reversed and remanded. Id. at 380-82. Here is a map of Texas,s counties. Take a look and decide for yourself whether Jack Ayers,s venue choice of Rusk County rather than Dallas County was an attempt to manipulate venue under the facts of the case. Or better yet, take Dubose,s word for it. In the Observer, he writes:

Willie,s lawyer, Jack Ayres, was determined to get the case to trial as fast as possible. . . . Ayres was looking for a court with a rocket docket. . . .

"We were in a race to save this kid,s life," Ayres said. Dockets in Dallas were backed up. So in 1994 Ayres filed suit in state district court in Henderson, a small East Texas town

Whatever Ayers,s motives, venue statutes in Texas do not have a &really compelling circumstances8 exception.

Chief Justice Phillips and Justices Gonzales (now White House General Counsel), Hecht, and Abbot signed onto Owen,s opinion. Gonzales, Hecht, and Abbot also concurred in order to address a non-venue-related issue that went unaddressed in the main opinion. Id. at 389. Justices Hankinson, Enoch, Spector, and Baker dissented in a very brief opinion on the basis of the majority,s venue determination. Id. at 390.

Based almost exclusively on this case, Dubose makes numerous unfounded and/or ill-founded claims. For example, Dubose attributes the decision solely to Owen. Although she was apparently assigned the opinion via random draw and penned the court,s opinion, Justice Owen was writing for a majority. So the lone extremist scenario that Dubose advances is not quite accurate. But Dubose persists with his conspiracy theory nonetheless:

. . . Corporations and defense firms pay for judicial elections [in Texas]. They expect what Lyndon [Johnson] used to call a &bang for their buck.8 In the Searcy case, Baker Botts, the Houston law firm founded by the great-grandfather of Bush-family adviser James Baker III, had given the Owen campaign \$20,450. The firm also happened to be Ford,s appeals counsel, angling for a \$1 million bonus if it could get the decision reversed. Which it did*with Owen,s help.

So could Dubose not find a similar pattern of contributions for the other four Justices in the majority? What about the dissenters*did Ford, Baker Botts, or the plaintiffs, bar contribute anything to their coffers? If one is going to imply that improper influence or corruption played a role in Owen,s decision-making process, aren,t these questions that need to be addressed? But, hey, why bother with such facts when you can just conspiratorially refer to James Baker,s great grandpappy.

Dubose also suggests that Owen delayed issuing a decision in a manner that contributed to Searcy,s eventual death. Dubose doe not, however, provide the reader with any facts capable of sustaining this charge. In the Observer, Dubose relies on the observations of unidentified law clerks regarding Owen,s handling of the case behind the scenes. This is unfortunate, because such unattributed claims are unanswerable by any of the Justices. Canon 3 of the Code of Judicial Conduct precludes judges from discussing such details:

A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in

accordance with Supreme Court guidelines for a court approved history project.

Moreover, the unidentified sources have almost certainly violated the ethical rules pertaining to law clerks, which generally require complete confidentiality regarding the goings-on in chambers. It is a little difficult to take the axe-grinding of disgruntled former clerks seriously when they would so casually violate the court,s confidence.

Dubose also contradicts himself on this point regarding Owen,s alleged delay. In The Texas Observer he lays much of the blame for the delay on Ford Motor Company, rather than Owen:

Ford Motor Co. is not exactly an easy mark for lawsuits. In the early , 90s, the company was winning 80 percent of the cases that made it to a jury. In 1994, as Willie Searcy,s lawyers were starting the discovery phase of the trial, the company was changing its litigation strategy. Ford was going to play hardball. "The essence of Ford,s strategy," according to The National Law Journal, "is that it,s now ready and willing to try any case, no matter how small, no matter how great the risk of a mammoth jury verdict." The company would make a take-it-or-leave-it pretrial settlement offer. Ford assistant general counsel James A. Brown was up front about the new strategy. There would be one offer, he told the Law Journal reporter. "I don,t give a shit if they take it or not . . . If the plaintiff doesn,t settle, it doesn,t matter to us. We tell them, +We,re coming after you.,"

Ford came after Willie Searcy,s lawyers. "They told us to make an offer they would find acceptable, or they would string this along until Willie died," Randall Sandifer said. Sandifer filed an affidavit describing Ford,s promise to delay a final resolution of the case as long as they could. The actual timeline is less than complete. From Westlaw, one can determine the following: The accident occurred in 1993. Miles v. Ford Motor Co., 922 S.W.2d 572, 578 (Tex. App.*Texarkana 1996). The appellate court issued its decision affirming in part and reversing in part the trial court,s verdict on March 13, 1996. Argument was heard on appeal before the Supreme Court of Texas on November 21, 1996; the high court issued its decision on March 19, 1998. That is a while to be sure. However, once it was remanded the case lingered on for over three years. The last opinion in Westlaw on the case was issued by the Dallas Court of Appeals, which remanded the suit to the trial court once again. See Miles v. Ford Motor Co., No.

05-99-01258-CV, 2001 WL 727355 (Tex. App.*Dallas June 29, 2001, pet. denied) (unpublished opinion). Searcy died less than a week later.

Dubose does not bother explaining the details regarding this timeline. Nor does Dubose provide the reader with any of the docket entries that might explain the delay, apart from referring to a procedural glitch in the initial appeal from the trial court and Ford,s purported misconduct. Needless to say, none of this lays any responsibility at Owen,s doorstep. At any rate, from the preceding timeline alone, it is obvious that this case spent most of its unhappy history in courts other than the Supreme Court of Texas.

Dubose,s only attempt in the LA Weekly to attribute the delay to Owen is this feeble assertion:

And here,s why Owen deserves to be singled out for delaying justice and treatment for Willie. She wrote a long opinion on the Texas venue statute, one of those seemingly important lawyerly things to do to make sure the statute could be correctly applied in future cases. But there would be no future cases. After the suit was filed, the statute had been replaced by a new, restrictive venue law then-Governor Bush pushed through the Legislature in 1995. In effect, Owen was using time marked by Willie Searcy,s regulated breathing to elaborate on a piece of legal history. She could have quickly moved the case without working to persuade a majority of justices to sign onto an opinion. But she subjected Willie Searcy to the &results-oriented& process that is a signature mark of the Texas Supreme Court. Ford wanted the case retried in a friendly venue in Dallas; Owen,s belabored opinion liberally interpreted the law to achieve that outcome.

First, Owen,s opinion is not long; it is approximately ten pages in length, of which about three are devoted to the issue of venue. Second, she and the court, including the dissenters, construed the statute and law that was applicable to the case. To do otherwise, would be to disregard the court,s precedent and the venue rules established by the legislature. Dubose chides Owen for result-oriented jurisprudence, but the gravamen of his complaint is essentially that Owen construed the law as she found it rather than ignoring the applicable law and doing what was &right.⁸ Third, what information does Dubose have that suggests that Owen in particular was responsible for this delay in achieving consensus? He does not really identify any specifics. The court was fractured and that fact can hardly be laid at a single Justice,s feet. Fourth, Dubose gets the venue issue exactly wrong. Ford may have wanted to try the case in Dallas, but the real issue is whether venue was appropriate in Rusk County. I invite readers to re-consult the map and the venue facts and decide for yourselves who was attempting to twist Texas venue law.

In the Observer, Dubose goes to a little more trouble in explaining the supposed reason that Owen is to blame for the delay:

But two former clerks said discussion about Willie Searcy,s case was acrimonious. It was acrimonious because Priscilla Owen,s opinion was truly astounding. It was not astounding because it ruled against Susan Miles and her son, but because of how it ruled against Susan Miles and her son. According to the court,s procedural rules, the justices would inform the attorneys of the questions of law the court would consider. The attorneys would address those specific issues in their briefs and in their oral argument.

"Venue" was not among the issues) "or points of error") the court said it would consider in Willie Searcy,s case. Venue was not briefed on the merits by Ford,s attorneys or by Willie Searcy,s attorneys. Venue was not mentioned in the oral argument on November 21, 1996. But the opinion Priscilla Owen wrote in March 1998 was based on venue.

"We felt like we got ambushed," said Ayres.

A lawyer who worked on the court agrees that Jack Ayres and Willie Searcy were ambushed. "If venue wasn,t in the points of error, it is very unusual that the court addressed it," the former court clerk said. "If the justices decide they want the court to address something not in the points of error, they would ask for additional briefing. They send letters to the parties and ask for briefing."

Owen had asked for no additional briefing.

Dubose does not cite the rules in question. Of course, courts frequently address issues sua sponte*even dispositive ones. Although the case was resolved via a closely divided 5-4 decision, the dissenters do not indicate any surprise at the majority,s decision to address the issue of venue. If the mere fact that the court were addressing the issue was so peculiar, one might have thought that the dissent would mention it. It does not. Instead, the dissenters agree that venue is the dispositive matter and address it on the merits. See Miles, 967 S.W.2d at 390-91 (Hankinson, J., dissenting)

When Dubose is not tossing out non sequiturs, spinning conspiracy theories, or misrepresenting the facts, he is engaged in argument that verges on ad hominem:

Owen is 47. Smart but not cerebral. A bit lazy. A Texas evangelical so opposed to abortion that a fellow justice called her attempt to narrow the state,s parental-consent abortion law &an unconscionable act of judicial activism.⁸ (That justice was Alberto Gonzales, now Bush,s White House counsel.) She,s profoundly pro-business. And responsible for the most restrictive open-records ruling imposed on Texans since Santa Anna seized the diaries of the defenders of the Alamo.

I beg to differ. On the contrary, Owen is one of the brightest stars in Texas,s legal firmament. She graduated third in her class at Baylor Law School. After graduation, she achieved the highest score on the Texas Bar Exam. She received a unanimous well-qualified rating from the American Bar Association. She is a member of the American Law Institute. She has sat on

the Supreme Court of Texas since 1995. In her last election in 2000, her candidacy was endorsed by all of the sizeable Texas newspapers. Prior to joining the Supreme Court, she was a partner in Andrews & Kurth, with a career in commercial litigation that spanned seventeen years. Moreover, she has a reputation for working long hours and devoting a great deal of care to opinions, including carefully articulated concurrences and dissents. In the face of her record, the accusation of laziness is laughable.

Moreover, Dubose repeats a highly questionable charge regarding Justice Gonzales's alleged criticism of Owen's purported activism in abortion cases. Examination of the actual opinions, see *In re Doe*, 19 S.W.3d 346 (Tex. 2000), reveals that Gonzales's remarks are far more ambiguous. The bulk of Gonzales's concurrence is devoted to addressing Justice Hecht's livid dissent, which accuses Gonzales and the others in the majority of enacting their own policy preferences in a rather intemperate fashion. See *id.* at 364 et seq. (Gonzales, J., concurring); see also *id.* at 366 et seq. (Hecht, J., dissenting).

Gonzales does not mention Owen by name or even cite to her separate dissent; his sole reference to the "dissents" in general is about five or six sentences removed from Gonzales's frequently cited verbiage to the effect that an excessively narrow construction of Texas's Parental Notification Act "would be an unconscionable act of judicial activism." *Id.* at 366 (Gonzales, J., concurring). Placed in the broader context of his concurrence, it is not clear that Gonzales was leveling a charge of activism against Owen. Indeed, given other passages in Gonzales's concurrence, such an accusation regarding Owen would be strange. See *id.* at 365 (Gonzales, J., concurring) (noting that "every member of this Court agrees that the duty of a judge is to follow the law as written by the Legislature").

A separate concurrence penned by Justice Enoch, who also joined Gonzales's opinion, also lends support to the notion that any criticism is directed at Justice Hecht. See *id.* 362 et seq. (Enoch, J., concurring). Enoch also does not reference Owen.

For her part, Justice Owen does not reference either of the concurrences* hardly an omission one would expect if she had been directly accused of activism by a fellow judge in a published opinion. In short, a reading of *In re Roe* does not appear to bear the weight of Dubose's charge.

As for the open-records decision that Dubose mentions, I suppose I could look it up on Westlaw. But given his analysis of Miles and *In re Roe*, I am not particularly inclined to do so. Dubose's strained, irrelevant, and weirdly hyperbolic allusion to Santa Anna and the Alamo speaks for itself. Dubose's articles are typical of the sort of objections that have been lodged against Owen, and they fairly illustrate why I place no stock in Democratic objections regarding her nomination.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: PRA 6
Sent: 6/20/2003 5:26:54 AM
Subject: : Re: !!!!
Attachments: P_08ADH003_WHO.TXT_1.html

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 20-JUN-2003 09:26:54.00
SUBJECT: : Re: !!!!
PRA 6 [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

Thank you. A little early (since no nomination yet), but should be interesting. Hope you are well.

PRA 6
06/19/2003 10:35:40 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: !!!!

FAN-FREAKING'-TASTIC NEWS!!!!!!!!!!!!!!!!!!!!!!

- att1.htm

ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <P_08ADH003_WHO.TXT_1>

FAN-FREAKING'-TASTIC NEWS!!!!!!!!!!!!!!!!!!!!

From: CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO]
To: Kyle Sampson/WHO/EOP@EOP [WHO] <Kyle Sampson>;David G. Leitch/WHO /EOP@Exchange@EOP [WHO] <David G. Leitch>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange@EOP [WHO] <Alberto R. Gonzales>
Sent: 6/20/2003 7:37:46 AM
Subject: : Bashman on Duncan hearing and implications for Boyle

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Theodore W. Ulliyot (CN=Theodore W. Ulliyot/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:20-JUN-2003 11:37:46.00
SUBJECT:: Bashman on Duncan hearing and implications for Boyle
TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

U.S. Senator John Edwards (D-NC) succeeds in effort to slow Boyle: The Senate Judiciary Committee has scheduled a confirmation hearing for Fourth Circuit nominee Allyson K. Duncan to occur on the afternoon of Wednesday, June 25, 2003. Yesterday's edition of The Charlotte Observer reported the news in an article headlined "Appeals nominee hearing planned; Former N.C. appeals judge would be first black woman in post."

While this is excellent news for both Duncan and the Fourth Circuit, it also demonstrates the degree to which U.S. Senator John Edwards (D-NC) has succeeded in his effort to derail confirmation of Fourth Circuit nominee Terrence W. Boyle, who currently serves as Chief Judge of the U.S. District Court for the Eastern District of North Carolina. President George W. Bush originally nominated Boyle to the Fourth Circuit on May 7, 2001, and yet more than two years later Boyle hasn't even received a hearing before the Judiciary Committee.

Why? Because Senator Edwards hasn't yet returned a so-called "blue slip" indicating whether he approves or disapproves the nomination. Duncan, by contrast, was nominated on April 28, 2003, nearly two full years after Boyle. And her confirmation hearing will occur next week, and she will probably be sitting on the Fourth Circuit before the Judiciary Committee holds a hearing on Boyle's nomination. Why is one nomination on a fast track and the other on a boat adrift at sea? Because Senator Edwards supports Duncan but for whatever reason doesn't want to go on record with his position on Boyle.

From: Gigot, Paul <Paul.Gigot@wsj.com>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/20/2003 1:53:03 PM
Subject: : congrats

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Gigot, Paul" <Paul.Gigot@wsj.com> ("Gigot, Paul" <Paul.Gigot@wsj.com> [UNKNOWN]
)
CREATION DATE/TIME:20-JUN-2003 17:53:03.00
SUBJECT:: congrats
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

on the pending and well deserved nomination. you follow in some giant
footsteps.

From: Leitch, David G.
To: <Kaplan, Joel>
CC: <Kavanaugh, Brett M.>
Sent: 6/20/2003 6:30:00 PM
Subject: Proposed response

Here's what I would propose as a general answer to questions 14-21. Brett and I discussed giving this type of answer without the bracketed material -- i.e., offering only the positive and not the negative -- but on balance I thought that, as I wrote it out, that sounded a bit too abrupt and non-responsive (more non-responsive than this non-responsive answer):

In response to Questions 14-21, which seek information about my participation in certain matters that may have been discussed or resolved at the White House, I would state that, as Deputy White House Chief of Staff for Policy, I become involved in some way in nearly every issue of domestic policy that might be of interest to the President and the Administration. In carrying out my responsibilities in service to the President, I review many documents and draft reports, meet with various interested parties both inside and out of government, and offer my views on policy matters to the President and senior White House staff. [Under longstanding practice, it would be inappropriate for me to comment further on the confidential discussions in which I have been involved and advice I have given in the performance of my duties as a member of the White House staff].

Question 16 might call for a different or additional response that acknowledges that people ought to follow all applicable ethics rules, and that Josh has done that and intends to do so in the future.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Ashley Snee/WHO/EOP@Exchange [WHO] <Ashley Snee>
Sent: 6/20/2003 2:52:07 PM
Subject: : RE:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 20-JUN-2003 18:52:07.00
SUBJECT: : RE:
TO: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

456-5104

From: Ashley Snee/WHO/EOP@Exchange on 06/20/2003 06:50:38 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE:

What is your fax number? I'll send you her letter.

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

From: Kavanaugh, Brett M.
Sent: Friday, June 20, 2003 6:49 PM
To: Snee, Ashley
Subject:

Do we have particular questions she wants to focus on.

Message

From: Carl Cohen (Carl Cohen) **PRA 6**
Sent: 6/21/2003 10:42:03 AM
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
Subject: : Re: query

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Carl Cohen [**PRA 6**] UNKNOWN])
CREATION DATE/TIME:21-JUN-2003 10:42:03.00
SUBJECT:: Re: query
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Brett --
Warm greetings. I sought to reach you only because I wanted to express to you my great pleasure in reading that you are (it seems very highly probable) to be nominated for a seat on the DC Circuit Court. I think that is really wonderful -- for you, for the Court, and for the country. I wish you every success.

And I think about you all the more as I await, with the rest of us, the Supreme Court's decisions in the Michigan admissions cases. On that matter I am guardedly optimistic; a very great deal hangs on the outcome, of course.

If I can be helpful to you in the advancement of the nomination, please let me know.
Stay in touch. Be well. Carl

Brett_M._Kavanaugh@who.eop.gov wrote:

> I am here.
>
>
> (Embedded
> image moved [**PRA 6**]
> to file: 06/20/2003 04:38:06 PM
> pic19988.pcx)
>
>
> Record Type: Record
>
> To: Brett M. Kavanaugh/WHO/EOP@EOP
>
> cc:
> Subject: query
>
> Brett - Carl Cohen here, at the University of Michigan. I am taking a stab with this e-mail address. Do I reach you? Let me know, please.
> Thanks and be well. Carl
>
> --
> Carl Cohen
> [**PRA 6**]
> FAX: (734) 665-1116
>
>

> Name: pic19988.pcx
> pic19988.pcx Type: PCX Image
> (application/x-unknown-content-type-pcxfile)
> Encoding: base64

--

Carl Cohen

FAX: (734) 665-1116

From: Kaplan, Joel
To: <Kavanaugh, Brett M.>;<Kupfer, Jeffrey F.>
Sent: 6/21/2003 11:05:52 AM
Subject: RE:

I feel like if there's something in the letter where we conclude that Josh took no action, that might be worth including.

Also, on the Lieberman questions: Can you please review ALL of them, including the RNC questions and the NEPD questions for appropriate responses? Remember, Josh would like to balance appropriate non-responsiveness with appropriate respect to the Committee. Thanks Brett.

