From: "Sinatra, Nicholas A."
To: <srushton@committeeforjustice.org>
Subject: Judicial Coalition Press
Received(Date): Fri, 16 Jun 2006 09:49:33 -0500
Judicial Coalition Press Round-Up as of 6-15-06.doc

Sean,
Is this an accurate round-up of the press to date? Thanks, Nick

---

Nick Sinatra
Associate Director
White House Office of Public Liaison
Phone: 202-456-2380
Fax: 202-456-6218

Rocky Mountain News

Time running short on nomination

By M.E. Sprengelmeyer, Rocky Mountain News
June 15, 2006

WASHINGTON — Time is running out before a Colorado judicial nomination could get stalled in the U.S. Senate's summer swoon.

President Bush has nominated attorney and legal scholar Neil Gorsuch to fill a seat on the Denver-based 10th Circuit Court of Appeals, and backers hope he gets a hearing in the Senate Judiciary Committee in the next few weeks.

But if there's a delay and the committee can't agree to advance the nomination by the Senate's August recess, it's unlikely he can be win final Senate confirmation by the end of the year, said Sean Conway, chief of staff to Sen. Wayne Allard, R-Loveland.

That prospect, and the lengthy delay in confirming an earlier 10th Circuit nominee, Tim Tymkovich, prompted Allard to hand-deliver a letter to Senate Judiciary Committee chairman Sen. Arlen Specter, R-Pa., this week asking him to expedite Gorsuch's confirmation.

"What we're trying to do is get this process moving," Allard chief of staff Sean Conway said Thursday. "What pushed this is we do not want a repeat of the Tymkovich situation where we had a vacancy on the court for over two years."

"Sen. Allard just doesn't feel it's prudent to have a vacancy on an important appeals court like this, particularly with a non-controversial nominee."

So far, no overt opposition has emerged to Gorsuch's nomination, but arcane Senate procedures have left the timing of his pending confirmation hearings up in the air.

By Senate tradition, the Judiciary Committee does not move forward with confirmation hearings until a nominee's two home-state Senators deliver so-called "blue slips" indicating they approve going forward.

In the past, Allard has used that procedure to block two of former President Bill Clinton's Colorado judicial nominees.

As of Thursday afternoon, Sen. Ken Salazar, D-Denver, had not delivered his "blue slip" on Gorsuch, but spokesman Drew Nannis said there was no intent to delay Gorsuch and that Salazar's sign-off could come within a day or two.

http://www.philly.com/mld/inquirer/news/editorial/14820282.htm

Philadelphia Inquirer
June 15, 2006

Stop the nomination games:
It's time to pass Specter's reforms to the irresponsible handling of judicial nominations.
By Jeffrey Lord

There they go again.

It's bad enough that one political party in charge of the U.S. Senate plays games with the federal judiciary when the other party controls the White House. Now we have members of the same party playing games when their own party controls the White House. Either way, the result is bad for federal judges.

The latest incident involves Sen. Lindsey Graham (R., S.C.) and a Bush nominee for the U.S. Court of Appeals for the Fourth Circuit. The nominee, William "Jim" Haynes, is currently the general counsel at the Pentagon. As such, he has played a role in the issue of the treatment of detainees captured on the battlefields of Afghanistan and Iraq. Graham, a military lawyer himself, apparently objects to Haynes and is responding to critics in the military community that the policies on detainees Haynes helped to construct make him unfit for the appeals court.

Fair enough. While I disagree with this assessment, this has been used as yet another excuse to abuse the Senate's judicial confirmation process.

Haynes' nomination has been sitting in the Senate Judiciary Committee for three years without a vote. Repeated news accounts finger Graham, a committee member, as the senator who is quietly keeping Haynes from getting that vote. Even more amazing, there are multiple media stories that Sen. John McCain (R., Ariz.), a potential presidential candidate, is urging Graham on.

Once again, members of the U.S. Senate are vividly demonstrating why the public has such increasing contempt for things political. Not unlike the way Pennsylvania state legislators of both parties united to give themselves a pay raise in the middle of the night, Republican and Democratic U.S. senators seem determined to show the public that there are not two political parties in Washington, but three: the Republicans, the Democrats and the Senate Party. The latter has a mere 100 members and is thoroughly bipartisan.

So Graham quietly signals his colleagues that he wants to obstruct the confirmation process and - presto! - the senator gets his wish. Never mind that the rules for selecting senators are hard and fast and not to be tampered with. Forget that McCain and any other interested presidential candidate depend on the rules for how we elect a president. It's only the third branch of government that doesn't get the same respect.

If Graham were informed today that his next election were moved up from 2008 to next week, he would correctly cry foul. Yet he shows not the slightest concern over letting a judicial nominee cool his heels for three years.

Even more amazing is the reported conduct of McCain. Forget the sheer politics of his infuriating the very conservatives he will need to get nominated. Does he seriously believe that his conduct in this matter will not provide some ammunition for some future senator to stymie the judicial nominations of a President McCain?

For that matter, every senator with an eye on the White House in 2008 should be hustling to make sure Haynes and other nominees are treated fairly. After senatorial abuse of the process reaching back to at least the Reagan administration, what makes any Democrat think things will change if the next president's name is Clinton, Kerry or Feingold?

Several years ago, Pennsylvania's own Sen. Arlen Specter proposed a series of excellent reforms that would bring a halt to what has become an out-of-control judicial confirmation process. They featured a timeline for hearings, committee votes and floor votes. If adopted, the rule changes would apply to all nominees of all presidents, regardless of which party controlled the Senate.

For no other reason than simple fairness, not to mention respect for the federal judiciary, it's time to pass those Specter reforms.

Of course, there will be bipartisan resistance from senators more interested in self-granted perks than the kind of impartial rules senators themselves look to as the lifeblood of their role as elected officials under the Constitution.