I have to leave to get on a plane; available by cell if you want to read a suggested response to me. Otherwise, Jeff becomes POC for the day. Thanks man.

Joel

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

From: Kavanaugh, Brett M.
Sent: Saturday, June 21, 2003 10:39 AM
To: Kaplan, Joel; Kupfer, Jeffrey F.
Subject:

Draft answer to Evans question:

I would refer the Committee to two letters sent to it last year relating to Enron matters. Secretary Card wrote a letter to Congressman Waxman on February 1, 2002, noting Secretary Evans' public statements that he (Secretary Evans) had spoken with me about Enron's deteriorating condition and its potential impact on the trading markets. Judge Gonzales provided a copy of this letter to the Committee on April 19, 2002. In addition, Judge Gonzales' letter to the Committee of May 22, 2002, further summarized and discussed internal Executive Branch communications related to Enron's business failure, including the possible effects on the energy and financial markets. Judge Gonzales noted that these communications reflected "appropriate and responsible actions by government officials."

From: Mamo, Jeanie S.
To: <Snee, Ashley>;<Kavanaugh, Brett M.>;<Hester, Bradley E.>
Sent: 6/21/2003 6:04:55 PM
Subject: Charlotte Observer (6/19/03) re: Appeals nominee hearing planned

Posted on Thu, Jun. 19, 2003

Appeals nominee hearing planned

Former N.C. appeals judge would be first black woman in post

TIM FUNK

Observer Washington Bureau

WASHINGTON - The Senate Judiciary has tentatively scheduled a hearing for next Wednesday on the nomination of Raleigh's Allyson Duncan to the 4th U.S. Circuit Court of Appeals.

Republican Duncan, who has the support of both of North Carolina's senators, would become the first black woman to sit on the Richmond, Va.-based court. Her confirmation, which is considered likely, also would end a decadelong political impasse that has kept North Carolina -- the largest state in the circuit -- from having any representation on the appeals court.

Still, a political skirmish broke out Wednesday when Republicans suggested that Duncan's hearing was being postponed for a day to suit Sen. John Edwards' presidential campaign schedule.

The Senate Judiciary Committee had sent out a notice earlier in the week announcing that Duncan's hearing would tentatively be held next Tuesday morning.

That was apparently news to Democrat Edwards, who is a member of the committee. Edwards spokesman Mike Briggs said the senator's staff had been talking with the committee staff and Sen. Elizabeth Dole's office about finding a day that would suit all parties.

But Republican Dole sent Edwards a letter Wednesday expressing her concern about moving the hearing day and

attributing the delay to a "scheduling conflict" that Edwards reportedly had.

"While I certainly understand your desire to be present at the hearing," she wrote, "I am concerned that moving the date could potentially diminish the importance of this historic event" because fewer members of the Senate committee might not be able to attend.

N.C. GOP Chairman Bill Cobey said Edwards was putting his presidential campaign schedule ahead of his N.C. duties.

But Edwards campaign spokeswoman Jennifer Palmieri said Edwards doesn't have any campaign events scheduled for Tuesday -- at least so far.

Under consideration, she said, is a visit to the Rev. Jesse Jackson's Rainbow Coalition gathering in Chicago.

Duncan, 51, is a former state Court of Appeals judge and the new president of the N.C. Bar Association.

From: CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Bradley E. Hester/WHO/EOP@EOP [WHO] <Bradley E. Hester>; Ashley Snee/WHO/EOP@Exchange@EOP [WHO] <Ashley Snee>
Sent: 6/21/2003 2:06:21 PM
Subject: : Charlotte Observer (6/19/03) re: Appeals nominee hearing planned

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME:21-JUN-2003 18:06:21.00
SUBJECT:: Charlotte Observer (6/19/03) re: Appeals nominee hearing planned
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Bradley E. Hester (CN=Bradley E. Hester/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Posted on Thu, Jun. 19, 2003

Appeals nominee hearing planned
Former N.C. appeals judge would be first black woman in post
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Observer Washington Bureau

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REV_00238387

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Duncan, 51, is a former state Court of Appeals judge and the new president of the N.C. Bar Association.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>
Sent: 6/23/2003 9:27:53 AM
Subject: : Re: well there you have it then

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 23-JUN-2003 13:27:53.00
SUBJECT: : Re: well there you have it then
TO: Joel Kaplan (CN=Joel Kaplan/OU=WHO/O=EOP@Exchange [UNKNOWN])
READ: UNKNOWN
End Original ARMS Header

that was line i was referring to

From: Joel Kaplan/WHO/EOP@Exchange on 06/23/2003 01:25:08 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: well there you have it then

"More important, for the reasons set out below, today we endorse Justice Powell's view that student body diversity is a compelling state interest that can justify the use of race in university admissions.";

;
It doesn't really get much clearer than that.

From: Kavanaugh, Brett M.
To: <Gonzales, Alberto R.>;<Lefkowitz, Jay P.>;<Bartlett, Daniel J.>;<Leitch, David G.>;<McClellan, Scott>
Sent: 6/23/2003 3:38:25 PM
Subject: important: WH web site characterization of President's statement

See the headline below from Wh web site and how it differs from first sentence of the statement, which applauds not the decisions but rather the Court's recognition of the value of diversity. At a minimum, the headline should be in the plural.

President Applauds Supreme Court Decision

Statement by the President

I applaud the Supreme Court for recognizing the value of diversity on our Nation's campuses. Diversity is one of America's greatest strengths. Today's decisions seek a careful balance between the goal of campus diversity and the fundamental principle of equal treatment under the law.

My Administration will continue to promote policies that expand educational opportunities for Americans from all racial, ethnic, and economic backgrounds. There are innovative and proven ways for colleges and universities to reflect our diversity without using racial quotas. The Court has made clear that colleges and universities must engage in a serious, good faith consideration of workable race-neutral alternatives. I agree that we must look first to these race-neutral approaches to make campuses more welcoming for all students.

Race is a reality in American life. Yet like the Court, I look forward to the day when America will truly be a color-blind society. My Administration will continue to work toward this important goal.

From: Orr, Christopher J.
To: <McClellan, Scott>
CC: <Kavanaugh, Brett M.>;<Gonzales, Alberto R.>;<Lefkowitz, Jay P.>;<Bartlett, Daniel J.>;<Leitch, David G.>
Sent: 6/23/2003 3:52:38 PM
Subject: RE: important: WH web site characterization of President's statement

absolutely yes

From: Scott McClellan/WHO/EOP@Exchange on 06/23/2003 03:50:41 PM

Record Type: Record

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

cc: Christopher J. Orr/WHO/EOP@EOP

Subject: RE: important: WH web site characterization of President's statement

Jay and I just discussed. Jimmy - can you make sure it is changed to read, "President Applauds Supreme Court for Recognizing Value of Diversity"

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

From: Kavanaugh, Brett M.

Sent: Monday, June 23, 2003 3:38 PM

To: Gonzales, Alberto R.; Lefkowitz, Jay P.; Bartlett, Daniel J.; Leitch, David G.; McClellan, Scott

Subject: important: WH web site characterization of President's statement

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REV_00238404

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Race is a reality in American life. Yet like the Court, I look forward to the day when America will truly be a color-blind society. My Administration will continue to work toward this important goal.

Message Sent To: _____

Brett M. Kavanaugh/WHO/EOP@EOP

Alberto R. Gonzales/WHO/EOP@Exchange

Jay P. Lefkowitz/OPD/EOP@Exchange

Daniel J. Bartlett/WHO/EOP@Exchange

David G. Leitch/WHO/EOP@Exchange

From: Lefkowitz, Jay P.
To: <Kavanaugh, Brett M.>
Sent: 6/23/2003 3:59:00 PM
Subject: Re: important: WH web site characterization of President's statement

Good catch.

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

From: Kavanaugh, Brett M.
To: Gonzales, Alberto R. ; Lefkowitz, Jay P. ; Bartlett, Daniel J. ; Leitch, David G. ; McClellan, Scott

Sent: Mon Jun 23 15:38:25 2003
Subject: important: WH web site characterization of President's statement

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Race is a reality in American life. Yet like the Court, I look forward to the day when America will truly be a color-blind society. My Administration will continue to work toward this important goal.

From: Kavanaugh, Brett M.
To: <Leitch, David G.>;<Orr, Christopher J.>
CC: <Bartlett, Daniel J.>;<Lefkowitz, Jay P.>;<McClellan, Scott>;<Gonzales, Alberto R.>
Sent: 6/23/2003 6:54:26 PM
Subject: RE: First page of WH web site

I would still make the word change. The Court today upheld an admissions program that the President asked -- very publicly -- for the Court to hold unconstitutional. I think that makes it hard for him to applaud the "decisions" even though he can applaud certain of the Court's reasoning, such as its recognition of the value of diversity.

From: David G. Leitch/WHO/EOP@Exchange on 06/23/2003 06:42:27 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Daniel J. Bartlett/WHO/EOP@Exchange, Jay P. Lefkowitz/OPD/EOP@Exchange, Scott McClellan/WHO/EOP@Exchange

cc: Alberto R. Gonzales/WHO/EOP@Exchange

Subject: RE: First page of WH web site

This doesn't seem as egregious as the headline issued earlier because it continues after the bolded language to say that he's applauding the decisions "for recognizing the value of diversity" -- it's not the unadorned endorsement of the decisions themselves that the headline stated. And is not really different from saying (as the statement does) that the President applauds the Court for recognizing the value of diversity, which is something it did in the decisions.

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

From: Kavanaugh, Brett M.

Sent: Monday, June 23, 2003 6:32 PM

To: Bartlett, Daniel J.; Lefkowitz, Jay P.; McClellan, Scott

Cc: Leitch, David G.; Gonzales, Alberto R.

Subject: First page of WH web site

Sorry to bring a new issue up, but the current preview on page 1 of the White House web page says what is quoted below.

"President Bush **applauded Monday's Supreme Court decisions** for recognizing the value of diversity on our Nation's campuses and said these "decisions seek a careful balance between the goal of campus diversity and the fundamental principle of equal treatment under the law."

Again, the problem (technical but important) is that President did not applaud the decisions themselves in his actual statement.

REV_00238409

From: Orr, Christopher J.
To: <McClellan, Scott>
CC: <Kavanaugh, Brett M.>;<Leitch, David G.>;<Bartlett, Daniel J.>;<Lefkowitz, Jay P.>;<Gonzales, Alberto R.>
Sent: 6/23/2003 7:16:49 PM
Subject: RE: First page of WH web site

I apologize for the misstep. When legal issues arise, I will contact Counsel before writing a headline to ensure the right message gets across.

Jimmy

From: Scott McClellan/WHO/EOP@Exchange on 06/23/2003 06:55:17 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, David G. Leitch/WHO/EOP@Exchange, Christopher J. Orr/WHO/EOP@EOP

cc: Daniel J. Bartlett/WHO/EOP@Exchange, Jay P. Lefkowitz/OPD/EOP@Exchange, Alberto R. Gonzales/WHO/EOP@Exchange

Subject: RE: First page of WH web site

Jimmy -- can we do a quick edit to reflect this? Thanks.

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

From: Kavanaugh, Brett M.

Sent: Monday, June 23, 2003 6:54 PM

To: Leitch, David G.; Orr, Christopher J.

Cc: Bartlett, Daniel J.; Lefkowitz, Jay P.; McClellan, Scott ; Gonzales, Alberto R.

Subject: RE: First page of WH web site

I would still make the word change. The Court today upheld an admissions program that the President asked -- very publicly -- for the Court to hold unconstitutional. I think that makes it hard for him to applaud the "decisions" even though he can applaud certain of the Court's reasoning, such as its recognition of the value of diversity.

From: David G. Leitch/WHO/EOP@Exchange on 06/23/2003 06:42:27 PM

REV_00238411

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Daniel J. Bartlett/WHO/EOP@Exchange, Jay P. Lefkowitz/OPD/EOP@Exchange, Scott McClellan/WHO/EOP@Exchange

cc: Alberto R. Gonzales/WHO/EOP@Exchange

Subject: RE: First page of WH web site

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

From: Kavanaugh, Brett M.

Sent: Monday, June 23, 2003 6:32 PM

To: Bartlett, Daniel J.; Lefkowitz, Jay P.; McClellan, Scott

Cc: Leitch, David G.; Gonzales, Alberto R.

Subject: First page of WH web site

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Again, the problem (technical but important) is that President did not applaud the decisions themselves in his actual statement.

REV_00238412

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 6/24/2003 7:40:49 AM
Subject: FW: Recap from Kavanaugh interview -- questions

Let's talk

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

From: Simendinger, Alexis [<mailto:asimendinger@nationaljournal.com>]
Sent: Monday, June 23, 2003 7:42 PM
To: Snee, Ashley
Subject: Re: Recap from Kavanaugh interview -- questions

Hi Ashley,

Just to organize from the conversation with Brett --

Outstanding questions we discussed:

- 1) How is the Vice President handling his fundraising in terms of the Naval Observatory/residence? Can he make fundraising calls or campaign solicitations from the compound, which is military? Do DoD regulations against partisan political activity on military installations not apply to the Naval Observatory? [I have also talked with Jennifer about this question, and she wanted to talk with you.]
- 2) Are major donors being offered the opportunity to visit Crawford during Bush's vacation in August? At what level of giving would they qualify to visit the ranch? Remember, part of the question: Is the White House selling access?
- 3) The re-election campaign has begun to reimburse the White House/Treasury for campaign-related expenses, Brett said. Please give an example of White House expenses being picked up by the campaign, at what cost, and is reimbursement done monthly, etc.? Looking for specifics here....
- 4) Travel. Describe the total costs for a recent Bush trip that was either all campaign or partially official business and describe the total costs and how the campaign picked up, or will pick up, the appropriate expenses. What is or was the breakdown in dollar terms? Looking for specifics here -- Georgia trip? New York trip? (This information in past years was routinely requested by Congress [Republicans, as a matter of fact], supplied by the White House, and widely reported.) Does Bush intend to be transparent about this information pre-emptively?

On the Georgia trip, how many White House staff members were considered "official" travelers for the purposes of expenses, and how many were paid for by the campaign? Same for New York. Brett said it depends on each trip, and I want to offer an example.

Thanks, Alexis
202-739-8490

From: CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [UNKNOWN]
To: Benjamin A. Powell/WHO/EOP@EOP [UNKNOWN] <Benjamin A. Powell>;Charlotte L. Montiel/WHO/EOP@Exchange [UNKNOWN] <Charlotte L. Montiel>;David G. Leitch/WHO/EOP@Exchange [UNKNOWN] <David G. Leitch>;Jonathan F. Ganter/WHO/EOP@EOP [UNKNOWN] <Jonathan F. Ganter>;Nanette Everson/WHO/EOP@EOP [UNKNOWN] <Nanette Everson>;Patrick J. Bumatay/WHO/EOP@Exchange [UNKNOWN] <Patrick J. Bumatay>;Jennifer R. Brosnahan/WHO/EOP@EOP [WHO] <Jennifer R. Brosnahan>;John B. Bellinger/NSC/EOP@EOP [UNKNOWN] <John B. Bellinger>;David S. Addington/OVP/EOP@EOP [OVP] <David S. Addington>;Kyle Sampson/WHO/EOP@EOP [UNKNOWN] <Kyle Sampson>;Jennifer G. Newstead/WHO/EOP@EOP [UNKNOWN] <Jennifer G. Newstead>;Edward McNally/WHO/EOP@EOP [UNKNOWN] <Edward McNally>;Brett M. Kavanaugh/WHO/EOP@EOP [UNKNOWN] <Brett M. Kavanaugh>;J. Elizabeth Farrell/WHO/EOP@EOP [UNKNOWN] <J. Elizabeth Farrell>;James W. Carroll/WHO/EOP@EOP [UNKNOWN] <James W. Carroll>;Reginald J. Brown/WHO/EOP@EOP [UNKNOWN] <Reginald J. Brown>;Elizabeth Bingold/WHO/EOP@EOP [UNKNOWN] <Elizabeth Bingold>;H. Christopher Bartolomucci/WHO/EOP@EOP [UNKNOWN] <H. Christopher Bartolomucci>;Theodore W. Ulyot/WHO/EOP@EOP [UNKNOWN] <Theodore W. Ulyot>
Sent: 6/24/2003 5:48:08 AM
Subject: : Judge's schedule

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [UNKNOWN])

CREATION DATE/TIME:24-JUN-2003 09:48:08.00

SUBJECT:: Judge's schedule

TO:Benjamin A. Powell (CN=Benjamin A. Powell/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Charlotte L. Montiel (CN=Charlotte L. Montiel/OU=WHO/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Jonathan F. Ganter (CN=Jonathan F. Ganter/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Patrick J. Bumatay (CN=Patrick J. Bumatay/OU=WHO/O=EOP@Exchange [UNKNOWN])

READ:UNKNOWN

TO:Jennifer R. Brosnahan (CN=Jennifer R. Brosnahan/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:John B. Bellinger (CN=John B. Bellinger/OU=NSC/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])

READ:UNKNOWN

TO:Kyle Sampson (CN=Kyle Sampson/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Jennifer G. Newstead (CN=Jennifer G. Newstead/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Edward McNally (CN=Edward McNally/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:James W. Carroll (CN=James W. Carroll/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Reginald J. Brown (CN=Reginald J. Brown/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Elizabeth Bingold (CN=Elizabeth Bingold/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:H. Christopher Bartolomucci (CN=H. Christopher Bartolomucci/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

TO:Theodore W. Ulyot (CN=Theodore W. Ulyot/OU=WHO/O=EOP@EOP [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

As you may know, the Judge will be on travel in California and Arizona from Wednesday afternoon through Saturday of this week. David Leitch will also be out of the office from mid-Thursday through Friday. If you have any items to discuss with the Judge/David before their respective departures, please let me know.

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On a related note, staff meeting has been cancelled for Friday, June 27; and Friday, July 4th.

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Thanks!

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;
;
;

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/24/2003 6:33:54 AM
Subject: : Free the Michigan 4

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])
CREATION DATE/TIME:24-JUN-2003 10:33:54.00
SUBJECT:: Free the Michigan 4
BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Attached is a letter recently received on the Sixth Circuit.

The Honorable William H. Frist
Majority Leader
United States Senate

Dear Majority Leader Frist:

We write to you concerning a grave injustice that is endangering the well being of countless Americans and putting our system of justice in jeopardy in a significant part of this country. We refer to the continued, intentional obstruction of the nominations of Henry W. Saad, Susan B. Neilson, David W. McKeague, and Richard A. Griffin to the U.S. Court of Appeals for the Sixth Circuit, as well as the nominations of Thomas L. Ludington and Daniel P. Ryan to the U.S. District Court for the Eastern District of Michigan. This obstruction is not only harming the lives and careers of good, qualified judicial nominees, it is prolonging a dire emergency in the administration of justice; an emergency that has brought home to numerous Americans the truth of the phrase "justice delayed is justice denied."

As you know, the two Michigan Senators continue to block Judiciary Committee hearings regarding these nominees. They refuse to allow the United States Senate to complete its Constitutional duty of Advise and Consent, denying the nominees the opportunity to address any honest objections to their records or qualifications and their fellow Senators the right to air the relevant issues and vote according to their consciences. All of this taking place during an emergency in the Sixth Circuit Court of Appeals.

We join with the members of Michigan's Congressional delegation who wrote Chairman Hatch on February 26, 2003 to express their concern that "if the President's nominations are permitted to be held hostage, for reasons not personal to any nominee, then these judicial seats traditionally held by judges representing the citizens of Michigan may be filled with nominees from other states within the Sixth Circuit. This would be an injustice to the many citizens who support these judges and who have given much to their professions and government in Michigan."

Our interest, however, is not parochial. We are concerned about the Sixth Circuit as a whole, which continues to be tainted by scandal and burdened by high caseloads. The facts as to the Sixth Circuits are undisputed. The Sixth Circuit is under-staffed, with 4 of its 16 seats vacant. The workload is heavy in the Sixth Circuit and the judges are few. According to the Administrative Office of the United States Courts, the 6th Circuit ranks next to last out of the 12 circuit courts in the time it takes to complete its cases. Since 1996 each active

judge has had to increase his or her number of decisions by 46% -- more than three times the national average. But even this extraordinary effort has not been sufficient. In the recent past, the Sixth Circuit has taken as many as 15.3 months to reach a final disposition of an appeal. With the national average at only 10.9 months, this means the Sixth Circuit takes over 40% longer than the national average to process a case.

We urge you to put an end to this obstruction and bring these nominations forward so that honest debate may ensue, and so that we may address the severe shortage of judges in the Sixth Circuit.

The last time the Sixth Circuit was this understaffed former Chief Judge Gilbert S. Merritt said that it was handling "a caseload that is excessive by any standard." Judge Merritt also wrote that the court was "rapidly deteriorating, understaffed and unable to properly carry out their responsibilities." That is precisely the case today. And real Americans' lives are being affected as a result.

Senator, these are not just dry statistics. The crisis is real and it affects everyday Americans. Let us cite a few examples.

1. Ohio Attorney General Betty Montgomery has said that numerous death penalty appeals before the 6th Circuit are experiencing prolonged delays. For example, the appeal of Michael Beuke has not been acted on in more than two years and Clarence Carter has had a motion pending before the 6th Circuit for three years. [The Cincinnati Post, March 25, 2002.]

2. District Court Judge Robert Holmes Bell describes the 6th Circuit as in a "crisis" because of the vacancies, and he added, "We're having to backfill with judges from other circuits, who are basically substitutes. You don't get the same sense of purpose and continuity you get with full-fledged court of appeal judges." [The Grand Rapids Press, February 21, 2002.]

3. Cincinnati Attorney Elizabeth McCord, as of the end of 2001, had been waiting fifteen months just to have oral arguments scheduled for her client's appeal in a job-discrimination suit, according to a December 26, 2001 article in The Cincinnati Post. In that interim, her client had died. The article describes delays like this as "commonplace" because vacancies have left the court at "at half-strength and have created a serious backlog of cases.

4. Mary Jane Trapp, president of the Ohio Bar Association, said, "Colleagues of mine who do a lot of federal work are continuing to complain (about the delays). When you don't have judges appointed to hear cases, you really are back to the adage of 'justice delayed is justice denied.'" [The Cincinnati Post, December 26, 2001.]

The Sixth Circuit has been forced to use district court judges and Sixth Circuit senior judges to keep pace with its caseload. This practice, in turn, affects the efficiency of the district courts. We understand that the Sixth Circuit currently hears some arguments via telephone, and rules on some cases according to written arguments rather than oral arguments. Each three-judge panel on the Sixth Circuit not only must hear more cases each year; it must spend less time on each case in order to maintain some control over the docket. Some cases may not be heard despite their merit. In the meantime, the administration of justice suffers.

Decisions from the Sixth Circuit are slower in coming, based on less careful deliberation and as a result are less likely to be just and predictable. The effects on our people, our society and our economy are far reaching. Uncertainty, transaction costs and even litigation are increased as people strive to continue doing business when the lines of

swift justice and clear precedent are being blurred.

Senator, President Bush has done his part to alleviate this crisis. Over the past two years he has nominated eight qualified people to the Sixth Circuit Court of Appeals, with three of them designated to cure judicial emergencies. Four of these nominees continue to languish without hearings because of the obstruction of the two Michigan Senators.

We now ask that the Senate fulfill its role in the Constitutional nomination process by holding hearings and allowing a vote on the Michigan nominees.

Best regards,

Charles E. Rice Bernard
Dobranski
Professor Emeritus Dean
University of Notre Dame Law School Ave Maria School
of Law

Douglas W. Kmiec Mary Ann
Glendon
Dean and St. Thomas More Professor Learned Hand
Prof. of Law
Catholic University of America School of Law Harvard Law School

Gerard V. Bradley Joseph
L. Falvey, Jr.
Professor Assoc.
Dean of Acad. Affairs
University of Notre Dame Law School Ave Maria School
of Law

Douglas Kahn Mollie Murphy
Paul G. Kahn Professor of Law Professor
University of Michigan Law School Ave Maria School
of Law

Stephen J. Safranek Tom Ludden,
President
Professor
Federalist Society
Ave Maria School of Law Michigan
Lawyers
Chapter

Steven J. Murphy, Immediate Past President
Federalist Society
Michigan Lawyers Chapter

cc. Chairman Orrin G. Hatch
Senator Michael McConnell
Senator Michael Dewine
Senator George Voinovich
Senator James Bunning
Senator Lamar Alexander

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

From: Miranda, Manuel (Frist) [mailto:Manuel_Miranda@frist.senate.gov]
Sent: Monday, June 23, 2003 10:12 AM
To: Joseph Cella (jcella@avemarialist.org)
Subject: RE: Free the Michigan 4

Could you copy it into the text of the email, I won't have any comment just to know.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 6/24/2003 1:46:31 PM
Subject: FW: candidate bush comments on supreme court nominations

FYI - i asked for anything he said as a candidate...

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

From: Bravo, Brian
Sent: Monday, June 23, 2003 4:19 PM
To: Snee, Ashley
Subject: candidate bush comments on supreme court nominations

PRESIDENTIAL DEBATE

October 3, 2000

LEHRER: All right. On the--on the Supreme Court question, should a voter assume--you're pro-life. You've just stated your position.

Gov. BUSH: I am pro-life.

LEHRER: Should a voter assume that all judicial appointments you make to the Supreme Court or any other court, federal court, will in f--also be pro-life?

Gov. BUSH: The voters should assume that I have no litmus test on that issue or any other issue. But the voters will know I'll put competent judges on the bench, people who will strictly interpret the Constitution and will not use the bench fo--to write social policy. And that's going to be a big difference between my opponent and me. I--I believe that--I believe that the judges ought not to take the place of the legislative branch of government, that they're appointed for life and that they ought to look at the Constitution as sacred. They--they shouldn't misuse their bench. I don't believe in liberal activist judges. I believe in s--I believe in strict constructionists. And those are the kinds of judges I will appoint. I've ha--I've named four Supreme Court judges in the state of Texas. And I would ask the people to check out their qualifications, their--their deliberations. They're good solid men and women who have made good sound judgments on behalf of the people of Texas.

From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/24/2003 9:47:44 AM
Subject: : FW: candidate bush comments on supreme court nominations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:24-JUN-2003 13:47:44.00
SUBJECT:: FW: candidate bush comments on supreme court nominations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

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Sent: Monday, June 23, 2003 4:19 PM
To: Snee, Ashley
Subject: candidate bush comments on supreme court nominations

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From: Kavanaugh, Brett M.
To: <Snee, Ashley>
Sent: 6/24/2003 2:14:16 PM
Subject: Re: FW: candidate bush comments on supreme court nominations

there is more than this

From: Ashley Snee/WHO/EOP@Exchange on 06/24/2003 01:46:31 PM

Record Type: Record

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

cc:

Subject: FW: candidate bush comments on supreme court nominations

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From: Bravo, Brian

Sent: Monday, June 23, 2003 4:19 PM

To: Snee, Ashley

Subject: candidate bush comments on supreme court nominations

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From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 6/24/2003 2:15:07 PM
Subject: RE: FW: candidate bush comments on supreme court nominations

Yeah, I thought so - I've asked him to keep checking

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

From: Kavanaugh, Brett M.
Sent: Tuesday, June 24, 2003 2:14 PM
To: Snee, Ashley
Subject: Re: FW: candidate bush comments on supreme court nominations

there is more than this

From: Ashley Snee/WHO/EOP@Exchange on 06/24/2003 01:46:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: candidate bush comments on supreme court nominations

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From: Bravo, Brian
Sent: Monday, June 23, 2003 4:19 PM
To: Snee, Ashley
Subject: candidate bush comments on supreme court nominations

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From: CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 6/24/2003 10:16:21 AM
Subject: : RE: FW: candidate bush comments on supreme court nominations

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:24-JUN-2003 14:16:21.00
SUBJECT:: RE: FW: candidate bush comments on supreme court nominations
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yeah, I thought so - I've asked him to keep checking

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

From: Kavanaugh, Brett M.
Sent: Tuesday, June 24, 2003 2:14 PM
To: Snee, Ashley
Subject: Re: FW: candidate bush comments on supreme court nominations

there is more than this

From: Ashley Snee/WHO/EOP@Exchange on 06/24/2003 01:46:31 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: FW: candidate bush comments on supreme court nominations

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Sent: Monday, June 23, 2003 4:19 PM
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October 3, 2000

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REV_00238446

branch of government, that they're appointed for life and that they ought to look at the Constitution as sacred. They--they shouldn't misuse their bench. I don't believe in liberal activist judges. I believe in s--I believe in strict constructionists. And those are the kinds of judges I will appoint. I've ha--I've named four Supreme Court judges in the state of Texas. And I would ask the people to check out their qualifications, their--their deliberations. They're good solid men and women who have made good sound judgments on behalf of the people of Texas.

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 6/24/2003 2:28:57 PM
Subject: call me

From: Leitch, David G.
To: <Kavanaugh, Brett M.>;<Bartolomucci, H. Christopher>;<Newstead, Jennifer G.>;<Sampson, Kyle>;<Powell, Benjamin A.>;<Bartolomucci, H. Christopher>;<Brown, Reginald J.>;<Brosnahan, Jennifer R.>
Sent: 6/24/2003 3:28:50 PM
Subject: FW:

Please let me or Jen know if you receive such an inquiry. We're trying to channel all of the 9/11 commission contacts with our office through Jen so that we can handle in a coherent way.

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

From: Addington, David S.
Sent: Tuesday, June 24, 2003 12:24 PM
To: Leitch, David G.
Cc: Newstead, Jennifer G.
Subject:

A person from the 9/11 Commission just left a voicemail on my phone saying that she was collecting telephone, cell phone, fax, secure phone, and secure fax numbers for all the various government entities with whom the Commission is working. I wanted to give you a heads up, so that you could instruct your assistants not to give out such information (unless you want it given out with respect to yourselves).

For me, the Commission's general counsel has my regular phone and regular fax numbers, and that's all he needs to get in contact with me. (I am not interested in having random Commission employees calling me on my cell phone.)

From: Grubbs, Wendy J.
To: <Nelson, Carolyn>
CC: <Kavanaugh, Brett M.>
Sent: 6/24/2003 7:28:17 PM
Subject: Is the Collins Judge meeting set?

From: Grubbs, Wendy J.
To: <Kavanaugh, Brett M.>
Sent: 6/25/2003 12:39:02 PM
Subject: Did you look at

Call Isit for judge? Need to start calls. ok?

From: Kavanaugh, Brett M.
To: <Grubbs, Wendy J.>
Sent: 6/25/2003 1:13:39 PM
Subject: Meeting on Friday

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 06/25/2003 01:13 PM -----

"Miranda, Manuel (Frist)"

06/25/2003 01:07:04 PM

Record Type: Record

To:

cc:

Subject: Meeting on Friday

We would like to invite you to a meeting for organizations to discuss Judicial Nominations...in the Senate, in the Capitol S 211, at 11 am on Friday. Please let me know if you can make it.

Manuel Miranda

Counsel to the Majority Leader

228-3462

REV_00238487

From: Grubbs, Wendy J.
To: <Ojakli, Ziad>;<Hobbs, David W.>;<Pelletier, Eric C.>;<Kavanaugh, Brett M.>
Sent: 6/25/2003 4:25:02 PM
Subject: FW: Colleague Letter!

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

From: Miranda, Manuel (Frist) [mailto:Manuel_Miranda@frist.senate.gov]

Sent: Wednesday, June 25, 2003 4:24 PM

To: Simmons, Kyle (McConnell); Abegg, John (McConnell); Grubbs, Wendy J.; Delrahim, Makan (Judiciary); Dahl, Alex (Judiciary)

Subject: Colleague Letter!

Importance: High

Just FYI, the Frist is out to colleagues. But note, Hatch told me personally and I think he told the Leader as well that he was against sending the Letter of 51.

From: Leitch, David G.
To: <Powell, Benjamin A.>;<Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
CC: <Stanzel, Scott>
Sent: 6/26/2003 9:31:04 AM
Subject: RE: Wisconsin Commn Story

It's always the headlines that kill you.

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

From: Powell, Benjamin A.
Sent: Thursday, June 26, 2003 9:02 AM
To: Gonzales, Alberto R.; Leitch, David G.; Kavanaugh, Brett M.
Cc: Stanzel, Scott
Subject: Wisconsin Commn Story

The article is not as bad as the headline.

Original URL: <http://www.jsonline.com/news/gen/jun03/150748.asp>

Board will name judicial candidates

Senators reactivate panel in light of appeals vacancy

By CRAIG GILBERT

Last Updated: June 25, 2003

Washington - After discussions with the White House and House Republican F. James Sensenbrenner Jr., Senate Democrats Herb Kohl and Russ Feingold have reactivated a bipartisan Wisconsin commission to recommend finalists for an important vacancy on the federal appeals court.

The move appears to avert for now a political collision over the sensitive judicial post, though a fight is certainly possible down the road.

The vacancy, on the Seventh Circuit Court of Appeals in Chicago, results from Judge John Coffey's decision to assume senior status and a reduced workload.

Over White House resistance, Kohl and Feingold have insisted on the commission process, which has been used over the past 20 years to vet most Wisconsin candidates for federal judge and prosecutor.

The two senators enjoy considerable leverage on the issue, because both sit on the Judiciary Committee, which approves new judges.

Kohl said he believed the White House concluded that fighting the commission process would lead to a "very, very difficult" nomination battle.

"They've got two senators on the Judiciary Committee, both senators taking the same position . . . It would be a bad idea to just say, 'We're going to wreck the commission.' They made a smart decision."

Kohl said that in recent talks, the White House had signaled its willingness to send its preferred candidate through the commission.

"We're confident the nominee chosen by the president will receive the full support of senators Feingold and Kohl," said White House spokesman Scott Stanzel.

But Stanzel said the use of a nominating commission "is not up to the White House because this is the process the senators are using to help them in their duty to advise the president."

The White House has also said in recent weeks that when it comes to appellate vacancies, it would not be bound by the list of finalists coming out of a nominating commission.

REV_00238534

So while Wednesday's announcement makes a smooth nomination possible, it does not guarantee one. The two senators could still find the president's preferred choice objectionable. The White House could choose to press ahead over those objections.

Much at stake

What makes either scenario possible is the high political stakes involved.

Appellate vacancies have provoked the sharpest battles between the Republican president and Senate Democrats, due to the crucial role appellate judges play in shaping law. The Court of Appeals is just one tier down in the federal judiciary from the Supreme Court.

Kohl and Feingold have defended the commissions as a bipartisan mechanism for recommending nominees. In practice, it also has given the senators a direct role in winnowing the names that are passed along to the White House.

Sensenbrenner said the White House is "willing to go through the (commission) process" but reserves the right to nominate whom it wants when it wants.

"That's why it is important for the commission to get down to work quickly," he said.

The 12-member commission will start taking applications immediately for the vacancy and hopes to produce a list of five or so finalists in as little as 30 days, said Jason Westphal of the State Bar of Wisconsin. The bar staffs the commission.

The nominating commission will be chaired by the incoming dean of Marquette University Law School, Joe Kearney, and the dean of the University of Wisconsin Law School, Ken Davis.

Two of its members were named by Kohl: Steve Glynn and Greg Conway.

Two were named by Feingold: Charles Curtis and James H. Hall Jr.

Four were named by Sensenbrenner: Rick Graber, Mark Neumann, William Curran and John Savage.

Two were named by the State Bar: James Brennan and John Knuteson.

From the June 26, 2003 editions of the Milwaukee Journal Sentinel

From: Miranda, Manuel (Frist) <Manuel_Miranda@frist.senate.gov>
BCC: Brett M. Kavanaugh (Brett M. Kavanaugh/WHO/EOP [WHO])
Sent: 6/26/2003 6:48:21 AM
Subject: : S Ct /Just Out/ Frist
Attachments: P_8JCIH003_WHO.TXT_1

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> ("Miranda, Manuel (Frist)" <Manuel_Miranda@frist.senate.gov> [UNKNOWN])

CREATION DATE/TIME:26-JUN-2003 10:48:21.00

SUBJECT:: S Ct /Just Out/ Frist

BCC:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])

READ:UNKNOWN

End Original ARMS Header

On Supreme Court(- frist-nominat...pdf

ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P_8JCIH003_WHO.TXT_1>

United States Senate

OFFICE OF THE MAJORITY LEADER
WASHINGTON, DC 20510-7000

June 25, 2003

Dear Colleague,

In light of numerous letters of colleagues addressing the possibility of a Supreme Court nomination this summer, I wanted to write to outline my expectations of a fair and orderly process for Senate consideration of a Supreme Court nomination if any Justice retires at the end of this Supreme Court Term.

First, to perform our obligations to the Supreme Court and the American people, the Senate should act on any nominee within a reasonable time to ensure, if possible, that a new Justice can assume office before the Supreme Court resumes hearing cases this fall.

In most instances in the past, the Senate has acted promptly to consider a President's nominee to the Supreme Court. Most recently, for example, both of President Clinton's nominees to the Supreme Court received Senate votes before the Senate's August recess, after receiving Judiciary Committee hearings in July. Consistent with that schedule, if there is a retirement at the end of the Supreme Court's Term and a nomination is submitted shortly thereafter, I anticipate the Judiciary Committee would hold hearings in July and the full Senate would vote on the nomination before the Senate recess in August.

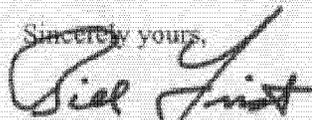
Second, the Senate must vote on the President's nominee to either confirm or reject the nominee. The Constitution provides that the Senate shall advise and consent on a President's nominees to the Supreme Court. Since 1789, in accord with the Constitution and to fulfill its Constitutional responsibility, the Senate has consistently afforded Presidential nominees to the Supreme Court a vote of the Senate (except, of course, when the nominee withdrew before a vote).

Any tactics to endlessly delay the process and prevent the Senate from performing its Constitutional responsibility to vote on a Supreme Court nomination would be inconsistent with the Constitution and contrary to the Senate's traditional practice for more than 200 years.

As Majority Leader, I will work to ensure that a Supreme Court nominee by a President of either party receives a fair up or down vote in the Senate.