But Specter believes in these reforms and, as chairman of the Senate Judiciary Committee, he is in exactly the right place to get fair treatment for Haynes and finally reform the U.S. Senate's judicial

confirmation process for good. After decades of senatorial mistreatment of judicial nominees, isn't it about time?

Pennsylvanians of all political stripes who are interested in seeing that the federal judiciary gets the same fairness senators demand for themselves should insist that their senior senator use his considerable yet momentary power to pass the Specter reforms.

Jeffrey Lord P6/(b)(6) is the author of "The Borking Rebellion," an inside look at the U.S. Senate's judicial confirmation process.

Bloomberg
June 12, 2006

Republican Activists Urge Senate to Vote on Judicial Nominees
By James Rowley

June 12 (Bloomberg) -- Republican activists want their allies in the U.S. Senate to revive the debate over President George W. Bush's judicial nominees to mobilize the party's core voters for the November elections.

Republicans risk losing one or both houses of Congress unless the base is motivated to vote, the activists warned at a news conference in Washington. They urged Senate Republican leader Bill Frist of Tennessee to focus on judicial nominees instead of a proposed constitutional amendment to ban flag burning that is set for debate this month.

“Our constituents will not be put off being told that the Senate has more pressing business than judicial nominees,'” said Jan LaRue, chief counsel of Concerned Women For America. Unless Senate Republicans confirm more judicial nominees, ``come Nov. 8, the votes they want may not be there.''

The flag-burning amendment is more a symbolic issue than judicial nominations, which have concerned voters in past elections since Bush took office, said Manuel Miranda, a former Senate Republican aide who heads the Third Branch Conference.

“Appealing only with symbolic issues, is, in essence, patronizing," Miranda told reporters. Still, he defended Frist’s doomed effort to pass legislation to ban same-sex marriage because that issue “is very much linked to our concern for the judiciary."

Making a Difference

David Keene, chairman of the American Conservative Union, said a debate on judges is a good way for Republicans to distinguish themselves from Democrats in November.

Conservatives are more likely to vote “if they are happy, active and energized," he told reporters.

Frist has tried to avoid battles over nominees who have generated the most controversy. After vowing earlier this year to seek a vote on Terrence Boyle, nominated to the 4th U.S. Circuit Court of Appeals, he has ducked questions about plans to seek Senate votes on Boyle and another nominee for the same Richmond-based court, William J. Haynes II.

Boyle, 60, a federal trial court judge in North Carolina, is accused of breaking a conflict-of-interest law by purchasing stock in General Electric Co. while overseeing a case involving an employee in a pension dispute with the company. Boyle ruled in favor of the company. Those allegations emerged after Frist had announced his plan to seek a Senate vote on Boyle, who Bush first nominated five years ago.

Suspected Terrorists

Haynes, 48, the Defense Department's general counsel, faces questions from Republicans and Democrats alike over his role in drafting the policies for detaining and interrogating suspected terrorists.

Critics say those policies blur legal prohibitions on abuse of prisoners, leading to the torture of captives at the Abu Ghraib prison in Iraq. About a dozen soldiers have been prosecuted for the alleged mistreatment.

Activists last week urged South Carolina Republican Senator Lindsey Graham to drop his objections to Haynes and permit a vote by the Judiciary Committee on his nomination.

Graham, acknowledging he has concerns about Haynes's role in drafting the detention and interrogation policies, has declined to say how he would vote on the nomination.

In a June 8 letter to the activists, he said he took “very seriously" the criticisms by two retired Navy judge advocate generals who opposed Haynes. “I am troubled that very distinguished military leaders have expressed strong opposition to the Haynes nomination," the letter said.

Second Hearing

Miranda said he wouldn't oppose a second confirmation hearing for Haynes, who was questioned by the committee before the revelations about Abu Ghraib.

Haynes's nomination is still in the Judiciary Committee, where Democrats say they would ask for another hearing before the panel votes to send the appointment to the full Senate.

“Jim Haynes does not condone torture," Republican activist Pat M. Woodward Jr., told reporters. Opponents “are trying to blame Jim Haynes for this administration's policies in the war on terror."

More than 60 activists, including Paul Weyrich of Coalitions for America and Donald E. Wildmon of the American family Association, have signed a letter urging Republican leaders to drop the flag-burning debate in favor of judicial nominations.

Conservative Leaders Ask Frist To Emphasize Judges

CONGRESS DAILY PM
June 12, 2006
by Greta Wodele

More than 60 conservative leaders today called on Senate Majority Leader Frist to set aside this month's planned debate on a constitutional amendment to ban flag burning and instead schedule votes on several pending appellate court nominations. "We write to remind you of your duty, but also because we are concerned that if the majority that assured the confirmation votes of Chief Justice Roberts and Justice [Samuel] Alito lose just one seat in the next election, the future of the Supreme Court and the federal appellate bench will again be imperiled by use of filibusters," members of the coalition of conservative groups wrote in a letter to Frist and Republican senators. The group, which is expected to pick up nearly 100 signatures, plans to send the letter Tuesday. The coalition argued the judges debate, which has pitted Republicans against Democrats, ranks higher in surveys with conservatives than the flag burning proposal.

Frist's spokeswoman today responded that the flag burning amendment is a key proposal to Americans, especially for veterans as well as soldiers in Iraq and Afghanistan. She added that Frist has "methodically" pushed through several of President Bush's judicial picks and would continue to do so this year. The spokeswoman declined to give a timeline for scheduling a vote on pending nominees. The Senate is slated to vote on the flag proposal at the end of the month. One conservative group, Americans

for Tax Reform, opted against signing onto the coalition's letter and instead sent its own letter encouraging Frist to schedule votes on judicial nominees.