The Senate has few Constitutional responsibilities as important as exercising its advice and consent on a President's nominee to the Supreme Court. I look forward to working with each of you to ensure a fair and orderly Senate process in the event of a Supreme Court nomination this summer or in the future.

Sincerely yours,



Bill Frist, M.D.

From: Nelson, Carolyn
To: <Leitch, David G.>;<Kavanaugh, Brett M.>;<Addington, David S.>
CC: <Bumatay, Patrick J.>;<Montiel, Charlotte L.>
Sent: 6/26/2003 10:53:03 AM
Subject:
Attachments: CALIFORNIA.doc

Judge's schedule in case you need to reach him...

Schedule of Judge Gonzales

Travel to San Francisco, California
and Phoenix, Arizona

June 25-27, 2003

Wednesday, June 25, 2003

2:30pm Depart West Basement en route Dulles International Airport via Carpet.

3:30pm Arrive Dulles International.

4:50pm Depart Dulles en route San Francisco via United Airlines flight #1048.
Seat 23D (aisle). Dinner served.
American Express Travel Office: 866-596-2769
After hours: 800-354-2769 Access Code: **PRA 6**

7:23pm Arrive San Francisco International.
WEATHER: Sunny, 59F / 80F

Met by: Driver w/ Virgin Limo (driving town car). Driver will meet you at baggage carousel and will be holding a sign with your name.

Virgin Limo: 1-800-421-5466.

8:15pm Arrive Fairmont Hotel San Francisco
Confirmation number: **PRA 6**
The Fairmont San Francisco
950 Mason Street
San Francisco, California 94108
Telephone: (415) 772-5000
Fax: (415) 772-5013

RON: Fairmont Hotel - San Francisco

NOTE: Giants have home game at Pac Bell Park at 7:15pm vs. Los Angeles.

Thursday, June 26, 2003

Weather: Partly cloudy 59F / 80 F

11:00 am Meet Fred Lowell (**PRA 6**) in Lobby of Fairmont per Ruben. Fred will walk with you to the Pacific Union Club for a cup of coffee (across street from Fairmont). Fred's bio is in folder.

11:45 am Proceed back to Fairmont.

11:55am Check out of room. Leave bags at front desk with Valet.

12:10pm Meet Bob Balzer ([PRA 6] cell) in front of Venetian Room. Bob will escort you to your seat.
Other contacts: Dianne Donahue [PRA 6] (cell) or Debbie Foster: [PRA 6] (cell).

12:15pm-
2:00pm

REMARKS: California Newspaper Publishers Association Luncheon at the Fairmont Hotel (1hr 45min) *SEE ATTACHED PROGRAM

Notes: 20 mins remarks and Q&A re: judges/judicial nomination process, affirmative action. SF Mayor Willie Brown in attendance 1:10 introduction. 1:15 remarks begin. Bob Balzer introduces you.

Seating: President's table:

1. Steve Laxineta CNPA President
2. Dianne Laxinete wife
3. Judge Gonzales
4. Bob Balzer Publisher of Inland Valley Daily Bulletin
5. Will Fleet Convention Chair
6. Jennifer Thompson Significant other
7. Hal Fuson VP & Legal Counsel for Copley Press
8. Pam Fuson wife

Press: Assume you are on the record, but no media taping.

2:00pm Retrieve bags from Valet.

2:10pm Meet driver from Virgin Limo outside of front door to hotel for transportation to SFO.

4:30pm- Depart San Francisco en route Phoenix, AZ via UA flt 1055:
Seat 6A (no aisle seats available). No meal service.

6:24pm Arrive Phoenix, AZ.
WEATHER: Sunny 80F / 110F
Note: Becky Arrives Phoenix @ 12:19 pm via America West flt #82 from Reagan and will pick up rental car (SUV) at Enterprise desk. Confirmation # [PRA 6] (59.99 p/day, AZ Republicans paying- credit card previously submitted).

6:40pm Met by: Mario Guerrero w/ Naleo. [PRA 6] (cell). Will meet you at Baggage Claim area and will be holding a sign with your name. Driving towncar.

7:30pm Arrive Pointe South Mountain Resort for check-in.
7777 South Pointe Parkway
Phoenix, AZ 85044
866-267-1321 (ph)

602-431-6535 (fax)
Confirmation # [PRA 6]

RON: Phoenix, Arizona-Pointe South Mountain Resort

Friday, June 27, 2003

Weather: Sunny, 82 F/ 110F

6:45am

Depart Pointe South en route Hyatt Regency Downtown .

Note: Drive Time about 35 mins w/ allowance for rush hour traffic.

Driving Directions	Distance
<input type="checkbox"/> 1. Start out going North on S POINTE PKWY toward W BASELINE RD.	0.07 Miles
<input type="checkbox"/> 2. Turn RIGHT onto W BASELINE RD.	0.27 Miles
<input type="checkbox"/> 3. Merge onto I-10 W via the ramp- on the left- toward PHOENIX.	6.00 Miles
<input type="checkbox"/> 4. Merge onto I-17 N/US-60 W via exit number 150A toward FLAGSTAFF.	1.80 Miles
<input type="checkbox"/> 5. Take the exit- exit number 195B- toward 7TH ST/CENTRAL AVE.	0.20 Miles
<input type="checkbox"/> 6. Turn SLIGHT LEFT onto E MARICOPA FRWY.	0.04 Miles
<input type="checkbox"/> 7. Turn SLIGHT RIGHT onto S 7TH ST.	1.32 Miles
<input type="checkbox"/> 8. Turn LEFT onto E WASHINGTON ST.	0.35 Miles
<input type="checkbox"/> 9. Turn RIGHT onto N 2ND ST.	0.09 Miles

7:20am Arrive Hyatt Regency.

Hyatt Regency Downtown
122 N. Second Street
Phoenix, AZ 85004

Note: Complimentary Valet Parking.

Met by: Camilla Strongin [PRA 6] (cell) and Bob Fannon
(Arizona Republican Party Chair) at Valet parking area.

7:30am

VIP RECEPTION AND PHOTO-OP (Sundance Room-1st floor)

Note: 35-50 participants

8:00 am Proceed to Regency Ballroom for seating.

8:00am-
9:00am

**KEYNOTE REMARKS Arizona State Republican Party
Fundraiser Breakfast (Regency Ballroom)**

Topic: Up to you. Job, relationship with the President, etc.

Note: 15-20 minutes remarks. Introduced by Bob Fannon. 200-300 attendees.

Seating: You will be seated at head table w/ Bob and Lisa Fannon, David Gonzales, U.S. Marshal for AZ, Paul Charlton, U.S. Attorney (TBD), Frank Rivera, President of Phoenix Hispanic Chamber. Breakfast served at 8. You will speak at 8:30.

Press: Open Press. You are NOT expected to participate in interviews.

9:00am Depart Hyatt Regency en route Pointe South Mountain Resort.

9:40am Arrive Pointe South Mountain Resort for downtime/ speech prep.
Note: Becky has meeting at ASU at 11:00am

12:15pm Proceed to Main Lobby of resort.
Met by: Larry Gonzales [PRA 6] (cell) for walk to Pavilion.

12:30pm-
2:30pm

**KEYNOTE REMARKS: National Association of Latino Elected
Officials Luncheon (Pavilion) *SEE ATTACHED PROGRAM**

Topic: Hispanic issues, affirmative action, judicial apts.

Notes: You speak at beginning of luncheon (12:40). Introduced by Rosario Marin. Eduardo Aguirre and Ruben Barrales follow you with remarks.

Seating: Head Table with Rosario, Ruben, Eduardo Aguirre, Arturo Vargas (Executive Director of NALEO), TBD officials.

Press: CSPAN will cover this speech live.

2:30pm Depart Pavilion.

RON: Phoenix, Arizona-Pointe South Mountain Resort

Saturday, June 28, 2003

Phoenix, AZ

Weather: Sunny 82F / 110F

12:45pm Late check out at hotel.

12:55pm Depart Pointe South Mountain Resort en route Phoenix Airport.

1:15pm Arrive Enterprise counter for rental car drop-off.

1:30pm Arrive America West ticket counter for check in.
Flight # 46, no meal service. Seat assignments available at airport.

2:41pm Depart Phoenix en route Washington, D.C.

9:59pm Arrive National Airport.

10:15pm Depart National via Carpet en route White House.

10:30pm Arrive White House.

From: Bumatay, Patrick J.
To: <Kavanaugh, Brett M.>
Sent: 6/26/2003 10:56:51 AM
Subject: FW: Judges?

All the info that Alicia was compiling on the judicial nomination process was for an accomplishments list.

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

From: Clark, Alicia P.
Sent: Thursday, June 26, 2003 10:54 AM
To: Bumatay, Patrick J.
Subject: RE: Judges?

accomplishments list

From: Parell, Christie
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>;<Oca - Office Of Cabinet Affairs>
Sent: 6/26/2003 4:06:24 PM
Subject: Agency FOIA Requests
Attachments: FOIA 06-26-03.doc

<>

AGENCY FOIA REQUESTS

DOC

Received on 6/13/03, from **Steve George, Willie R. Etheridge Seafood Company**, requesting data on large coastal shark landing in longline category 07.

Received 6/16/03, from **Rosario Z. Isip, eCivis, LLC**, Pasadena, California, requesting copies of a city or county's funded grant application from the most recent award cycle for the following programs: (a) Economic Development support for Planning Program; (b) Economic Development Technical Assistance Program.

Received 6/17/03, from **Larry Shelton**, requesting information regarding petroleum industry contracts in Iraq.

Received 6/17/03, from **Aaron Colangelo, Natural Resources Defense Council**, requesting all records reflecting communications between the National Marine Fisheries Service and the Environmental Protection Agency on the effects or potential effects of atrazine on threatened or endangered species or their habitat, and any records of any formal or informal consultations on atrazine under the Endangered Species Act.

Received 6/17/03, from **Carol Iancu, The Commonwealth of Massachusetts**, request for records on NOAA's role in the preparation and review of the Climate Action Report, as well as the Environmental Protection Agency's role in the preparation and submittal of the report to the United Nations.

Received 6/19/03, from **Sajit Gandhi** of the **National Security Archive**, requesting all records concerning the potential impact of Peru's Camisea Natural Gas Project on the environment and people living in proximity to the project area

Received 6/19/03, from **Douglas Barnes**, requesting records concerning two reports issued by the Working Group on Intellectual Property Rights of the Information Infrastructure Task Force.

Received 6/19/03, from **Daniel Harris, Harris & Hull, PLC**, requesting a copy of all documents on the January or February 2003 incident in which six American crab boats were caught by the United States Coast Guard fishing in Russian waters, - - in particular, the Notices of Violations and Assessment issued by the National Marine Fisheries Service which were served between March 12, 2003, and March 20, 2003.

DoEd

Becki J. Lesser, Attorney at Law, has requested copies of all correspondence between the Department and Congressmen Dennis Hastert and Tom DeLay, from 1995 to the present, and all correspondence with Congressman Thomas Reynolds from 1998 to the present.

Jason T. Sauer has requested copies of all correspondence between the Department and Congressman Ernest L. Fletcher, from 1999 through June 1, 2003.

Bradley Katz of the **Democratic Senatorial Campaign Committee** has requested copies of all FOIA requests received by the Department since January 1, 2003, concerning the following Senators: Patty Murray, Ron Wyden, Barbara Boxer, Harry Reid, Byron Dorgan, Tom Daschle, Blanche Lincoln, John Breaux, Russ Feingold, Evan Bayh, Bob Graham, Ernest Hollings, John Edwards, Barbara Mikulski, Chris Dodd, Charles Schumer, and Pat Leahy.

HHS

7/2/03

The Detroit Free Press requested grant applications and HRSA communications regarding unsuccessful Federally Qualified Health Center applicants from the Detroit area during the past 5 years.

DHS

FOIA/PA REQUESTS FROM 6 -16-2003 TO 6 -20 -2003

Number of requests: 6

Who from and Subject of Request:

1. **Brian Jones**: physical fitness requirements for law enforcement trainees
2. **Meghann K. Peterlin**: correspondence between DHS and numerous Senators
3. **Martin F. McMahon & Associates**: Usama Bin Laden documents and communication with Treasury
4. **Robert O'Harrow, Washington Post** staff writer: contracts from certain companies and budget summaries
5. **Newhouse News Service, Brett Lieberman**: correspondence between DHS and Congressman Gekas
6. **Democratic Senatorial Campaign Committee**: correspondence between Asa Hutchinson and 2 companies

Disposition and Outstanding actions:

1. **Brian Jones**: awaiting assignment within BTS directorate
2. **Meghann K. Peterlin**: awaiting assignment within DHS legislative affairs
3. **Martin F. McMahon & associates**: awaiting assignment within DHS directorates
4. **Robert O'Harrow, *Washington Post*** staff writer: awaiting assignment to DHS contracting officer and budget office
5. **Newhouse News Service, Brett Lieberman**: awaiting assignment within DHS legislative affairs
6. **Democratic Senatorial Campaign Committee**: awaiting assignment within BTS directorate

FOIA/PA REQUESTS FROM 6 -9-2003 TO 6 -13 -2003

Number of requests: 15

Who from and Subject of Request:

1. **Stanley Myatt**: info about self (PA)
2. **Antony Tseng**: grants available to local EMS-only entities in New York
3. **John Mondragon**: employee relations and benefits administration contracts/costs
4. **Babyleadfoot**: info about husband from INS
5. **Dallas Morning News, Allen Pusey**: Texas plane tapes between Texas DPS and AMICC
6. **Carroll Publishing, Thomas E. Carroll**: contact information regarding senior government officials
7. **Vicki Baker**: info regarding investigation of TSA in Dayton Ohio
8. **Fort Worth Star Telegram, Maria Recio**: Texas plane tapes between Texas DPS and AMICC
9. **Leblang, Sobel and Ashbaugh**: info about Maria Socorro Serrano Vda de Vega
10. **Philip H Joiner-El**: no request, no questions, just a statement
11. **Mary K Hickox**: info about self (PA)
12. **Gabriel Cornilescu**: info about self (PA)
13. **Jeffery Martin Sierzega**: info about self and instruments that monitor him
14. **John S. Dickerson Jr.**: info about self (PA)

15. **Milwaukee Journal Sentinel, Scott Williams**: list of Wisconsin residents investigated under the Patriot Act

EPA

During the week of June 16 – June 20, 2003, the Agency received 263 FOIA requests. Of the total, 72 were received in Headquarters. Year-to-date totals are 1,753 for Headquarters and 9,277 agency-wide. Significant FOIA requests received this week include:

- (3) **John Gardner** of **EarthJustice** has requested all correspondence between Rep. Richard Pombo, any EPA employees or agents, and any other state or federal agency;
- (4) **Geoff Dutton** of **The Columbia Dispatch** has requested a copy of the EPA's analysis of Clean Water Act enforcement, which the agency completed in February;
- (5) **Patti Goldman** of **EarthJustice** has requested, on behalf of a number of public interest groups, all communications between the U.S. Department of Commerce, NOAA, NMFS, the Environmental Protection Agency, the U.S. Department of the Interior, the U.S. Fish and Wildlife Service, United States Department of Agriculture, the Council on Environmental Quality, the Office of Management and Budget, the National Economic Council, the Department of Justice, and representatives of pesticide user groups, pesticide registrants, pesticide or agricultural trade groups, and/or members of Congress concerning threatened or endangered species;
- (6) **William L. Kovacs** of the **Chamber of Commerce** of the United States of America has requested copies of the responses and attachments from Carol M. Browner to various members of the House Committee on Science;
- (7) **Jim Hecker** of the **Trial Lawyers for Public Justice** has requested information related to the preparation of the Environmental Impact Statement on mountaintop mining and valley fills in the Appalachian coalfields.

DOI

Mountaintop Mining. On June 13, the Secretary of the Interior, the Office of Surface Mining, the Fish and Wildlife Service and the Environmental Protection Agency received identical Freedom of Information Act requests for documents related to the draft Mountaintop Mining/Valley Fill Environmental Impact Statement. The request, from Trial Lawyers for Public Justice on behalf of the West Virginia Highlands Conservancy, seeks documents related to the Mountaintop Mining/Valley Fill Environmental Impact Statement generated since the last request in April 2002, that are: 1) part of the administrative record; 2) records of communications between the agencies and anyone outside the executive branch; and 3) records of communications by or among members of the Environmental Impact Statement Steering Committee.

DOL

Benjamin Jones, Research Director, Democratic Senatorial Campaign Committee, Washington, D.C., is seeking:

all direct correspondence and other information requested by or provided to Representative Harry Reid, 1/1/82 – 12/31/86 and Senator Harry Reid, 1/1/87 – present (including letters, reports, requests and other relevant material.)

Jason T. Sauer, Lexington, KY, is seeking:

copies of all correspondence between the Department of Labor and the Office of Representative Ernest L. Fletcher of KY, between the dates of January 1, 1999 and June 1, 2002.

David Hafetz, *Austin American-Statesman*, is seeking:

case files from the Austin, TX, Office concerning a trenching fatality and one injury on Jan. 8, 2003 in Bremon, TX.

Deborah Solomon, *The Wall Street Journal*, is seeking:

a list of all complaints filed under Sarbanes-Oxley.

Jim Morris, *Dallas Morning News*, is seeking:

a list of all Air-21 whistleblower complaints broken out by airline

OPM

Reporter Michael Scherer of *Mother Jones Magazine* has filed a number of FOIA requests seeking to evaluate the effectiveness of the US Investigative Service (USIS) in delivering investigations services for OPM and the amount of savings the government has realized since privatizing the Office of Federal Investigations in 1996 through an Employee Stock Ownership Plan (ESOP). An off-the-record interview is being arranged for the reporter.

From: Nelson, Carolyn
To: <Kavanaugh, Brett M.>
Sent: 6/26/2003 6:16:30 PM
Subject: call me 65081

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Michael E. Meece/WHO/EOP@EOP [WHO] <Michael E. Meece>;Kevin Warsh/OPD
/EOP@EOP [OPD] <Kevin Warsh>;Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L.
Schacht>
Sent: 7/1/2003 6:39:02 AM
Subject: : Any word from Z on class action event?

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-JUL-2003 10:39:02.00
SUBJECT:: Any word from Z on class action event?
TO:Michael E. Meece (CN=Michael E. Meece/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
TO:Kevin Warsh (CN=Kevin Warsh/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
TO:Diana L. Schacht (CN=Diana L. Schacht/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN
End Original ARMS Header

From: CN=Tim Goeglein/OU=WHO/O=EOP [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/1/2003 3:24:34 AM
Subject: : Re:

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Tim Goeglein (CN=Tim Goeglein/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-JUL-2003 07:24:34.00
SUBJECT:: Re:
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

Yes, let's discuss.

tsg

Brett M. Kavanaugh
06/30/2003 07:14:29 PM
Record Type: Record

To: Tim Goeglein/WHO/EOP@EOP
cc:
Subject:

Can we talk about President possibly speaking at Federalist Society
National Convention in November? The Vice President spoke last year.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 7/1/2003 8:15:29 AM
Subject: is this right

TRIPS

When the President travels to a city for the purpose of participating in a political event, the campaign incurs the costs of the trip (minus security costs) to the city.

If there is an official event in the same city, the government does not incur any additional costs, and campaign covers all of the travel related costs to the particular city.