Manuel Miranda, executive director of the conservative Third Branch Conference, praised Frist today for his previous efforts on judicial nominees, but argued Republicans must demand the majority leader schedule votes for the pending judicial nominees in order to help energize conservative voters this fall. "It will get out small margins," Miranda told reporters, conceding the issue would not mobilize large numbers of conservative voters. "It is by small margins that several [GOP] senators currently hold their seats." Miranda said the judge debate is a "signature issue" for Frist, who would need conservatives for a potential White House bid in 2008. "He began with a bang, but if he ends on a whimper that could hurt him," Miranda said. "We want to help him." One GOP Senate aide dismissed Miranda's news conference today as a media ploy to pressure Republicans on a single issue. "The 'Flag Amendment' is not preventing movement on judges," said the aide, arguing the flag proposal gave conservatives a "juicier hook" than other legislative measures slated for floor debate this year.

Miranda said he expects Frist to commit to a vote on Terrence Boyle's nomination to the 4th U.S. Circuit Court of Appeals before the July Fourth recess. But conservatives worry that Frist and GOP leaders will not continue pushing votes on other pending judges in the months leading up to the November elections. "Under the old Senate tradition, judges stop after June and July," said Miranda. Frist's spokeswoman declined to comment about whether Frist would schedule a vote on Boyle's nomination before next month.

WALL STREET JOURNAL
June 7, 2006

Justice Kennedy's Culture War
How gay marriage became a federal case, alas.

The Supreme Court is busy this week, but Justice Anthony Kennedy should take a moment to tune into the Senate debate on gay marriage. As the man who enabled this latest front in the culture wars, it's the least he can do.

That's the most efficient way to think about the Senate debate this week on the Marriage Protection Amendment, which would create a national definition of marriage as a "union of a man and a woman." We remain opposed to federal interference in this issue, believing that issues of family life and law are best settled in state legislatures. Yet given the way activist courts have turned gay marriage into a national issue, it's no surprise that Congress joined the fray.

Senate Majority Leader Bill Frist knows he's unlikely to get many more than the 48 votes he got the last time he brought up this amendment, in 2004. Constitutional amendments require a two-thirds majority, and only one Democrat, Nebraska's Ben Nelson, is publicly on board. So some of this is about rallying a demoralized conservative base.

But the amendment vote can't be understood outside of the anxiety created by activist courts. Justice Kennedy wrote the majority opinion in the 2003 Lawrence case that banned state anti-sodomy laws. So sweeping was his "privacy right" language that it took only a few months for the Massachusetts Supreme Court to use Lawrence to justify its decision to impose a right to gay marriage there. Politicians in New York and San Francisco began issuing gay marriage licenses, never mind state law.

So here we go again with another values issue about to become an endlessly polarizing national debate. Beltway politicians can posture knowing nothing much will change. This is the history of abortion since Roe v. Wade, with both sides at the same barricades 30 years on. The Founders left such thorny social issues to the states precisely to allow the democratic give and take that can reach a rough consensus, as well as adjust as social mores change.

That's what the states have been doing in recent years. Some 19 states now have constitutional amendments protecting "traditional" marriage; another 26 have statutes doing the same. Alabama voters yesterday endorsed such an amendment, and six more states will have the question on November ballots.

States have also devised a range of policies for civil partnerships or other legal rights for gay couples. These innovations reflect the reality that most Americans oppose extending the term "marriage" to gays but are open to other legal arrangements. Colorado voters may face ballot initiatives this fall dealing with both a definition of marriage and domestic partnership rights.

Supporters of the national ban say an amendment is necessary because willful courts won't honor those voter verdicts. They have a point. A federal court struck down Nebraska's ban on gay marriage last year even though 70% of the state's residents voted for it. Bans have been overturned in Washington, California, Maryland and New York.

But it's far from clear that a Constitutional amendment is necessary to stop this just now. Congress passed the Defense of Marriage Act in the 1990s, and sooner or later the Supreme Court will decide if this clashes with the Constitution's "full faith and credit" clause that applies one state's laws to the other 49 (i.e., easy Nevada divorce). If the High Court overturns the Defense of Marriage Act, there'd be a much stronger case for something as rare, and politically difficult, as passing a Constitutional amendment. Meantime, this is another argument for confirming President Bush's judicial nominees.

As for liberals, they might consider that their best chance to change minds is through open state debate, not coercive courts. Polls show Americans are becoming more comfortable with civil unions and other gay rights. In fact, the best thing gay activists could do for themselves at the federal level would be to support repeal of the death tax, since under current law gay couples often lack inheritance rights. That would accomplish more than anything that will emerge from this week's political spectacle over amending the Constitution.

June 7, 2006
Wall Street Journal

A Different Judicial Battle

The Senate is back in session, and we'll soon see if Republicans are serious about confirming President Bush's nominees for the appeals courts. Majority Leader Bill Frist kept his promise to confirm Brett Kavanaugh to the D.C. Circuit before Memorial Day, after he'd waited three years for a vote.

So who's next? Mr. Frist wanted to move Fourth Circuit nominee Terrence Boyle by Memorial Day too, but no go. A federal judge in North Carolina, Mr. Boyle has the honor of waiting longer than any appeals-court nominee in history for a floor vote. He was in Mr. Bush's first group of nominees announced on May 9, 2001 and was first nominated by Mr. Bush's father in 1991, though Democrats denied him a vote.

Democrats now say they'll filibuster his nomination. They are distorting a couple of Judge Boyle's civil rights decisions and making conflict-of-interest allegations that add up at worst to minor infractions. But Republicans don't want a fight in an election year over race or ethics. And Judge Boyle's onetime Senate champion -- Jesse Helms -- has long since retired. A controversial nominee without an angel to guide him through today's polarized Senate is in trouble.