When the President travels to a campaign event, the campaign reimburses the government for the cost of a first class airline ticket for each staffer traveling for the purposes of the political event.

When the President travels and there is a political event on the schedule, the government does not incur any additional costs.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: alberto r. gonzales/who/eop@exchange [WHO] <alberto r. gonzales>; david s. addington/ovp/eop@exchange [OVP] <david s. addington>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>
Sent: 7/1/2003 6:13:44 AM
Subject: : CADC

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 1-JUL-2003 10:13:44.00
SUBJECT:: CADC
TO: alberto r. gonzales (CN=alberto r. gonzales/OU=who/O=eop@exchange [WHO])
READ: UNKNOWN
TO: david s. addington (CN=david s. addington/OU=ovp/O=eop@exchange [OVP])
READ: UNKNOWN
TO: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN
End Original ARMS Header

I also would expect Judicial Watch decision before Friday, although that is just speculation on my part.

From: Elwood, Courtney S.
To: <Kavanaugh, Brett M.>
Sent: 7/1/2003 11:21:04 AM
Subject: RE: draft memo on various additional travel issues

I have talked to both David and Claire, and both expressed some uneasiness. Can we talk about it? Are you available around noon?

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

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 11:19 AM
To: Elwood, Courtney S.
Subject: RE: draft memo on various additional travel issues

any word?

From: Courtney S. Elwood/OVP/EOP@Exchange on 06/30/2003 09:28:07 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Claire M. O'Donnell/OVP/EOP@Exchange, David S. Addington/OVP/EOP@Exchange
cc:
Subject: RE: draft memo on various additional travel issues

Brett --

I think your memo will be very helpful to everyone concerned. I'd like the opportunity to discuss it with my clients and David. Can I give you my comments tomorrow afternoon (Tuesday)? Or is it something you'd like to get out today?

--Courtney

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

From: Kavanaugh, Brett M.
Sent: Friday, June 27, 2003 4:37 PM
To: Gambatesa, Linda M.; Litkenhaus, Colleen; Ralston, Susan B.; Douglass, Kimberly A.; Jenkins, Gregory J.; O'Donnell, Claire M.; Elwood, Courtney S.; tomj@georgewbush.com; kmcculough@georgewbush.com

Subject: draft memo on various additional travel issues

This draft memo addresses various additional travel issues and also provides a checklist for monitoring all payments for govt employees who travel on campaign-related trips. Please feel free to make suggestions, corrections, etc. Thanks.

<< File: political travel issues 6 27 03.doc >>

REV_00238637

From: Lefkowitz, Jay P.
To: <Leitch, David G.>;<Gonzales, Alberto R.>;<Addington, David S.>;<Kavanaugh, Brett M.>;<Perry, Philip J.>
CC: <Pelletier, Eric C.>
Sent: 7/1/2003 11:51:28 AM
Subject: RE:

We have sent up proposed legislation that the Administration is comfortable with.

Eric -- Pls let us know if our leg office starts hearing rumblings on this issue.

thanks

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

From: Leitch, David G.

Sent: Tuesday, July 01, 2003 11:39 AM

To: Gonzales, Alberto R.; Addington, David S.; Kavanaugh, Brett M.; Lefkowitz, Jay P.; Perry, Philip J.

Subject:

Today's DC Circuit decision on the Iranian hostage litigation and the Algiers accords will no doubt revive Senator Allen's interest in legislation specifically abrogating the accords and the push for a terrorist victim compensation scheme.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 7/1/2003 12:10:50 PM
Subject: RE: is this right

What is the precedent for this? Is this how previous admins did it too?

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

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 8:37 AM
To: Snee, Ashley
Subject: Re: is this right

The last point is redundant and thus confusing but the rest is right.

From: Ashley Snee/WHO/EOP@Exchange on 07/01/2003 08:15:29 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: is this right

TRIPS

When the President travels to a city for the purpose of participating in a political event, the campaign incurs the costs of the trip (minus security costs) to the city.

If there is an official event in the same city, the government does not incur any additional costs, and campaign covers all of the travel related costs to the particular city.

When the President travels to a campaign event, the campaign reimburses the government for the cost of a first class airline ticket for each staffer traveling for the purposes of the political event.

When the President travels and there is a political event on the schedule, the government does not incur any additional costs.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 7/1/2003 12:26:13 PM
Subject: RE: is this right

Ok, so basically - the gov't does not pick up part of the travel costs just because an official event is added in the city. But the gov't does pay for the actual costs of the official event - right? (risers, pipe and drape..)

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

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 12:21 PM
To: Snee, Ashley
Subject: RE: is this right

been the same for several decades in Presidential campaigns

From: Ashley Snee/WHO/EOP@Exchange on 07/01/2003 12:10:50 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: is this right

What is the precedent for this? Is this how previous admins did it too?

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

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 8:37 AM
To: Snee, Ashley
Subject: Re: is this right

The last point is redundant and thus confusing but the rest is right.

From: Ashley Snee/WHO/EOP@Exchange on 07/01/2003 08:15:29 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: is this right

TRIPS

When the President travels to a city for the purpose of participating in a political event, the campaign incurs the costs of the trip (minus security costs) to the city.

If there is an official event in the same city, the government does not incur any additional costs, and campaign covers all of the travel related costs to the particular city.

When the President travels to a campaign event, the campaign reimburses the government for the cost of a first class airline ticket for each staffer traveling for the purposes of the political event.

When the President travels and there is a political event on the schedule, the government does not incur any additional costs.

From: Snee, Ashley
To: <Kavanaugh, Brett M.>
Sent: 7/1/2003 12:29:27 PM
Subject: RE: is this right

Ok, thanks

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

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 12:27 PM
To: Snee, Ashley
Subject: RE: is this right

exactly

From: Ashley Snee/WHO/EOP@Exchange on 07/01/2003 12:26:13 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: is this right

Ok, so basically - the gov't does not pick up part of the travel costs just because an official event is added in the city. But the gov't does pay for the actual costs of the official event - right? (risers, pipe and drape..)

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

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 12:21 PM
To: Snee, Ashley
Subject: RE: is this right

been the same for several decades in Presidential campaigns

From: Ashley Snee/WHO/EOP@Exchange on 07/01/2003 12:10:50 PM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: RE: is this right

What is the precedent for this? Is this how previous admins did it too?

REV_00238644

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

From: Kavanaugh, Brett M.
Sent: Tuesday, July 01, 2003 8:37 AM
To: Snee, Ashley
Subject: Re: is this right

The last point is redundant and thus confusing but the rest is right.

From: Ashley Snee/WHO/EOP@Exchange on 07/01/2003 08:15:29 AM
Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
Subject: is this right

TRIPS

When the President travels to a city for the purpose of participating in a political event, the campaign incurs the costs of the trip (minus security costs) to the city.

If there is an official event in the same city, the government does not incur any additional costs, and campaign covers all of the travel related costs to the particular city.

When the President travels to a campaign event, the campaign reimburses the government for the cost of a first class airline ticket for each staffer traveling for the purposes of the political event.

When the President travels and there is a political event on the schedule, the government does not incur any additional costs.

From: Leitch, David G.
To: <Gonzales, Alberto R.>;<Kavanaugh, Brett M.>
Sent: 7/1/2003 1:41:04 PM
Subject:

Following up on yesterday's discussion -- Jeff Rosen writes in The New Republic that, "[b]y resurrecting an unprincipled and unconvincing constitutional methodology, the Court will energize the conservatives who have lost the culture wars, and will allow them to cast themselves as judicial martyrs rather than political losers." I think there's a fair amount of truth in his observation that social conservatives have been losing the culture wars at the political level, and that the Court, while leading in some respects by constitutionalizing issues, is not necessarily taking the country where it does not want to be taken.

From: CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO]
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>
Sent: 7/1/2003 9:42:21 AM
Subject: :

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 1-JUL-2003 13:42:21.00

SUBJECT::

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])

READ:UNKNOWN

End Original ARMS Header

Following up on yesterday's discussion -- Jeff Rosen writes in The New Republic that, "[b]y resurrecting an unprincipled and unconvincing constitutional methodology, the Court will energize the conservatives who have lost the culture wars, and will allow them to cast themselves as judicial martyrs rather than political losers."; I think there's a fair amount of truth in his observation that social conservatives have been losing the culture wars at the political level, and that the Court, while leading in some respects by constitutionalizing issues, is not necessarily taking the country where it does not want to be taken.;

From: Pelletier, Eric C.
To: <Lefkowitz, Jay P.>;<Leitch, David G.>;<Gonzales, Alberto R.>;<Addington, David S.>;<Kavanaugh, Brett M.>;<Perry, Philip J.>
CC: <Keniry, Daniel>;<Ojakli, Ziad>;<Burgeson, Christine M.>;<Cox, Christopher C.>
Sent: 7/1/2003 6:19:39 PM
Subject: RE:

we will monitor and keep you informed.

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

From: Lefkowitz, Jay P.
Sent: Tuesday, July 01, 2003 11:51 AM
To: Leitch, David G.; Gonzales, Alberto R.; Addington, David S.; Kavanaugh, Brett M.; Perry, Philip J.
Cc: Pelletier, Eric C.
Subject: RE:

We have sent up proposed legislation that the Administration is comfortable with.

Eric -- Pls let us know if our leg office starts hearing rumblings on this issue.

thanks

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

From: Leitch, David G.
Sent: Tuesday, July 01, 2003 11:39 AM
To: Gonzales, Alberto R.; Addington, David S.; Kavanaugh, Brett M.; Lefkowitz, Jay P.; Perry, Philip J.
Subject:

Today's DC Circuit decision on the Iranian hostage litigation and the Algiers accords will no doubt revive Senator Allen's interest in legislation specifically abrogating the accords and the push for a terrorist victim compensation scheme.

From: Kavanaugh, Brett M.
To: <Nelson, Carolyn>
CC: <Bumatay, Patrick J.>;<Ganter, Jonathan F.>
Sent: 7/2/2003 11:19:04 AM
Subject: RE: WH tour request for the "young miguel estrada"

Help!!

From: Carolyn Nelson/WHO/EOP@Exchange on 07/02/2003 11:11:20 AM

Record Type: Record

To: Patrick J. Bumatay/WHO/EOP@Exchange, Brett M. Kavanaugh/WHO/EOP@EOP, Jonathan F. Ganter/WHO/EOP@EOP

cc:

Subject: RE: WH tour request for the "young miguel estrada"

I'll be cheerleading.

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

From: Bumatay, Patrick J.

Sent: Wednesday, July 02, 2003 11:10 AM

To: Kavanaugh, Brett M.; Nelson, Carolyn; Ganter, Jonathan F.

Subject: RE: WH tour request for the "young miguel estrada"

I have very important business today - softball.

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

From: Kavanaugh, Brett M.

Sent: Wednesday, July 02, 2003 11:03 AM

To: Nelson, Carolyn; Bumatay, Patrick J.; Ganter, Jonathan F.

Subject: FW: WH tour request for the "young miguel estrada"

Tour request from a Santorum staffer. Can someone do a quick tour tonight?

Albert Valdivia III, PRA 6

Candy G. Valdivia, PRA 6

REV_00238655

Zachary A. Valdivia, **PRA 6**

Alexander Valdivia, **PRA 6**

Beth Ann Dannemiller, **PRA 6**

>

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Joel D. Kaplan/WHO/EOP@Exchange@EOP [WHO] <Joel D. Kaplan>;Jeffrey F. Kupfer/WHO/EOP@Exchange@EOP [WHO] <Jeffrey F. Kupfer>
Sent: 7/2/2003 2:46:51 PM
Subject: : Clinton statement on signing Defense of Marriage Act in 1996

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JUL-2003 18:46:51.00
SUBJECT:: Clinton statement on signing Defense of Marriage Act in 1996
TO: Joel D. Kaplan (CN=Joel D. Kaplan/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
TO: Jeffrey F. Kupfer (CN=Jeffrey F. Kupfer/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ: UNKNOWN
End Original ARMS Header

September 30, 1996

Throughout my life I have strenuously opposed discrimination of any kind, including discrimination against gay and lesbian Americans. I am signing into law H.R. 3396, a bill relating to same-gender marriage, but it is important to note what this legislation does and does not do.

I have long opposed governmental recognition of same-gender marriages and this legislation is consistent with that position. The Act confirms the right of each state to determine its own policy with respect to same gender marriage and clarifies for purposes of federal law the operative meaning of the terms "marriage" and "spouse".

This legislation does not reach beyond those two provisions. It has no effect on any current federal, state or local anti-discrimination law and does not constrain the right of Congress or any state or locality to enact anti-discrimination laws. I therefore would take this opportunity to urge Congress to pass the Employment Non-Discrimination Act, an act which would extend employment discrimination protections to gays and lesbians in the workplace. This year the Senate considered this legislation contemporaneously with the Act I sign today and failed to pass it by a single vote. I hope that in its next Session Congress will pass it expeditiously.

I also want to make clear to all that the enactment of this legislation should not, despite the fierce and at times divisive rhetoric surrounding it, be understood to provide an excuse for discrimination, violence or intimidation against any person on the basis of sexual orientation. Discrimination, violence and intimidation for that reason, as well as others, violate the principle of equal protection under the law and have no place in American society.

From: CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO]
To: Jay P. Lefkowitz/OPD/EOP@Exchange@EOP [OPD] <Jay P. Lefkowitz>
Sent: 7/2/2003 2:47:06 PM
Subject: : Clinton statement on signing Defense of Marriage Act in 1996

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
CREATION DATE/TIME: 2-JUL-2003 18:47:06.00
SUBJECT:: Clinton statement on signing Defense of Marriage Act in 1996
TO: Jay P. Lefkowitz (CN=Jay P. Lefkowitz/OU=OPD/O=EOP@Exchange@EOP [OPD])
READ: UNKNOWN
End Original ARMS Header

September 30, 1996

Throughout my life I have strenuously opposed discrimination of any kind, including discrimination against gay and lesbian Americans. I am signing into law H.R. 3396, a bill relating to same-gender marriage, but it is important to note what this legislation does and does not do. I have long opposed governmental recognition of same-gender marriages and this legislation is consistent with that position. The Act confirms the right of each state to determine its own policy with respect to same gender marriage and clarifies for purposes of federal law the operative meaning of the terms "marriage" and "spouse". This legislation does not reach beyond those two provisions. It has no effect on any current federal, state or local anti-discrimination law and does not constrain the right of Congress or any state or locality to enact anti-discrimination laws. I therefore would take this opportunity to urge Congress to pass the Employment Non-Discrimination Act, an act which would extend employment discrimination protections to gays and lesbians in the workplace. This year the Senate considered this legislation contemporaneously with the Act I sign today and failed to pass it by a single vote. I hope that in its next Session Congress will pass it expeditiously. I also want to make clear to all that the enactment of this legislation should not, despite the fierce and at times divisive rhetoric surrounding it, be understood to provide an excuse for discrimination, violence or intimidation against any person on the basis of sexual orientation. Discrimination, violence and intimidation for that reason, as well as others, violate the principle of equal protection under the law and have no place in American society.

From: CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO]
To: William Callahan/OA/EOP [OA] <William Callahan>; Vickie A. McQuade/WHO/EOP@Exchange [WHO] <Vickie A. McQuade>; Tracy Jucas/WHO/EOP [WHO] <Tracy Jucas>; Todd W. Beyer/WHO/EOP [WHO] <Todd W. Beyer>; Tim Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>; Tiffany L. Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>; Terra Gray/WHO/EOP@Exchange [WHO] <Terra Gray>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Sylvester Jefferson/WHO/EOP [WHO] <Sylvester Jefferson>; Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>; Susan L. Sterner/WHO/EOP [WHO] <Susan L. Sterner>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Steven A. Atkiss/WHO/EOP [WHO] <Steven A. Atkiss>; Stephen J. Hadley/NSC/EOP [NSC] <Stephen J. Hadley>; Stephanie E. Linder/WHO/EOP [WHO] <Stephanie E. Linder>; Shelley Reese/WHO/EOP@Exchange [WHO] <Shelley Reese>; Shannon Burkhardt/WHO/EOP [WHO] <Shannon Burkhardt>; Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Ruth E. Elliott/NSC/EOP [NSC] <Ruth E. Elliott>; Ross M. Kyle/WHO/EOP [UNKNOWN] <Ross M. Kyle>; Richard J. Tubb/WHO/EOP [WHO] <Richard J. Tubb>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; Raquel Cabral/WHO/EOP@Exchange [WHO] <Raquel Cabral>; Paul L. Morse/WHO/EOP@Exchange [WHO] <Paul L. Morse>; Paul D. Montanus/WHO/EOP [WHO] <Paul D. Montanus>; Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>; Michael H. Miller/WHO/EOP@Exchange [WHO] <Michael H. Miller>; Michael H. Ellis/WHO/EOP [WHO] <Michael H. Ellis>; Michael Davis/WHO/EOP [WHO] <Michael Davis>; Melissa S. Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>; Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>; Mary K. Lang/OVP/EOP@Exchange [OVP] <Mary K. Lang>; Marilyn R. Jacanin/WHO/EOP@Exchange [WHO] <Marilyn R. Jacanin>; Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>; Margaret A. Reid/WHO/EOP [WHO] <Margaret A. Reid>; Lynden R. Steele/WHO/EOP [WHO] <Lynden R. Steele>; Lindsey M. Lineweaver/WHO/EOP@Exchange [WHO] <Lindsey M. Lineweaver>; Lindsay J. Bourns/WHO/EOP [WHO] <Lindsay J. Bourns>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>; Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>; Lauren McCord/WHO/EOP@Exchange [WHO] <Lauren McCord>; Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>; Laura E. Lineberry/NSC/EOP [NSC] <Laura E. Lineberry>; Kristopher N. Purcell/WHO/EOP [WHO] <Kristopher N. Purcell>; Krista L. Ritacco/WHO/EOP@Exchange [WHO] <Krista L. Ritacco>; Kimberly Ellison/WHO/EOP [WHO] <Kimberly Ellison>; Kimberly A. Douglass/WHO/EOP@Exchange [WHO] <Kimberly A. Douglass>; Kendall Jesmer/WHO/EOP [WHO] <Kendall Jesmer>; Kelley Gannon/WHO/EOP [WHO] <Kelley Gannon>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Kathy Michalko/OA/EOP [OA] <Kathy Michalko>; Kathy J. Becker/WHO/EOP [WHO] <Kathy J. Becker>; Katherine A. Brown/NSC/EOP [NSC] <Katherine A. Brown>; Katharina M. Hager/WHO/EOP [WHO] <Katharina M. Hager>; Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>; Kady Dunlap/WHO/EOP@Exchange [WHO] <Kady Dunlap>; J. Elizabeth Farrell/WHO/EOP@Exchange [WHO] <J. Elizabeth Farrell>; Julia F. Kyle/OVP/EOP@Exchange [OVP] <Julia F. Kyle>; Joshua B. Bolten/WHO/EOP [UNKNOWN] <Joshua B. Bolten>; Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>; John P. McConnell/WHO/EOP [WHO] <John P. McConnell>; John M. Bridgeland/OPD/EOP [OPD] <John M. Bridgeland>; John J. Daly/WHO/EOP [WHO] <John J. Daly>; John Gordon/WHO/EOP@Exchange [WHO] <John Gordon>; John F. Newell/WHO/EOP [WHO] <John F. Newell>; Jennifer M. Katzaman/WHO/EOP [WHO] <Jennifer M. Katzaman>; Jennifer L. Davis/WHO/EOP [WHO] <Jennifer L. Davis>; Jennifer H. Mayfield/OVP/EOP@Exchange [OVP] <Jennifer H. Mayfield>; Jennifer D. Field/OVP/EOP@Exchange [OVP] <Jennifer D. Field>; Jennifer A. Wray/WHO/EOP [WHO] <Jennifer A. Wray>; Jenica Baldwin/WHO/EOP [WHO] <Jenica Baldwin>; Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>; Jeanie L. Figg/WHO/EOP@Exchange [WHO] <Jeanie L. Figg>; Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>; Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>; January M. Riecke/WHO/EOP@Exchange [WHO] <January M. Riecke>; Jane C. Heishman/NSC/EOP [NSC] <Jane C. Heishman>; James M. McAllister/WHO/EOP [WHO] <James M. McAllister>; James A. Waters/WHO/EOP [WHO] <James A. Waters>; Israel Hernandez/WHO/EOP@Exchange [WHO] <Israel Hernandez>; Healy E. Baumgardner/WHO/EOP [WHO] <Healy E. Baumgardner>; Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>; Gretchen P.

Steen/WHO/EOP [WHO] <Gretchen P. Steen>;Gregory L. Schulte/NSC/EOP [NSC] <Gregory L. Schulte>;Gregory J. Jenkins/WHO/EOP [WHO] <Gregory J. Jenkins>;Gregory C. Huffman/WHO/EOP [WHO] <Gregory C. Huffman>;Eric W. Terrell/WHO/EOP [WHO] <Eric W. Terrell>;Eric A. Draper/WHO/EOP@Exchange [WHO] <Eric A. Draper>;Elizabeth W. Kleppe/OVP/EOP@Exchange [OVP] <Elizabeth W. Kleppe>;Eleanor Stone/WHO/EOP [WHO] <Eleanor Stone>;Eleanor L. Gillmor/OPD/EOP@Exchange [OPD] <Eleanor L. Gillmor>;Douglas W. Slade/WHO/EOP [WHO] <Douglas W. Slade>;Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>;Diana C. Donnelly/WHO/EOP@Exchange [WHO] <Diana C. Donnelly>;Debra Heiden/OVP/EOP@Exchange [OVP] <Debra Heiden>;David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>;Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>;Condoleezza Rice/NSC/EOP [NSC] <Condoleezza Rice>;Colleen Litkenhaus/WHO/EOP@Exchange [WHO] <Colleen Litkenhaus>;Clare Pritchett/WHO/EOP@Exchange [WHO] <Clare Pritchett>;Christal R. West/WHO/EOP@Exchange [WHO] <Christal R. West>;Cheryl E. Barnett/NSC/EOP [NSC] <Cheryl E. Barnett>;Cathy L. Millison/NSC/EOP [NSC] <Cathy L. Millison>;Catherine S. Fenton/WHO/EOP@Exchange [WHO] <Catherine S. Fenton>;Catherine J. Martin/OVP/EOP@Exchange [OVP] <Catherine J. Martin>;Carolyn Nelson/WHO/EOP@Exchange [WHO] <Carolyn Nelson>;Carolyn E. Cleveland/WHO/EOP@Exchange [WHO] <Carolyn E. Cleveland>;Brook Holladay/WHO/EOP [WHO] <Brook Holladay>;Britt Grant/OPD/EOP [OPD] <Britt Grant>;Brian R. Besanceney/WHO/EOP [WHO] <Brian R. Besanceney>;Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>;Brett M. Kavanaugh/WHO/EOP@Exchange [WHO] <Brett M. Kavanaugh>;Bradley A. Blakeman/WHO/EOP@Exchange [WHO] <Bradley A. Blakeman>;Bradford D. Dayspring/WHO/EOP [WHO] <Bradford D. Dayspring>;Bonny K. Marshall/WHO/EOP [WHO] <Bonny K. Marshall>;Blake Gottesman/WHO/EOP@Exchange [WHO] <Blake Gottesman>;Barry S. Jackson/WHO/EOP [WHO] <Barry S. Jackson>;Barbara J. Goergen/WHO/EOP@Exchange [WHO] <Barbara J. Goergen>;Barbara J. Finn/OA/EOP [OA] <Barbara J. Finn>;A. Merrill Hughes/OVP/EOP@Exchange [OVP] <A. Merrill Hughes>;Ashley Estes/WHO/EOP@Exchange [WHO] <Ashley Estes>;Ashley D. Drummond/WHO/EOP [WHO] <Ashley D. Drummond>;Anne E. Campbell/WHO/EOP@Exchange [WHO] <Anne E. Campbell>;Andrew H. Card/WHO/EOP@Exchange [WHO] <Andrew H. Card>;Andrea G. Ball/WHO/EOP@Exchange [WHO] <Andrea G. Ball>;Allison L. Riepenhoff/WHO/EOP@Exchange [WHO] <Allison L. Riepenhoff>;Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>;Adrian G. Gray/WHO/EOP [WHO] <Adrian G. Gray>;Adam B. Ingols/WHO/EOP@Exchange [WHO] <Adam B. Ingols>;Jared B. Weinstein/WHO/EOP@Exchange@EOP [WHO] <Jared B. Weinstein>

CC:
Sent:
Subject:

7/3/2003 12:11:11 PM
: New APAs for 07/03/2003 Now Available in Timepiece.

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME: 3-JUL-2003 16:11:11.00
SUBJECT:: New APAs for 07/03/2003 Now Available in Timepiece.
TO:William Callahan (CN=William Callahan/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:Vickie A. McQuade (CN=Vickie A. McQuade/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Tracy Jucas (CN=Tracy Jucas/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Todd W. Beyer (CN=Todd W. Beyer/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Tim Campen (CN=Tim Campen/OU=OA/O=EOP@Exchange [UNKNOWN])
READ:UNKNOWN
TO:Tiffany L. Barfield (CN=Tiffany L. Barfield/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Terra Gray (CN=Terra Gray/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Taylor A. Hughes (CN=Taylor A. Hughes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Sylvester Jefferson (CN=Sylvester Jefferson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Suzy DeFrancis (CN=Suzy DeFrancis/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN

TO: Susan L. Sterner (CN=Susan L. Sterner/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Susan B. Ralston (CN=Susan B. Ralston/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Steven A. Atkiss (CN=Steven A. Atkiss/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Stephen J. Hadley (CN=Stephen J. Hadley/OU=NSC/O=EOP [NSC])
READ: UNKNOWN

TO: Stephanie E. Linder (CN=Stephanie E. Linder/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Shelley Reese (CN=Shelley Reese/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Shannon Burkhardt (CN=Shannon Burkhardt/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Scott N. Sforza (CN=Scott N. Sforza/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Ruth E. Elliott (CN=Ruth E. Elliott/OU=NSC/O=EOP [NSC])
READ: UNKNOWN

TO: Ross M. Kyle (CN=Ross M. Kyle/OU=WHO/O=EOP [UNKNOWN])
READ: UNKNOWN

TO: Richard J. Tubb (CN=Richard J. Tubb/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Richard Falkenrath (CN=Richard Falkenrath/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Raquel Cabral (CN=Raquel Cabral/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Paul L. Morse (CN=Paul L. Morse/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Paul D. Montanus (CN=Paul D. Montanus/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Michael J. Gerson (CN=Michael J. Gerson/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Michael H. Miller (CN=Michael H. Miller/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Michael H. Ellis (CN=Michael H. Ellis/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Michael Davis (CN=Michael Davis/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Melissa S. Bennett (CN=Melissa S. Bennett/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Matthew A. Schlapp (CN=Matthew A. Schlapp/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Mary K. Lang (CN=Mary K. Lang/OU=OVP/O=EOP@Exchange [OVP])
READ: UNKNOWN

TO: Marilyn R. Jacanin (CN=Marilyn R. Jacanin/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Margaret M. Spellings (CN=Margaret M. Spellings/OU=OPD/O=EOP@Exchange [OPD])
READ: UNKNOWN

TO: Margaret A. Reid (CN=Margaret A. Reid/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Lynden R. Steele (CN=Lynden R. Steele/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Lindsey M. Lineweaver (CN=Lindsey M. Lineweaver/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Lindsay J. Bourns (CN=Lindsay J. Bourns/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Linda M. Gambatesa (CN=Linda M. Gambatesa/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])
READ: UNKNOWN

TO: Lewis Libby (CN=Lewis Libby/OU=OVP/O=EOP@Exchange [OVP])
READ: UNKNOWN

TO: Lauren McCord (CN=Lauren McCord/OU=WHO/O=EOP@Exchange [WHO])
READ: UNKNOWN

TO: Lauren K. Allgood (CN=Lauren K. Allgood/OU=OPD/O=EOP@Exchange [OPD])
READ: UNKNOWN

TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Kristopher N. Purcell (CN=Kristopher N. Purcell/OU=WHO/O=EOP [WHO])
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CC:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange@EOP [WHO])
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End Original ARMS Header

New Approved Presidential Activity Sheets for 07/03/2003 are now available in:

"Timepiece" - The Presidential Scheduling Database.

To view the newly published APAs please click on the following link.

In addition to clicking on the link above, you can always directly access the latest Presidential Scheduling Information by selecting "Timepiece" from your Lotus Notes Desktop.

Please feel free to call the Office of Appointments and Scheduling with any questions.

Thank You,

Bradley A. Blakeman
Deputy Assistant to the President and Director of Appointments and Scheduling

From: CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO]
To: William Callahan/OA/EOP [OA] <William Callahan>; Vickie A. McQuade/WHO/EOP@Exchange [WHO] <Vickie A. McQuade>; Tracy Jucas/WHO/EOP [WHO] <Tracy Jucas>; Todd W. Beyer/WHO/EOP [WHO] <Todd W. Beyer>; Tim Campen/OA/EOP@Exchange [UNKNOWN] <Tim Campen>; Tiffany L. Barfield/WHO/EOP@Exchange [WHO] <Tiffany L. Barfield>; Terra Gray/WHO/EOP@Exchange [WHO] <Terra Gray>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Sylvester Jefferson/WHO/EOP [WHO] <Sylvester Jefferson>; Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>; Susan L. Sterner/WHO/EOP [WHO] <Susan L. Sterner>; Susan B. Ralston/WHO/EOP@Exchange [WHO] <Susan B. Ralston>; Steven A. Atkiss/WHO/EOP [WHO] <Steven A. Atkiss>; Stephen J. Hadley/NSC/EOP [NSC] <Stephen J. Hadley>; Stephanie E. Linder/WHO/EOP [WHO] <Stephanie E. Linder>; Shelley Reese/WHO/EOP@Exchange [WHO] <Shelley Reese>; Shannon Burkhardt/WHO/EOP [WHO] <Shannon Burkhardt>; Scott N. Sforza/WHO/EOP [WHO] <Scott N. Sforza>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Ruth E. Elliott/NSC/EOP [NSC] <Ruth E. Elliott>; Ross M. Kyle/WHO/EOP [UNKNOWN] <Ross M. Kyle>; Richard J. Tubb/WHO/EOP [WHO] <Richard J. Tubb>; Richard Falkenrath/WHO/EOP@Exchange [WHO] <Richard Falkenrath>; Raquel Cabral/WHO/EOP@Exchange [WHO] <Raquel Cabral>; Paul L. Morse/WHO/EOP@Exchange [WHO] <Paul L. Morse>; Paul D. Montanus/WHO/EOP [WHO] <Paul D. Montanus>; Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>; Michael H. Miller/WHO/EOP@Exchange [WHO] <Michael H. Miller>; Michael H. Ellis/WHO/EOP [WHO] <Michael H. Ellis>; Michael Davis/WHO/EOP [WHO] <Michael Davis>; Melissa S. Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>; Matthew A. Schlapp/WHO/EOP [WHO] <Matthew A. Schlapp>; Mary K. Lang/OVP/EOP@Exchange [OVP] <Mary K. Lang>; Marilyn R. Jacanin/WHO/EOP@Exchange [WHO] <Marilyn R. Jacanin>; Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M. Spellings>; Margaret A. Reid/WHO/EOP [WHO] <Margaret A. Reid>; Lynden R. Steele/WHO/EOP [WHO] <Lynden R. Steele>; Lindsey M. Lineweaver/WHO/EOP@Exchange [WHO] <Lindsey M. Lineweaver>; Lindsay J. Bourns/WHO/EOP [WHO] <Lindsay J. Bourns>; Linda M. Gambatesa/WHO/EOP@Exchange [WHO] <Linda M. Gambatesa>; Lezlee J. Westine/WHO/EOP [WHO] <Lezlee J. Westine>; Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>; Lauren McCord/WHO/EOP@Exchange [WHO] <Lauren McCord>; Lauren K. Allgood/OPD/EOP@Exchange [OPD] <Lauren K. Allgood>; Laura E. Lineberry/NSC/EOP [NSC] <Laura E. Lineberry>; Kristopher N. Purcell/WHO/EOP [WHO] <Kristopher N. Purcell>; Krista L. Ritacco/WHO/EOP@Exchange [WHO] <Krista L. Ritacco>; Kimberly Ellison/WHO/EOP [WHO] <Kimberly Ellison>; Kimberly A. Douglass/WHO/EOP@Exchange [WHO] <Kimberly A. Douglass>; Kendall Jesmer/WHO/EOP [WHO] <Kendall Jesmer>; Kelley Gannon/WHO/EOP [WHO] <Kelley Gannon>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Kathy Michalko/OA/EOP [OA] <Kathy Michalko>; Kathy J. Becker/WHO/EOP [WHO] <Kathy J. Becker>; Katherine A. Brown/NSC/EOP [NSC] <Katherine A. Brown>; Katharina M. Hager/WHO/EOP [WHO] <Katharina M. Hager>; Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>; Karin B. Torgerson/WHO/EOP@Exchange [WHO] <Karin B. Torgerson>; Kara G. Figg/WHO/EOP@Exchange [WHO] <Kara G. Figg>; Kady Dunlap/WHO/EOP@Exchange [WHO] <Kady Dunlap>; J. Elizabeth Farrell/WHO/EOP@Exchange [WHO] <J. Elizabeth Farrell>; Julia F. Kyle/OVP/EOP@Exchange [OVP] <Julia F. Kyle>; Joshua B. Bolten/WHO/EOP [UNKNOWN] <Joshua B. Bolten>; Jonathan W. Burks/WHO/EOP@Exchange [WHO] <Jonathan W. Burks>; John P. McConnell/WHO/EOP [WHO] <John P. McConnell>; John M. Bridgeland/OPD/EOP [OPD] <John M. Bridgeland>; John J. Daly/WHO/EOP [WHO] <John J. Daly>; John Gordon/WHO/EOP@Exchange [WHO] <John Gordon>; John F. Newell/WHO/EOP [WHO] <John F. Newell>; Jennifer M. Katzaman/WHO/EOP [WHO] <Jennifer M. Katzaman>; Jennifer L. Davis/WHO/EOP [WHO] <Jennifer L. Davis>; Jennifer H. Mayfield/OVP/EOP@Exchange [OVP] <Jennifer H. Mayfield>; Jennifer D. Field/OVP/EOP@Exchange [OVP] <Jennifer D. Field>; Jennifer A. Wray/WHO/EOP [WHO] <Jennifer A. Wray>; Jenica Baldwin/WHO/EOP [WHO] <Jenica Baldwin>; Jeanie S. Mamo/WHO/EOP [WHO] <Jeanie S. Mamo>; Jeanie L. Figg/WHO/EOP@Exchange [WHO] <Jeanie L. Figg>; Jean Cooper/OPD/EOP@Exchange [OPD] <Jean Cooper>; Jared B. Weinstein/WHO/EOP@Exchange [WHO] <Jared B. Weinstein>; January M. Riecke/WHO/EOP@Exchange [WHO] <January M. Riecke>; Jane C. Heishman/NSC/EOP [NSC] <Jane C. Heishman>; James M. McAllister/WHO/EOP [WHO] <James M. McAllister>; James A. Waters/WHO/EOP [WHO] <James A. Waters>; Israel Hernandez/WHO/EOP@Exchange [WHO] <Israel Hernandez>; Healy E. Baumgardner/WHO/EOP [WHO] <Healy E. Baumgardner>; Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>; Gretchen P.

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CC:
Sent:
Subject:

7/3/2003 12:11:11 PM
: New APAs for 07/03/2003 Now Available in Timepiece.