Which brings us to William "Jim" Haynes II, another stalled Fourth Circuit nominee. Mr. Haynes was named on September 29, 2003, had a hearing two months later, and was voted out of committee in March 2004. But don't blame this delay only on Democrats. Two Republicans -- Senators John McCain and Lindsey Graham -- are also causing the holdup.

Mr. Haynes is the Pentagon's general counsel, and his transgression is to have offered legal advice on the treatment of detainees in the war on terror. The big point of contention is his role in Defense Secretary Donald Rumsfeld's decision in December 2002 to allow "coercive" interrogation techniques against al Qaeda detainees at Guantanamo.

The Pentagon says Mr. Haynes offered legal analysis; his critics distort this to say he was instrumental in forging a policy that could be used to justify "torture." But there is no evidence that anyone condoned torture, and it was the CIA, not the Pentagon, that used "waterboarding" that critics cite as the most coercive sanctioned technique.

In any case, Mr. Rumsfeld rescinded his decision within six weeks after Pentagon lawyers took their concerns to Mr. Haynes, who then took them to Mr. Rumsfeld. Even if you believe the "coercive" techniques policy was a mistake, its reversal was due in no small part to Mr. Haynes, who did his duty of providing legal analysis. Mr. Haynes met with Senator McCain for an hour last month and agreed to answer written questions about the issue.

Senator McCain's anger over the Air Force's tanker deal with Boeing also unfairly extends to Mr. Haynes. As general counsel, Mr. Haynes had the job of reviewing and, in some cases, redacting the small library's worth of documents the Senator demanded. A McCain spokeswoman tells us that the Senator has not made a decision about whether to support the nomination.

It's hard to see how opposing Mr. Haynes would achieve anything except win the Senators some fleeting praise in the establishment media. It wouldn't impress GOP primary voters in Mr. Graham's home state of South Carolina, an important Presidential primary state in 2008 and home to many Haynes supporters. In defeating Mr. Haynes, Mr. McCain would mainly be validating those critics who want to punish anyone associated with the war in Iraq. Is this how a President McCain would treat his appointees who come under political fire for offering honest counsel?

There are 18 vacancies on the appeals-court bench -- 10% of the total -- and not many weeks left to fill them before election-year campaigning makes judicial confirmations next to impossible. Seven nominees are currently waiting for a hearing or vote. With Republicans in danger of losing Senate seats, if not their majority, now is the time to honor one of their campaign pledges from 2004 by confirming Mr. Bush's judicial nominees.

---

http://www.thehill.com/thehill/export/TheHill/News/Frontpage/060706/news3.html

THE HILL
June 7, 2006

White House Renews Push for Nominees
By Alexander Bolton

White House officials are making a concerted effort to cooperate with outside conservative groups to support and defend President Bush’s nominees to the federal bench, and they are also planning to work more closely with the Senate on confirming the nominees.

The greater focus on judges comes in the wake of privately expressed criticism from conservative leaders that the White House and the GOP-controlled Senate were doing little to defend high-profile nominees such as William “Jim” Haynes and Terrence Boyle, both picked for the 4th U.S. Circuit Court of Appeals, from attacks by liberals.

The White House and Senate Republicans offered spirited defenses of prior embattled nominees, such as Priscilla Owen, who now sits on the 5th U.S. Circuit Court of Appeals, and Janice Rogers Brown, who is a member of the D.C. Circuit Court. But since their confirmations and the Supreme Court confirmations of

Chief Justice John Roberts and Justice Samuel Alito, GOP leaders have done little to defend other controversial nominees.

The lack of an organized defense of languishing nominees such as Haynes, Boyle and William Myers, a nominee to the 9th Circuit, prompted former clerks of the nominees and conservative activists to take matters into their own hands. Boyle's former clerks, many of whom are now prominent lawyers, joined together on their own accord to defend him from accusations that he acted improperly while a district-court judge.

Conservative activists and intellectual leaders, such as Sean Rushton, executive director of the Committee for Justice, and Professor John Yoo of the University of California at Berkeley, also began laying plans to form committees to defend other embattled nominees. Yoo was in the national spotlight earlier this year during the Alito hearings because of his writings on the legal theory of the unitary executive, which Bush has used to justify his wartime powers.

But since the Senate confirmation of Brett Kavanaugh to the D.C. Circuit Court of Appeals two weeks ago, the White House has begun to take a more active role in defending the nominees. For example, talking points circulated at the end of last week defending Boyle from accusations that he did not recuse himself from cases where he may have had conflicts of interest were written in the signature style of the White House and its ally the Republican National Committee. And administration officials are also working more closely with conservative activists to defend the nominees. Also, the Department of Justice is crafting a memo on Boyle's conduct as a judge and activists close to the White House such as Edward Whelan, president of the Ethics and Public Policy Center who authored a recent article in the conservative Weekly Standard, are stepping up their advocacy on behalf of the judicial nominees.

"I sense that," said Sen. Jeff Sessions (R-Ala.), a member of the Senate Judiciary Committee, when asked yesterday if he noticed more effort by the White House to support the judicial nominees. He added that he met with Boyle and a White House aide Monday in a meeting he said he assumed was set up by the administration.

"I guess that represents a stepping up and talking about judges," Sessions acknowledged.

Sessions also said that conservatives are right to be concerned about the lack of action by Senate Republicans to defend the nominees, something he attributed to distractions caused by the busy schedule and big political issues such as immigration reform.

"I think it's time to get more serious in defending the nominees," he said.

Sen. Jim DeMint (R-S.C.), a rising star in the upper chamber's conservative circles, said that the White House is working more closely with Senate Majority Leader Bill Frist (R-Tenn.) on the judicial nominees.

"We've got to get moving faster on judicial nominees," said DeMint, who added that Frist has told him judicial nominees are a priority.

A White House official said that several of the nominees have sat in the Senate for a long time and that the administration is asking senators to make a decision about whether to confirm them or not, whether to "fish or cut bait."

The greater cooperation between the White House and conservative groups comes several weeks after White House political adviser Karl Rove and counsel Harriet Miers told conservatives in a private meeting that they would begin sending more judicial nominees to the Hill. But so far few nominees have been sent.

The White House official said that to the extent there is a push on judges it is an effort to wrap up background checks on judicial nominees and send them to the Senate more quickly. The effort is a direct

recognition that the window of opportunity for getting nominees confirmed in the Senate may be closing as Election Day and the end of the 109th Congress approaches.

Sen. Lindsey Graham (R-S.C.), a member of the Judiciary Committee, has come under heavy fire from conservatives for blocking Haynes's nomination.

Yesterday, nearly 80 prominent conservative leaders including David Keene, chairman of the American Conservative Union; Paul Weyrich, chairman of Coalitions for America; Manuel Miranda, chairman of the Third Branch Conference; and Saul Anuzis, chairman of the Michigan Republican Party, delivered a letter to Graham rebuking him for "effectively blocking" Haynes's nomination in the Judiciary Committee.

"We understand that you and Senator [John] McCain [R-Ariz.] have concerns about the Bush Administration's policies on prisoners captured in the War on Terror, and about Mr. Haynes's role in implementing those policies at the Defense Department," the conservative leaders wrote.

Graham defended himself yesterday by saying that he is not blocking Haynes in committee and arguing that the conservative leaders who signed the letter do not represent all conservatives. But Graham refused to say whether he would cast a crucial vote to pass Haynes out of committee.

---

http://powerlineblog.com/archives/014324.php

POWERLINE
June 6, 2006

Jim Haynes' listening skills

Last night, I discussed the incoherent criticism directed at Fourth Circuit nominee Jim Haynes by two retired military legal officers. It since has been pointed out to me that one of the officers, Retired Admiral Hutson, served as the Navy Judge Advocate General during the Clinton Administration, retiring in 2000. Thus, he never worked directly with Haynes, and presumably lacks first hand knowledge as to whether Haynes listens to others. The other Retired Admiral, Donald Guter, was the Navy JAG from 2000 to 2002. He retired in 2002, and so had a relatively brief overlap with Haynes.

By contrast, Major General (ret.) Michael Marchand served with Haynes until July 2005. He was an Army JAG for 31 years. During the last 12 of them, he served in positions that provided him with "sigificant exposure" to the various General Counsels of the Department of Defense. Marchand states, in a letter to Senators Specter and Leahy that

> In my experience Mr. Haynes has been more inclusive of the Judge Advocates General and the senior service lawyers of the armed services than any General Counsel of the Department of Defense. He has consistently and repeatedly reached out to the senior lawyers of the Department of Defense on some of the most difficult legal issues to confront our armed services, our Department, and our Country. He has done so throughout his tenure in formal and informal ways. He has been respectful of our views, even on those occasions when he may not have agreed with one of more of us. The Department and its legal community -- and the Country -- have been well served.

UPDATE: William Suter, Major General, USA (Ret.), and clerk of the U.S. Supreme Court, served in the JAG Corps from 1962-1991. He worked closely with Jim Haynes in 1990-1991 when Haynes was General Counsel of the Army. Suter has written to various Senators in support of Haynes. He states:

> Mr. Haynes is a superb lawyer in every respect. He performed his duties as the Army General Counsel with great distinction. He was very knowledgeable concerning military matters and fully supported the Army's mission. I found him easy to work with and considered him a valuable provessional colleague. He was always available to discuss pending legal issues and we kept

each other informed about important matters. He respected Judge Advocates and their opinions. He is also a man of great character and integrity.

Mr. Haynes deserves a vote on his nomination. I am confident that he will be an outstanding appellate judge.

(Subscription required)

Congress Daily PM
6 June 2006

Conservatives Rap Graham Over Judge; He Defends Stance

More than 80 conservative leaders today sent a letter to Sen. Lindsey Graham, R-S.C., accusing him of waging a "silent filibuster" against the nomination of William Haynes to the 4th U.S. Circuit Court of Appeals. While Graham today dismissed the coalition's charges, he also outlined his concerns with the nominee. "We represent a coalition of organizations that cares deeply about putting constitutionalist judges on the federal courts," wrote the leaders. "We are writing to express our concern about your lack of support for the nomination of William Haynes to the U.S. Court of Appeals for the Fourth Circuit, effectively blocking him in [the Judiciary] committee." The leaders further accused Graham of violating the constitutional prerogative of the president and the GOP majority to have an up-or-down vote on nominations, comparing his opposition to "Democrats' minority-obstructionist tactics."

Graham brushed off the group's efforts to demand he support the nominee. "They are a group of people that organize around a specific event. That doesn't mean they represent conservatives," said Graham. "I represent a conservative state with a conservative philosophy on judges. But I also believe added scrutiny is needed. And I am ready to vote on all nominees that I know about." Graham said Bush administration officials that worked with Haynes on the administration's policies involving torture of war prisoners have expressed to him their concerns with Haynes' role in the "formulation of the interrogation policy. I'm listening to those people." But Graham insisted he is not officially blocking the Judiciary Committee from voting on Haynes' nomination and predicted other senators would "call for more hearings" on controversial nominees, including Haynes. Graham declined to say how he would vote on the nominee if requests for additional hearings are not met. Sen. John McCain, R-Ariz., also shares Graham's concerns with Haynes' nomination.