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RECORD TYPE: FEDERAL (NOTES MAIL)
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CREATION DATE/TIME: 3-JUL-2003 16:11:11.00
SUBJECT:: New APAs for 07/03/2003 Now Available in Timepiece.
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TO:Laura E. Lineberry (CN=Laura E. Lineberry/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Kristopher N. Purcell (CN=Kristopher N. Purcell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Krista L. Ritacco (CN=Krista L. Ritacco/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kimberly Ellison (CN=Kimberly Ellison/OU=WHO/O=EOP [WHO])
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TO:Kimberly A. Douglass (CN=Kimberly A. Douglass/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Kendall Jesmer (CN=Kendall Jesmer/OU=WHO/O=EOP [WHO])
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TO:Kelley Gannon (CN=Kelley Gannon/OU=WHO/O=EOP [WHO])
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TO:Keith Hennessey (CN=Keith Hennessey/OU=OPD/O=EOP@Exchange [OPD])
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TO:Kathy Michalko (CN=Kathy Michalko/OU=OA/O=EOP [OA])
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TO:Kathy J. Becker (CN=Kathy J. Becker/OU=WHO/O=EOP [WHO])
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TO:Katherine A. Brown (CN=Katherine A. Brown/OU=NSC/O=EOP [NSC])
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TO:Kara G. Figg (CN=Kara G. Figg/OU=WHO/O=EOP@Exchange [WHO])
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TO:Kady Dunlap (CN=Kady Dunlap/OU=WHO/O=EOP@Exchange [WHO])
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TO:J. Elizabeth Farrell (CN=J. Elizabeth Farrell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Julia F. Kyle (CN=Julia F. Kyle/OU=OVP/O=EOP@Exchange [OVP])
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TO:Joshua B. Bolten (CN=Joshua B. Bolten/OU=WHO/O=EOP [UNKNOWN])
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TO:Jonathan W. Burks (CN=Jonathan W. Burks/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:John P. McConnell (CN=John P. McConnell/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:John M. Bridgeland (CN=John M. Bridgeland/OU=OPD/O=EOP [OPD])
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TO:John J. Daly (CN=John J. Daly/OU=WHO/O=EOP [WHO])
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TO:John Gordon (CN=John Gordon/OU=WHO/O=EOP@Exchange [WHO])
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TO:John F. Newell (CN=John F. Newell/OU=WHO/O=EOP [WHO])
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TO:Jennifer M. Katzaman (CN=Jennifer M. Katzaman/OU=WHO/O=EOP [WHO])
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TO:Jennifer L. Davis (CN=Jennifer L. Davis/OU=WHO/O=EOP [WHO])
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TO:Jennifer H. Mayfield (CN=Jennifer H. Mayfield/OU=OVP/O=EOP@Exchange [OVP])
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TO:Jennifer A. Wray (CN=Jennifer A. Wray/OU=WHO/O=EOP [WHO])
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TO:Jenica Baldwin (CN=Jenica Baldwin/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP [WHO])
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TO:Jeanie L. Figg (CN=Jeanie L. Figg/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jean Cooper (CN=Jean Cooper/OU=OPD/O=EOP@Exchange [OPD])
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TO:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:January M. Riecke (CN=January M. Riecke/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Jane C. Heishman (CN=Jane C. Heishman/OU=NSC/O=EOP [NSC])
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TO:James M. McAllister (CN=James M. McAllister/OU=WHO/O=EOP [WHO])
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TO:James A. Waters (CN=James A. Waters/OU=WHO/O=EOP [WHO])
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TO:Israel Hernandez (CN=Israel Hernandez/OU=WHO/O=EOP@Exchange [WHO])
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TO:Healy E. Baumgardner (CN=Healy E. Baumgardner/OU=WHO/O=EOP [WHO])
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TO:Harriet Miers (CN=Harriet Miers/OU=WHO/O=EOP@Exchange [WHO])
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TO:Gretchen P. Steen (CN=Gretchen P. Steen/OU=WHO/O=EOP [WHO])
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TO:Gregory L. Schulte (CN=Gregory L. Schulte/OU=NSC/O=EOP [NSC])
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TO:Gregory J. Jenkins (CN=Gregory J. Jenkins/OU=WHO/O=EOP [WHO])
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TO:Gregory C. Huffman (CN=Gregory C. Huffman/OU=WHO/O=EOP [WHO])
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TO:Eric W. Terrell (CN=Eric W. Terrell/OU=WHO/O=EOP [WHO])
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TO:Eric A. Draper (CN=Eric A. Draper/OU=WHO/O=EOP@Exchange [WHO])
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TO:Elizabeth W. Kleppe (CN=Elizabeth W. Kleppe/OU=OVP/O=EOP@Exchange [OVP])
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TO:Eleanor Stone (CN=Eleanor Stone/OU=WHO/O=EOP [WHO])
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TO:Douglas W. Slade (CN=Douglas W. Slade/OU=WHO/O=EOP [WHO])
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TO:Dina Powell (CN=Dina Powell/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Diana C. Donnelly (CN=Diana C. Donnelly/OU=WHO/O=EOP@Exchange [WHO])
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TO:Debra Heiden (CN=Debra Heiden/OU=OVP/O=EOP@Exchange [OVP])
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TO:David W. Hobbs (CN=David W. Hobbs/OU=WHO/O=EOP@Exchange [WHO])
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TO:Colleen Litkenhaus (CN=Colleen Litkenhaus/OU=WHO/O=EOP@Exchange [WHO])
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TO:Clare Pritchett (CN=Clare Pritchett/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Christal R. West (CN=Christal R. West/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Cheryl E. Barnett (CN=Cheryl E. Barnett/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Cathy L. Millison (CN=Cathy L. Millison/OU=NSC/O=EOP [NSC])
READ:UNKNOWN
TO:Catherine S. Fenton (CN=Catherine S. Fenton/OU=WHO/O=EOP@Exchange [WHO])
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TO:Catherine J. Martin (CN=Catherine J. Martin/OU=OVP/O=EOP@Exchange [OVP])
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TO:Carolyn Nelson (CN=Carolyn Nelson/OU=WHO/O=EOP@Exchange [WHO])
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TO:Carolyn E. Cleveland (CN=Carolyn E. Cleveland/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Brook Holladay (CN=Brook Holladay/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO:Britt Grant (CN=Britt Grant/OU=OPD/O=EOP [OPD])
READ:UNKNOWN
TO:Brian R. Besanceney (CN=Brian R. Besanceney/OU=WHO/O=EOP [WHO])
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TO:Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])
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TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Bradley A. Blakeman (CN=Bradley A. Blakeman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Bradford D. Dayspring (CN=Bradford D. Dayspring/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Bonny K. Marshall (CN=Bonny K. Marshall/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Blake Gottesman (CN=Blake Gottesman/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Barry S. Jackson (CN=Barry S. Jackson/OU=WHO/O=EOP [WHO])
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TO:Barbara J. Goergen (CN=Barbara J. Goergen/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Barbara J. Finn (CN=Barbara J. Finn/OU=OA/O=EOP [OA])
READ:UNKNOWN
TO:A. Merrill Hughes (CN=A. Merrill Hughes/OU=OVP/O=EOP@Exchange [OVP])
READ:UNKNOWN
TO:Ashley Estes (CN=Ashley Estes/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Ashley D. Drummond (CN=Ashley D. Drummond/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Anne E. Campbell (CN=Anne E. Campbell/OU=WHO/O=EOP@Exchange [WHO])
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TO:Andrew H. Card (CN=Andrew H. Card/OU=WHO/O=EOP@Exchange [WHO])
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TO:Andrea G. Ball (CN=Andrea G. Ball/OU=WHO/O=EOP@Exchange [WHO])
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TO:Allison L. Riepenhoff (CN=Allison L. Riepenhoff/OU=WHO/O=EOP@Exchange [WHO])
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TO:Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
TO:Adrian G. Gray (CN=Adrian G. Gray/OU=WHO/O=EOP [WHO])
READ:UNKNOWN
TO:Adam B. Ingols (CN=Adam B. Ingols/OU=WHO/O=EOP@Exchange [WHO])
READ:UNKNOWN
CC:Jared B. Weinstein (CN=Jared B. Weinstein/OU=WHO/O=EOP@Exchange@EOP [WHO])
READ:UNKNOWN
End Original ARMS Header

New Approved Presidential Activity Sheets for 07/03/2003 are now available in:

"Timepiece" - The Presidential Scheduling Database.

To view the newly published APAs please click on the following link.

In addition to clicking on the link above, you can always directly access the latest Presidential Scheduling Information by selecting "Timepiece" from your Lotus Notes Desktop.

Please feel free to call the Office of Appointments and Scheduling with any questions.

Thank You,

Bradley A. Blakeman
Deputy Assistant to the President and Director of Appointments and Scheduling

From: Ingwell, Carmen M.
To: <Kavanaugh, Brett M.>;<Ullyot, Theodore W.>;<Oca - Office Of Cabinet Affairs>
Sent: 7/3/2003 5:17:16 PM
Subject: Agency FOIA Requests
Attachments: FOIA 07-03-03.doc

<>

AGENCY FOIA REQUESTS

DOC

Received on 6/19/03, from **John Garder of Earthjustice**, requesting a copy of all communications between Rep. Richard Pombo (R-CA) and the National Marine Fisheries Service employees or agents, and records of communications between Rep. Richard Pombo and any other state or federal agency.

Received 6/20/03, from **Sajit Gandhi of the National Security Archive**, requesting information on the impact of Peru's proposed Camisea Natural Gas project on the environment and indigenous people living in proximity to the project area.

Received 6/24/03, from **Melanie Sloan of Citizens for Responsibility and Ethics in Washington**, requesting any records, dating from January 1, 2001 to present, mentioning Bacardi, Havana Club, HCH, or Cubaexport, received, sent, or maintained by employees of DOC, including Secretary Donald Evans, Under Secretary Grant Aldonas, former Director General Maria Cino, et al.

Received 6/23/03, from **Rob Evans of The Guardian (Newspaper from Surrey, England)** requesting documents regarding payment by BAE Systems or British Aerospace to the foreign minister of Qatar, Sheikh Hamad bin Jassin bin Jaber al-Thani, concerning a 1996 agreement to supply defense equipment.

Received 6/23/03, from **Ronald L. Motley of Motley, Rice LLC**, requesting information related to the use of commodities to facilitate money laundering, terrorist financing or other crimes.

Received 6/24/03, from **Bradley Katz of the Democratic Senatorial Campaign Committee**, requesting copies of any FOIA inquiries submitted since January 1, 2003 that seek any correspondence with or information about Senators Patty Murray, Ron Wyden, Barbara Boxer, Harry Reid, Byron Dorgan, Tom Daschle, Blanche Lincoln, John Breaux, Russ Feingold, Evan Bayh, Bob Graham, Ernest Hollings, John Edwards, Barbara Mikulski, Chris Dodd, Chuck Schumer, and Pat Leahy.

Received 6/24/03, from **Paul Blustein of the Washington Post**, two documents referred by the Department of State related to a request for records involving financial crises in and the International Monetary Fund bailout of Thailand, South Korea, Indonesia, Russia and Brazil; and the U.S. government's position on those issues.

Received 6/24/03, from **Christina Reynolds**, requesting all records of communication between the Department of Commerce and Howard B. Dean, John R. Edwards, Richard A. Gephardt and John F. Kerry; and any FOIA requests filed since January 11, 2002 regarding these individuals

Received 6/26/03 from **Rob Evans of The Guardian (Newspaper from Surrey, England)** requesting copies of all documents maintained by the Department of Commerce that relate to a

contract awarded to Agusta, an Italian firm, between 1998 and 2000 to supply helicopters to the South African air force.

Received on 6/26/03, from **Michael Milstein of *The Oregonian***, requesting records regarding the investigation into the die-off of fish including threatened coho salmon in the Klamath River system during 2002.

DoEd

Benjamin Jones, Democratic Senatorial Campaign Committee: Correspondence between DOE and Senator Harry Reid from January 1, 1982 to the present.

DOL

Deborah Turcotte, Business Reporter, Bangor Daily News, Bangor, MA, is seeking: copies of public records pertaining to Evergreen Forestry Services of Sandpoint, Idaho and Peter Smith, II also of Sandpoint, ID.

Bradley Katz, Research Assistant, Democratic Senatorial Campaign Committee, Washington, D.C., is seeking: correspondence with or information about the following current U.S. Senators or their offices and staff filed with the Department of Labor between January 1, 2003 and the present:

Senator Patty Murray
Senator Ron Wyden
Senator Barbara Boxer
Senator Harry Reid
Senator Byron Dorgan
Senator Tom Daschle
Senator Blanche Lincoln
Senator John Breaux
Senator Russ Feingold
Senator Evan Bayh
Senator Bob Graham
Senator Ernest "Fritz" Hollings
Senator John Edwards
Senator Barbara Mikulski
Senator Chris Dodd
Senator Chuck Schumer
Senator Pat Leahy

Jonathan P. Hiatt, General Counsel, AFL-CIO, Washington, D.C., is seeking: copies of all records relating to public opinion research conducted by or for the Department of Labor or any agency within the Department of Labor in or after September 2002 on the issue of compensatory time for hours worked in excess of 40 per week, including the results of any such public opinion research.

The response should include, but is not limited to: documents, correspondence, letters, logs, memoranda, records of meetings, logs of meetings, minutes of meetings, tape recordings, e-mails, statements of position, statistical reports, computer printouts, and computer disks or files, including drafts of any of these items.

Christina Reynolds and John Dervin, Raleigh, NC, are seeking:
any and all records of communications including but not limited to letters, written requests, reports, telephone records, electronic communications, complaints, investigations, violations and memos between the Department of Labor and all divisions and agencies of the following individuals:

Howard B. Dean or his offices for 1991–present, 1991–2002, 1995, 1997, 1987-1991, and 1983-1986.

John R. Edwards or his offices for 1998–present.

Richard A. Gephardt or his offices for 1977–present and 1971–1976.

John F. Kerry or his offices for 1985–present and 1983–1984.

The request also seeks any and all FOIA requests filed since January 1, 2002 with the Department of Labor, and all divisions and agencies, mentioning Howard B. Dean, John R. Edwards, Richard A. Gephardt, or John F. Kerry.

ED

Student Loan Discharge Records. Deanne Loone, representing the National Consumer Law Center, Inc., has requested copies of all documents related to Student Loan Discharge records from 1998 to the present.

FY 2002 Voluntary School Choice Program Correspondence. David J. Huff, representing Education Week, has requested copies of all documents related to the competition for funds under the Voluntary School Choice Program in Fiscal Year 2002.

Correspondence with Representative Fletcher. Jason T. Sauer has requested copies of all correspondence between the Department and Congressman Ernest L. Fletcher, from 1999 through June 1, 2003.

Correspondence with Representative Hastert, DeLay, and Reynolds. Becki J. Lesser, Attorney at Law, has requested copies of all correspondence between the Department and Congressmen Dennis Hastert and Tom DeLay, from 1995 to the present, and all correspondence with Congressman Thomas Reynolds from 1998 to the present.

Request for FOIAs Concerning Specified Members. Bradley Katz of the Democratic Senatorial Campaign Committee has requested copies of all FOIA requests received by the Department since January 1, 2003, concerning the following Senators: Patty Murray, Ron Wyden, Barbara Boxer, Harry Reid, Byron Dorgan, Tom Daschle, Blanche Lincoln, John

Breaux, Russ Feingold, Evan Bayh, Bob Graham, Ernest Hollings, John Edwards, Barbara Mikulski, Chris Dodd, Charles Schumer, and Pat Leahy.

VA

Request for Construction Drawings of the National Memorial Cemetery of Arizona. The National Cemetery Administration received a FOIA request from Benjamin Doherty, attorney for Bryan Cave Law Firm. Mr. Doherty represents a client who owns approximately 5 acres of property located south of the cemetery. The owner is considering developing the property for high-end new homes and needs additional information about possible access roads to serve his property. NCA is researching the request and will provide all releasable documentation once the research has been completed.

EPA

During the week of June 23, 2003, the Agency received 255 FOIA requests. Of the total, 62 were received in Headquarters. Year-to-date totals are 1,805 for Headquarters and 9,539 agency-wide. Significant FOIA requests received this week include:

- (4) Dawn Grodsky of Inside EPA/Clean Air Report has requested copies of administrative civil rights complaints that EPA has dismissed on the merits within the past few weeks; and
- (5) John Gamboa of The Greenlining Institute has requested copies of the Office of Civil Rights affirmative action reports and utilization factors for each region.

From: CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO]
To: Kevin M. O'Donovan/OVP/EOP@Exchange [OVP] <Kevin M. O'Donovan>; Scott McClellan/WHO/EOP@Exchange [WHO] <Scott McClellan>; Augustine T. Smythe/OMB/EOP@EOP [OMB] <Augustine T. Smythe>; Kathleen Mynster/WHO/EOP@EOP [WHO] <Kathleen Mynster>; Jeanie S. Mamo/WHO/EOP@EOP [WHO] <Jeanie S. Mamo>; Nanette Everson/WHO/EOP@EOP [WHO] <Nanette Everson>; Charles Conner/OPD/EOP@EOP [OPD] <Charles Conner>; Dana M. Perino/CEQ/EOP@EOP [CEQ] <Dana M. Perino>; Alicia P. Clark/WHO/EOP@EOP [WHO] <Alicia P. Clark>; James Connaughton/CEQ/EOP@EOP [CEQ] <James Connaughton>; Terrell L. Halaska/OPD/EOP@EOP [OPD] <Terrell L. Halaska>; Alan Gilbert/OPD/EOP@EOP [OPD] <Alan Gilbert>; Kirsten Chadwick/WHO/EOP@Exchange [UNKNOWN] <Kirsten Chadwick>; Holly A. Kuzmich/OPD/EOP@EOP [OPD] <Holly A. Kuzmich>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Wendy J. Grubbs/WHO/EOP@Exchange [WHO] <Wendy J. Grubbs>; Cindy R. Alexander/CEA/EOP@EOP [CEA] <Cindy R. Alexander>; Diana L. Schacht/OPD/EOP@EOP [OPD] <Diana L. Schacht>; James C. Capretta/OMB/EOP@EOP [OMB] <James C. Capretta>; Matthew Kirk/WHO/EOP@Exchange [WHO] <Matthew Kirk>; Charles P. Blahous/OPD/EOP@EOP [OPD] <Charles P. Blahous>; Stephen S. McMillin/OMB/EOP@EOP [OMB] <Stephen S. McMillin>; Tracy Young/WHO/EOP@EOP [WHO] <Tracy Young>; Sean B. O'Hollaren/WHO/EOP@Exchange [WHO] <Sean B. O'Hollaren>; Sara M. Taylor/WHO/EOP@EOP [WHO] <Sara M. Taylor>; Jess Sharp/OPD/EOP@EOP [OPD] <Jess Sharp>; Andrea G. Ball/WHO/EOP@Exchange [WHO] <Andrea G. Ball>; John H. Marburger/OSTP/EOP@EOP [OSTP] <John H. Marburger>; John M. Bridgeland/OPD/EOP@EOP [OPD] <John M. Bridgeland>; Claire Buchan/WHO/EOP@Exchange [UNKNOWN] <Claire Buchan>; Ziad Ojakli/WHO/EOP@Exchange [UNKNOWN] <Ziad Ojakli>; Daniel Keniry/WHO/EOP@Exchange [UNKNOWN] <Daniel Keniry>; Harriet Miers/WHO/EOP@Exchange [WHO] <Harriet Miers>; Lezlee J. Westine/WHO/EOP@EOP [WHO] <Lezlee J. Westine>; Barry S. Jackson/WHO/EOP@EOP [WHO] <Barry S. Jackson>; Suzy DeFrancis/WHO/EOP@Exchange [WHO] <Suzy DeFrancis>; Clay Johnson III/WHO/EOP@Exchange [WHO] <Clay Johnson III>; Michael J. Gerson/WHO/EOP@Exchange [WHO] <Michael J. Gerson>; Alberto R. Gonzales/WHO/EOP@Exchange [WHO] <Alberto R. Gonzales>; Jay P. Lefkowitz/OPD/EOP@Exchange [OPD] <Jay P. Lefkowitz>; Joseph W Hagin/WHO/EOP@Exchange [UNKNOWN] <Joseph W Hagin>; Melissa S. Bennett/WHO/EOP@Exchange [WHO] <Melissa S. Bennett>; Charles D. McGrath/OVP/EOP@Exchange [UNKNOWN] <Charles D. McGrath>; David G. Leitch/WHO/EOP@Exchange [WHO] <David G. Leitch>; Keith Hennessey/OPD/EOP@Exchange [OPD] <Keith Hennessey>; Ruben S. Barrales/WHO/EOP@EOP [WHO] <Ruben S. Barrales>; John P. McConnell/WHO/EOP@EOP [WHO] <John P. McConnell>; Darren D. Grubb/WHO/EOP@EOP [WHO] <Darren D. Grubb>; Elizabeth A. Stolpe/CEQ/EOP@EOP [CEQ] <Elizabeth A. Stolpe>; Bryan J. Hannegan/CEQ/EOP@EOP [CEQ] <Bryan J. Hannegan>; Phil Cooney/CEQ/EOP@EOP [CEQ] <Phil Cooney>; Marcus Peacock/OMB/EOP@EOP [OMB] <Marcus Peacock>; Philo D. Hall/OPD/EOP@EOP [OPD] <Philo D. Hall>; William D. Badger/OPD/EOP@EOP [OPD] <William D. Badger>; Ginger G. Loper/WHO/EOP@Exchange [WHO] <Ginger G. Loper>; David Dunn/OPD/EOP@EOP [OPD] <David Dunn>; Robert Marsh/WHO/EOP@Exchange [WHO] <Robert Marsh>; Stephanie J. Lundberg/OVP/EOP@Exchange [OVP] <Stephanie J. Lundberg>; Garry Malphrus/OPD/EOP@EOP [OPD] <Garry Malphrus>; Reginald J. Brown/WHO/EOP@EOP [WHO] <Reginald J. Brown>; Amy Jensen/WHO/EOP@Exchange [WHO] <Amy Jensen>; Thomas C. DeLeire/CEA/EOP@EOP [CEA] <Thomas C. DeLeire>; Joel Kaplan/WHO/EOP@Exchange [UNKNOWN] <Joel Kaplan>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>; Elan Liang/WHO/EOP@Exchange [WHO] <Elan Liang>; Ado A. Machida/OVP/EOP@Exchange [OVP] <Ado A. Machida>; Robert N. Collender/CEA/EOP@EOP [CEA] <Robert N. Collender>; Elizabeth S. Dougherty/OPD/EOP@EOP [OPD] <Elizabeth S. Dougherty>; Richard M. Russell/OSTP/EOP@EOP [OSTP] <Richard M. Russell>; Jim Towey/WHO/EOP@EOP [WHO] <Jim Towey>; Lewis Libby/OVP/EOP@Exchange [OVP] <Lewis Libby>; Lawrence A. Fleischer/WHO/EOP@Exchange [WHO] <Lawrence A. Fleischer>; Eric C. Pelletier/WHO/EOP@Exchange [WHO] <Eric C. Pelletier>; David W. Hobbs/WHO/EOP@Exchange [WHO] <David W. Hobbs>; Matthew A. Schlapp/WHO/EOP@EOP [WHO] <Matthew A. Schlapp>; Peter H. Wehner/WHO/EOP@EOP [WHO] <Peter H. Wehner>; Karl C. Rove/WHO/EOP@Exchange [WHO] <Karl C. Rove>; Daniel J. Bartlett/WHO/EOP@Exchange [WHO] <Daniel J. Bartlett>; Dina Powell/WHO/EOP@Exchange [WHO] <Dina Powell>; John Gordon/WHO

/EOP@Exchange [WHO] <John Gordon>;Stephen Friedman/OPD/EOP@Exchange [OPD]
<Stephen Friedman>;Margaret M. Spellings/OPD/EOP@Exchange [OPD] <Margaret M.
Spellings>;Joshua B. Bolten/OMB/EOP@Exchange [OMB] <Joshua B. Bolten>;Andrew H.
Card/WHO/EOP@Exchange [WHO] <Andrew H. Card>

Sent: 7/3/2003 1:20:47 PM
Subject: : "Off the Shelf!"
Attachments: 04024_p_6b3th003_who.txt_1.doc

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Brian D. Montgomery (CN=Brian D. Montgomery/OU=WHO/O=EOP@Exchange [WHO])

CREATION DATE/TIME: 3-JUL-2003 17:20:47.00

SUBJECT:: "Off the Shelf!"

TO: Kevin M. O'Donovan (CN=Kevin M. O'Donovan/OU=OVP/O=EOP@Exchange [OVP])

READ: UNKNOWN

TO: Scott McClellan (CN=Scott McClellan/OU=WHO/O=EOP@Exchange [WHO])

READ: UNKNOWN

TO: Augustine T. Smythe (CN=Augustine T. Smythe/OU=OMB/O=EOP@EOP [OMB])

READ: UNKNOWN

TO: Kathleen Mynster (CN=Kathleen Mynster/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Jeanie S. Mamo (CN=Jeanie S. Mamo/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: Nanette Everson (CN=Nanette Everson/OU=WHO/O=EOP@EOP [WHO])

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TO: Charles Conner (CN=Charles Conner/OU=OPD/O=EOP@EOP [OPD])

READ: UNKNOWN

TO: Dana M. Perino (CN=Dana M. Perino/OU=CEQ/O=EOP@EOP [CEQ])

READ: UNKNOWN

TO: Alicia P. Clark (CN=Alicia P. Clark/OU=WHO/O=EOP@EOP [WHO])

READ: UNKNOWN

TO: James Connaughton (CN=James Connaughton/OU=CEQ/O=EOP@EOP [CEQ])

READ: UNKNOWN

TO: Terrell L. Halaska (CN=Terrell L. Halaska/OU=OPD/O=EOP@EOP [OPD])

READ: UNKNOWN

TO: Alan Gilbert (CN=Alan Gilbert/OU=OPD/O=EOP@EOP [OPD])

READ: UNKNOWN

TO: Kirsten Chadwick (CN=Kirsten Chadwick/OU=WHO/O=EOP@Exchange [UNKNOWN])

READ: UNKNOWN

TO: Holly A. Kuzmich (CN=Holly A. Kuzmich/OU=OPD/O=EOP@EOP [OPD])

READ: UNKNOWN

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Issue #2;- Keep those comments coming.
ATT CREATION TIME/DATE: 0 00:00:00.00
File attachment <04024_p_6b3th003_who.txt_1>

Bet You Didn't Know...

Only one U.S. President in history retained
the same Cabinet for his entire term
Find out who on the last page...

"Well done is better than well said."
-Benjamin Franklin



“Off The Shelf”

Volume 1, Issue 2

...a twice-weekly bulletin highlighting current news of the President's Cabinet...

Office of Cabinet Affairs

July 3, 2003

AGRICULTURE

Enviros Sue Over Bush's Fire Plan

Greenwire (Online News Journal). July 2, 2003. A coalition of 18 environmental groups sued the Bush Administration for its Healthy Forests Initiative this week, saying the regulations block public involvement and give the Forest Service too much leeway to implement potentially destructive policies. The suit, filed June 30 in U.S. District Court in Montgomery, AL charges the Forest Service skirted the Federal environmental review process in writing the "arbitrary and capricious" regulations. Environmentalists said the lawsuit is the first of its kind. [Click Here For Full Story](#)

EDUCATION

School Grading Concept Wins Parents' Approval

Gannett News Service via Detroit News. July 3, 2003. Most parents seem to support a critical provision of the Federal school-reform law: labeling public schools as needing improvement even if just one group of students falls behind, according to a poll released today. The national telephone poll, conducted for the Business Roundtable, also shows that the overwhelming majority of parents and voters said they would worry if poor and minority students struggled with reading and math – even if the majority of students in their communities did well in those subjects. Only one in four parents said they backed labeling a local school that had been considered excellent as now needing improvement because one group of students lagged behind. [Click Here For Full Story](#)

HEALTH AND HUMAN SERVICES

Head Start Lawsuit Against Department of Health and Human Services (HHS) Dropped

Associated Press via Atlanta Journal Constitution. July 2, 2003. An advocacy group dropped its lawsuit against HHS after the Department agreed to write a new letter to Head Start centers around the country clarifying limits on lobbying activities by teachers and staffs. The National Head Start Association sued the Department last month, alleging that a letter written in May by a top HHS official violated the First Amendment. After a court hearing Monday, the department and the association agreed on language in a new letter that was sent Wednesday to Head Start centers. [Click Here For Full Story](#)

TRANSPORTATION

License-Plate Spray Foils Traffic Cameras

Washington Times. July 3, 2003. Motorists have litigated against them, fired bullets at them and thrown garbage on them — all to get back at the traffic cameras that have caught them in the act of running a red light or speeding. Now they have a new weapon in their arsenal, and it comes in a can for \$29.99. A clear spray called Photoblocker can be applied to license plates to make them hyper-reflective and unreadable when the camera flashes. Most states have laws against obscuring or distorting license plates, but Photoblocker obscures the license plate only in a photo, making it legal or at least difficult for police to detect with the naked eye. [Click Here For Full Story](#)

JUSTICE

Department of Justice (DOJ) To Mediate In Aftermath Of Riots

Associated Press. July 2, 2003. DOJ plans to mediate differences between Benton Harbor residents and local authorities in the aftermath of two days of riots. The riots occurred two weeks ago following a high-speed police chase in which a local motorcyclist died after he crashed into a vacant building. The incident highlighted Benton Harbor's bleak economic outlook and focused attention on the stark contrasts between the primarily black city and St. Joseph, the mostly white city across the river. The Community Relations Service, a branch of DOJ that calls itself a "peacemaker" for community conflicts arising from racial tensions, organized a recent meeting of local police chiefs and city officials. [Subscription Required](#)

ENERGY

Department Of Energy (DOE) To Hold Hearings On Proposed Site In Nevada

Greenwire (Online News Journal). July, 2, 2003. The National Nuclear Security Administration (NNSA) will hold a public hearing tonight in Las Vegas, NV to discuss a proposed nuclear "pit" factory that has come under fire recently for its potential to cause cancer deaths among workers. The DOE's Nevada Test Site is one of five proposed locations for the new facility, which would manufacture plutonium triggers for small nuclear weapons. NNSA plans to hold public hearings at each of the five proposed locations. [Click Here For Full Story](#)

TREASURY

Federal Deposit Insurance Corporation (FDIC) Tightens Rules for Payday Lender Alliances

American Banker. July 3, 2003. The FDIC released guidelines on Wednesday that make it difficult for banks and payday lenders to establish partnerships. Payday lenders are service organizations that accept checks or similar instruments from a borrower as collateral on short-term loans in exchange for a fee. The final version is tougher in several respects than a proposal it issued in January. "It sets a very high standard," said George French, the FDIC's deputy director for policy and examination. "I don't think payday lenders are going to read this and get a warm, fuzzy feeling." [Subscription Required](#)

COMMERCE

New Manufacturing Orders Are Modestly Higher

The New York Times. July 3, 2003. Commerce reported that demand for products of American manufacturers rose modestly in May, providing some hope that manufacturing industries might be emerging from its slump. New orders to factories had a total value of \$320.6 billion in May, a 0.4 percent increase from April. Today's data followed a report that the Institute for Supply Management's manufacturing index rose modestly in June, to a level that nonetheless indicated contraction. The index rose to 49.8 from 49.4 in May. A reading below 50 means manufacturing activity is slowing, while above 50 indicates growth. [Subscription Required](#)

Bet You Didn't Know that [Franklin Pierce](#) (14th U.S. President) was the only one to retain the same Cabinet for four years without any changes, replacements, resignations, or vacancies due to illness or death.

Please Contact the Office of Cabinet Affairs at 6-2572 With Any Questions or Comments

TIP: if unable to click through to full story, right click on link, select "edit link" and then copy and paste address into browser

From: CN=Carmen M. Ingwell/OU=WHO/O=EOP@Exchange [WHO]
To: Peter S. Sobich/WHO/EOP@Exchange [WHO] <Peter S. Sobich>; Jesse O. Villarreal/WHO/EOP@Exchange [WHO] <Jesse O. Villarreal>; Tevi Troy/WHO/EOP@Exchange [WHO] <Tevi Troy>; Sarah Pfeifer/WHO/EOP@Exchange [WHO] <Sarah Pfeifer>; Taylor A. Hughes/WHO/EOP@Exchange [WHO] <Taylor A. Hughes>; Brian D. Montgomery/WHO/EOP@Exchange [WHO] <Brian D. Montgomery>; Carmen M. Ingwell/WHO/EOP@Exchange [WHO] <Carmen M. Ingwell>; Christie Parel/WHO/EOP [WHO] <Christie Parel>; Matthew Koch/WHO/EOP@Exchange [WHO] <Matthew Koch>; Ali H. Tulbah/WHO/EOP@Exchange [WHO] <Ali H. Tulbah>; Edward Ingle/WHO/EOP [WHO] <Edward Ingle>; Theodore W. Ulyot/WHO/EOP@EOP [WHO] <Theodore W. Ulyot>; Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
Sent: 7/3/2003 2:13:39 PM
Subject: : Agency FOIA Requests
Attachments: P_HD4TH003_WHO.TXT_1.doc

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CREATION DATE/TIME: 3-JUL-2003 18:13:39.00
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AGENCY FOIA REQUESTS

DOC

Received on 6/19/03, from **John Garder of Earthjustice**, requesting a copy of all communications between Rep. Richard Pombo (R-CA) and the National Marine Fisheries Service employees or agents, and records of communications between Rep. Richard Pombo and any other state or federal agency.

Received 6/20/03, from **Sajit Gandhi of the National Security Archive**, requesting information on the impact of Peru's proposed Camisea Natural Gas project on the environment and indigenous people living in proximity to the project area.

Received 6/24/03, from **Melanie Sloan of Citizens for Responsibility and Ethics in Washington**, requesting any records, dating from January 1, 2001 to present, mentioning Bacardi, Havana Club, HCH, or Cubaexport, received, sent, or maintained by employees of DOC, including Secretary Donald Evans, Under Secretary Grant Aldonas, former Director General Maria Cino, et al.

Received 6/23/03, from **Rob Evans of The Guardian (Newspaper from Surrey, England)** requesting documents regarding payment by BAE Systems or British Aerospace to the foreign minister of Qatar, Sheikh Hamad bin Jassin bin Jaber al-Thani, concerning a 1996 agreement to supply defense equipment.

Received 6/23/03, from **Ronald L. Motley of Motley, Rice LLC**, requesting information related to the use of commodities to facilitate money laundering, terrorist financing or other crimes.

Received 6/24/03, from **Bradley Katz of the Democratic Senatorial Campaign Committee**, requesting copies of any FOIA inquiries submitted since January 1, 2003 that seek any correspondence with or information about Senators Patty Murray, Ron Wyden, Barbara Boxer, Harry Reid, Byron Dorgan, Tom Daschle, Blanche Lincoln, John Breaux, Russ Feingold, Evan Bayh, Bob Graham, Ernest Hollings, John Edwards, Barbara Mikulski, Chris Dodd, Chuck Schumer, and Pat Leahy.

Received 6/24/03, from **Paul Blustein of the Washington Post**, two documents referred by the Department of State related to a request for records involving financial crises in and the International Monetary Fund bailout of Thailand, South Korea, Indonesia, Russia and Brazil; and the U.S. government's position on those issues.

Received 6/24/03, from **Christina Reynolds**, requesting all records of communication between the Department of Commerce and Howard B. Dean, John R. Edwards, Richard A. Gephardt and John F. Kerry; and any FOIA requests filed since January 11, 2002 regarding these individuals

Received 6/26/03 from **Rob Evans of The Guardian (Newspaper from Surrey, England)** requesting copies of all documents maintained by the Department of Commerce that relate to a

contract awarded to Agusta, an Italian firm, between 1998 and 2000 to supply helicopters to the South African air force.

Received on 6/26/03, from **Michael Milstein of *The Oregonian***, requesting records regarding the investigation into the die-off of fish including threatened coho salmon in the Klamath River system during 2002.

DoEd

Benjamin Jones, Democratic Senatorial Campaign Committee: Correspondence between DOE and Senator Harry Reid from January 1, 1982 to the present.

DOL

Deborah Turcotte, Business Reporter, Bangor Daily News, Bangor, MA, is seeking: copies of public records pertaining to Evergreen Forestry Services of Sandpoint, Idaho and Peter Smith, II also of Sandpoint, ID.

Bradley Katz, Research Assistant, Democratic Senatorial Campaign Committee, Washington, D.C., is seeking: correspondence with or information about the following current U.S. Senators or their offices and staff filed with the Department of Labor between January 1, 2003 and the present:

Senator Patty Murray
Senator Ron Wyden
Senator Barbara Boxer
Senator Harry Reid
Senator Byron Dorgan
Senator Tom Daschle
Senator Blanche Lincoln
Senator John Breaux
Senator Russ Feingold
Senator Evan Bayh
Senator Bob Graham
Senator Ernest "Fritz" Hollings
Senator John Edwards
Senator Barbara Mikulski
Senator Chris Dodd
Senator Chuck Schumer
Senator Pat Leahy

Jonathan P. Hiatt, General Counsel, AFL-CIO, Washington, D.C., is seeking: copies of all records relating to public opinion research conducted by or for the Department of Labor or any agency within the Department of Labor in or after September 2002 on the issue of compensatory time for hours worked in excess of 40 per week, including the results of any such public opinion research.

The response should include, but is not limited to: documents, correspondence, letters, logs, memoranda, records of meetings, logs of meetings, minutes of meetings, tape recordings, e-mails, statements of position, statistical reports, computer printouts, and computer disks or files, including drafts of any of these items.

Christina Reynolds and John Dervin, Raleigh, NC, are seeking:
any and all records of communications including but not limited to letters, written requests, reports, telephone records, electronic communications, complaints, investigations, violations and memos between the Department of Labor and all divisions and agencies of the following individuals:

Howard B. Dean or his offices for 1991–present, 1991–2002, 1995, 1997, 1987-1991, and 1983-1986.

John R. Edwards or his offices for 1998–present.

Richard A. Gephardt or his offices for 1977–present and 1971–1976.

John F. Kerry or his offices for 1985–present and 1983–1984.

The request also seeks any and all FOIA requests filed since January 1, 2002 with the Department of Labor, and all divisions and agencies, mentioning Howard B. Dean, John R. Edwards, Richard A. Gephardt, or John F. Kerry.

ED

Student Loan Discharge Records. Deanne Loone, representing the National Consumer Law Center, Inc., has requested copies of all documents related to Student Loan Discharge records from 1998 to the present.

FY 2002 Voluntary School Choice Program Correspondence. David J. Huff, representing Education Week, has requested copies of all documents related to the competition for funds under the Voluntary School Choice Program in Fiscal Year 2002.

Correspondence with Representative Fletcher. Jason T. Sauer has requested copies of all correspondence between the Department and Congressman Ernest L. Fletcher, from 1999 through June 1, 2003.

Correspondence with Representative Hastert, DeLay, and Reynolds. Becki J. Lesser, Attorney at Law, has requested copies of all correspondence between the Department and Congressmen Dennis Hastert and Tom DeLay, from 1995 to the present, and all correspondence with Congressman Thomas Reynolds from 1998 to the present.

Request for FOIAs Concerning Specified Members. Bradley Katz of the Democratic Senatorial Campaign Committee has requested copies of all FOIA requests received by the Department since January 1, 2003, concerning the following Senators: Patty Murray, Ron Wyden, Barbara Boxer, Harry Reid, Byron Dorgan, Tom Daschle, Blanche Lincoln, John

Breaux, Russ Feingold, Evan Bayh, Bob Graham, Ernest Hollings, John Edwards, Barbara Mikulski, Chris Dodd, Charles Schumer, and Pat Leahy.

VA

Request for Construction Drawings of the National Memorial Cemetery of Arizona. The National Cemetery Administration received a FOIA request from Benjamin Doherty, attorney for Bryan Cave Law Firm. Mr. Doherty represents a client who owns approximately 5 acres of property located south of the cemetery. The owner is considering developing the property for high-end new homes and needs additional information about possible access roads to serve his property. NCA is researching the request and will provide all releasable documentation once the research has been completed.

EPA

During the week of June 23, 2003, the Agency received 255 FOIA requests. Of the total, 62 were received in Headquarters. Year-to-date totals are 1,805 for Headquarters and 9,539 agency-wide. Significant FOIA requests received this week include:

- (4) Dawn Grodsky of Inside EPA/Clean Air Report has requested copies of administrative civil rights complaints that EPA has dismissed on the merits within the past few weeks; and
- (5) John Gamboa of The Greenlining Institute has requested copies of the Office of Civil Rights affirmative action reports and utilization factors for each region.

From: Lefkowitz, Jay P.
To: <Kavanaugh, Brett M.>
Sent: 7/6/2003 1:18:52 PM
Subject: SOC

Said on tv today that a wise old woman would not think about a case any differently from a wise old man.

So much for viewpoint diversity.