Despite their anger over Graham's participation in the Gang of 14 last year, the conservative coalition declined to mention Graham's role in today's letter. The bipartisan Gang of 14 prevented Majority Leader Frist from changing Senate rules to prohibit the minority from filibustering a president's judicial nomination. The Committee for Justice, which signed today's letter, said recently the conservative groups would launch a national campaign via e-mails and telephone calls to Graham in hope of persuading the senator to support Haynes' nomination. One conservative leader predicted recently that Graham's conservative base could lash out against the senator when he runs for re-election in 2008. Haynes, who was nominated three years ago, has twice received the American Bar Association's highest rating. The group today defended Haynes' involvement in the 2003 torture scandal when he served as the Pentagon's general counsel, arguing Haynes had an "obligation to defend the legal rights of his client, the Defense Department, and to follow the legal advice of the Justice Department." -- by Greta Wodele

---

http://powerlineblog.com/archives/014317.php

June 6, 2006
POWERLINE

The incoherence of Jim Haynes' critics

According to the Washington Post, "some retired military officers have served notice" that they will oppose the nomination of Jim Haynes in the event of a confirmation battle. The two officers mentioned by the Post are both former military lawyers.

This is old news to anyone who has been reading Power Line. Indeed, as we have long noted, Sen. Lindsey Graham reportedly has been preventing a confirmation battle based partly on reports from military lawyers who are unhappy with Haynes about his role regarding the administration's policy towards war on terrorism detainees.
One of the officers, retired Rear Admiral John Hutson, claims that Haynes' "unwillingness to listen to others caused him to preside over the DOD legal system during the time of its greatest debacle in memory, the abuse of detainees by military personnel around the world." This is the familiar argument of the bureaucrat on the losing side -- "they didn't listen to me," which almost always means "they didn't agree with me." In Haynes' case, moreover, it was his obligation to defer to the legal advice and policy preferences of the Justice Department and the White House, not those of career military lawyers.

As for the "great debacle" claim, Hutson's tortured formulation, ("caused [Haynes] to preside over the legal system in the time of its greatest debacle," not "caused a debacle"), betrays the weakness of his argument. And what precisely was the debacle? If Hutson is referring to Abu Ghraib, he's talking nonsense. Nothing Haynes (or Justice Department lawyers) did caused that debacle; otherwise, whatever they did to cause it would have caused other Abu Ghraibs. Indeed, the controversial memo that Haynes produced (which adhered to the legal position laid out by the Justice Department) did not include sexual humiliation as one of the permitted interrogation devices. If Hutson is referring to Guantanamo Bay, then there is no debacle. Evidence of mistreatment of prisoners there is scant. It can be argue that the decision to hold so many people at Gitmo indefinitely (regardless of how they are treated) has been a public relations set-back. But that decision was not made by Haynes.

Meanwhile, retired Rear Admiral Donald Guter, apparently in response to the argument that Haynes was following Justice Department policy as he was obliged to, doubts that as a judge Haynes would have the independence or judgment to oppose unwise policies being pushed by his superiors. Either Guter is being misquoted or he was absent the day they taught law in law school. As an appeals court judge, Haynes' "superiors" would be the Supreme Court, and it would be Haynes' obligation not to oppose their decisions. It would also be Haynes' obligation as a judge not to focus on whether policies being "pushed" by the executive or the legislature are "unwise," as opposed to unlawful.

Against the incoherent views of the retired admirals, we have the testimony of Bernard Meltzer, a distinguished law professor and former assistant trial counsel at Nuremberg, who worked with Haynes in formulating the procedure for trying detainees before military tribunals. Meltzer apparently had no difficulty in getting Haynes to "listen." He reports that Haynes showed "informed and sensitive concern for the rights and legitimate interests of those who might be tried before a military commission."
No wonder Lindsey Graham has been trying to prevent a debate on the merits of Haynes.

---

http://www.washingtonpost.com/wp-dyn/content/article/2006/06/05/AR2006060501124.html

Washington Post
June 6, 2006

Opposition to Nominee
By Shailagh Murray and Charles Babington

Some retired military officers have served notice that if conservatives keep pressing for a Senate confirmation vote for judicial nominee William J. Haynes II, it won't come without a fight.

Haynes, the Defense Department's general counsel, is President Bush's choice for a seat on the U.S. Court of Appeals for the 4th Circuit. Democrats have opposed Haynes since 2003, and now some Republicans are joining them. They object to his role as the Pentagon's top lawyer when controversial policies were adopted regarding harsh treatment of detainees captured in Afghanistan, Iraq and elsewhere.

The conservative group Committee for Justice has launched a telephone and e-mail campaign against one of those Republicans, Sen. Lindsey O. Graham (S.C.). Last week, some retired military lawyers came to Graham's defense, sending letters to the Judiciary Committee that call Haynes unfit for a lifetime appointment to the appellate court.

Haynes's "unwillingness to listen to others caused him to preside over the DOD legal system during the time of its greatest debacle in memory, the abuse of detainees by military personnel around the world," wrote John D. Hutson, a retired rear admiral who was a senior Navy lawyer. Donald J. Guter, who held the same rank, wrote that he doubted Haynes would have the independence or judgment to oppose unwise policies being pushed by his superiors.

Among those praising Haynes in letters to the committee is Bernard D. Meltzer, a retired law professor and former assistant trial counsel in the trials before the International Military Tribunal in Nuremberg. Meltzer wrote that he got to know Haynes while consulting with the Pentagon and that "I was impressed by his informed and sensitive concern for the rights and legitimate interests of those who might be tried before a military commission."

---

http://www.weeklystandard.com/Content/Public/Articles/000/000/012/290ixcht.asp

6/12/2006
WEEKLY STANDARD

Lowering the Bar
The corrupt ABA judicial evaluation process.

By Edward Whelan

IF THERE WERE A LIST of lawyers least suited to assess Brett Kavanaugh's fitness to serve as a judge on the D.C. Circuit, Marna Tucker would be very high on it. Tucker's narrow specialty, divorce law, is far removed, in both substance and sophistication, from the work of the federal appellate courts--especially from the complex cases of administrative law that are the staple of the D.C. Circuit. Even worse, Tucker could hardly pretend to be impartial towards Kavanaugh. A fervent gender activist and supporter of other left-wing causes, she is a longtime ally of those who have vituperated the conservative Kavanaugh on account of his work for Kenneth Starr's independent-counsel investigation and his service as White House lawyer and staff secretary under President George W. Bush.

After nearly three years of Democratic obstruction, Kavanaugh's nomination was recently confirmed by the Senate, and he has taken his seat on the D.C. Circuit. But the untold story of his recent treatment by the ABA's Committee on the Federal Judiciary, which rates all federal judicial nominees, deserves attention, for it illustrates a longstanding defect that periodically plagues the committee's evaluations of Republican nominees.

When President Bush first nominated Kavanaugh in July 2003, the ABA committee gave him its top overall rating of "well qualified" (with a "substantial majority"--10 to 13 of the 14 voting members--rating him "well qualified" and the remaining minority rating him "qualified"). When Kavanaugh was renominated in early 2005, the committee's supplemental evaluation yielded the same "well qualified" rating. Then, as the Senate's 2005 session was wrapping up, Democratic leadership in the Senate, in a curious move, insisted that Kavanaugh's nomination, alone among all the pending judicial nominations, be sent back to

the White House. The Democrats' insistence seemed at the time peevish, requiring President Bush to go through the formality of renominating Kavanaugh in January 2006. Little noticed was the fact that, under the ABA committee's practices, the renomination would trigger yet another supplemental evaluation of Kavanaugh.

There was every reason to expect the ABA's 2006 supplemental evaluation to be routine, as its purpose was simply to cover the one-year period since the previous rating. But a key fact had changed over that year: Tucker had been assigned to the ABA committee as the member responsible for the D.C. Circuit. Instead of focusing on the previous year--the only period of time not covered in the earlier evaluations--Tucker launched a scorched-earth review of Kavanaugh's entire career. She conducted 91 witness interviews--far more than the 55 that underlay the original 2003 evaluation--but showed little interest in witnesses identified by Kavanaugh. When ABA judiciary committee chairman Stephen Tober discovered (in his words) that "this was a nominee that Ms. Tucker was spending a considerable amount of time on," he did not rein her in but instead enlisted a second committee member--liberal civil-rights activist John Payton--to assist her.

Kavanaugh's relations with the previous D.C. Circuit member--also a Democratic woman--had been cordial and professional. In sharp contrast--according to administration officials whom Kavanaugh spoke with at the time--Tucker and Payton were adversarial and partisan when they interviewed Kavanaugh. Tucker criticized the White House for ending the ABA committee's privileged role in reviewing judicial candidates before they were formally nominated. Tucker and Payton displayed a bizarre interest in an internal Senate dispute (not involving Kavanaugh) that arose in late 2003 after a Republican staffer discovered on a shared computer directory a Democratic strategy memo that urged that a Sixth Circuit nominee be stonewalled in order to affect the outcome of the University of Michigan racial-preferences cases pending in that court. And Payton, who had argued those same cases in the Supreme Court in 2003, tried to probe what part Kavanaugh had played in the White House's formulation of the administration's position in those cases.

Returning from the interview, Kavanaugh told his White House colleagues that Tucker's conduct of the interview deeply concerned him. Fortunately for Kavanaugh, his strong record and the previous ratings he had received from the ABA committee made it difficult for Tucker to do him serious damage. Her evaluation reduced his overall rating from "well qualified" to "qualified" (with a minority of the committee still finding him well qualified), but even that rating meant that he had met the committee's "very high standards with respect to integrity, professional competence and judicial temperament."

But the ABA committee and Tucker weren't through with Kavanaugh. Responding to hyperbolic Democratic rhetoric about Kavanaugh's downgrade, Tober took the extraordinary step of submitting to the Senate Judiciary Committee a statement that presented, in isolation and without attribution, the committee's supposed dirt on Kavanaugh. And Tober and Tucker supplemented this statement in a telephone conference with senators and staffers.

One witness, Tober explained, had charged that Kavanaugh had "dissembled" in an oral argument. And (among a few other criticisms) several witnesses, all supposedly using the same word, had characterized Kavanaugh's White House work as "insulated." Tober and Tucker asserted that, consistent with their committee's policies, Kavanaugh had been informed of all negative items and had been given a full opportunity to answer them.

The ABA's disclosures, and the manner in which they were presented, astounded Kavanaugh and his advisers. Tucker had never told him the incendiary charge about having "dissembled" in court, he explained to White House colleagues. Had he heard it, he pointed out compellingly, he certainly would have tried to learn more about it from Tucker in order to dispute it. And, indeed, it appears that in the original charge the term "dissembled" was misused. Questioned in the telephone conference about the charge, Tucker stated that the "quote was 'He did not handle the case well as an advocate; he was not forceful, and when he dissembled, he did not argue his case clearly.'" The quoted statement makes little sense: It would be peculiar to criticize dissembling (a form of lying) merely for its effect on clarity, rather than as an intrinsic evil. Tucker herself, according to an unpublished transcript of the telephone

conference, interpreted the charge merely to mean that Kavanaugh "did not respond appropriately" to questions. But Kavanaugh was never given a chance to contest the charge. And Senate Democrats, handed the ammunition by Tober and Tucker, profligately highlighted the "dissembling" charge to impugn Kavanaugh's integrity.

As for the charge that Kavanaugh's White House experience was "insulated": It was clear to Kavanaugh that Tucker herself was committed to that view. She even ignorantly insisted that, as staff secretary overseeing the full range of executive-branch decisions, he was exposed only to a "very narrow band" of views.

With hindsight, only a naïf would believe that Tucker and Senate Democrats did not work together to engineer the return of Kavanaugh's nomination in December 2005. The most sensible hypothesis is that Tucker signaled that she was well positioned to inflict damage on Kavanaugh--and that sending the nomination back to the White House would enable her to do so through a supplemental evaluation. Why else would Senate Democrats have insisted on sending the nomination back?

The bigger question is why a highly partisan divorce lawyer was ever appointed to the committee in the first place. The sitting ABA president, during his one-year term, has plenary authority to fill the five or so vacancies that arise each year. (The committee chairman and the 14 other members serve staggered three-year terms.) With the ABA's transformation over the last few decades from an apolitical professional organization into a liberal interest group, ABA presidents and the bar activists who vie for influential ABA positions have trended leftwards. Current ABA president Michael S. Greco, a zealous liberal, presumably selected Tucker because of, not in spite of, her partisan credentials.

Tober's role in Tucker's excesses is also significant. Under the committee's procedures, the chairman and the circuit member who conducts the investigation have extraordinary practical clout in shaping the views of the other committee members, as they prepare the report that goes to the full committee. That Tober did not try to restrain Tucker, but instead teamed her up with another liberal activist, suggests a woeful inattention on his part to partisan conflicts of interest.

Not coincidentally, Tober recently oversaw the committee's remarkable "not qualified" rating of Fifth Circuit nominee Michael B. Wallace, a highly respected attorney and former Supreme Court law clerk for the late William Rehnquist. In 1987, when Wallace served on the board of the Legal Services Corporation, Tober presented strikingly intemperate testimony to an LSC committee that Wallace chaired. Opposing a proposed regulation to require that boards receiving LSC funds have bipartisan membership (as does the LSC itself), Tober flamboyantly accused Wallace of attempting to "fashion a political bias litmus test" and of having a "hidden agenda," and he vowed to disobey the regulation if it became law.

The transcript of Tober's testimony, which also includes a number of loopy constitutional arguments, makes one wonder why Tober has any role in evaluating judicial nominees. It's even more disturbing that he would not see fit to recuse himself from reviewing the nomination of Wallace, for whom he plainly bears a strong animus.

Perhaps Tober will provide a persuasive explanation for the committee's negative rating of Wallace. But one lesson from the Kavanaugh process is that Tober's explanations should not be accepted at face value. In any event, it's long past time for the ABA to take serious steps to ensure the selection of committee members who will not let political bias infect their evaluations of judicial nominees. Absent such steps, the Senate Judiciary Committee should deprive the ABA committee of the privileged status it has long been accorded.

-Edward Whelan is president of the Ethics and Public Policy Center and a contributor to National Review Online's Bench Memos blog on judicial nominations.

---

http://powerlineblog.com/archives/014292.php

POWERLINE
June 05, 2006

Arlen Specter or Tom Daschle, take your pick

This lead in today's Post story by Chris Cillizza about Sen. Lindsey Graham is priceless:

No longer content with bashing Democrats for their obstruction of President Bush's judicial nominees, a coalition of conservative groups is now turning its attention to a prominent Republican -- Sen. Lindsey O. Graham (S.C.).

Give that liberal a blog!

The story is great news, though. I've referred to Senator Graham as "the Arlen Specter of the south." In same ways, though, the better comparison is to Tom Daschle. As with Daschle, the voters in Graham's conservative home state probably have little idea of Graham's true ideological stance. Sean Rushton makes this point when he says:

A key reason why Lindsey Graham is Senator Graham is because he ran as opposed to the obstruction of the president's judicial nominees. We hope he'll remember that.
Graham is widely thought (along with Senator McCain) to be obstructing the nomination of Jim Haynes, the general counsel of the defense department. Graham apparently has tight connections with military lawyers who disliked the Pentagon's legal position on detainee interrogations. The Post quotes a spokesman for Graham who expresses concern that Haynes may not have been receptive enough to "advice from the military." However, Haynes was obliged to take his legal advice (if that's what the spokesman is referring to) from the Justice Department and the Office of White House Counsel, and he did so.

If Senator Graham nonetheless feels that Haynes is unfit to serve on the Fourth Circuit by virtue of his legal memos (or for any other reason) that's fine. But let's have the debate and the vote.

Note: This article was republished in the NY Sun (http://www.nysun.com/article/33859), The (SC) State (http://www.thestate.com/mld/thestate/news/nation/14742315.htm), and The (TN) Commercial Appeal.

http://www.washingtonpost.com/wp-dyn/content/article/2006/06/03/AR2006060300555.html

WASHINGTON POST
June 4, 2006

Conservatives Backing Nominee Look at Graham

WASHINGTON POST
By Chris Cillizza

No longer content with bashing Democrats for their obstruction of President Bush's judicial nominees, a coalition of conservative groups is now turning its attention to a prominent Republican -- Sen. Lindsey O. Graham (S.C.).

The campaign, led by the Committee for Justice, is aimed at persuading Graham to allow a vote on William James Haynes II, the general counsel at the Department of Defense and a nominee for the U.S. Court of Appeals for the 4th Circuit. Although the campaign is in its infancy, organizers expect it to develop into a national e-mail and telephone lobbying effort.

"A key reason why Lindsey Graham is Senator Graham is because he ran as opposed to the obstruction of the president's judicial nominees," said Sean Rushton, executive director of the Committee for Justice. "We hope he'll remember that."

Graham insists he has engaged in no formal obstruction of Haynes, nor has he enlisted other senators to do so. Along with colleague and political ally John McCain (R-Ariz.), Graham has expressed concern regarding the advice Haynes provided the Bush administration on the treatment of detainees captured in the war on terrorism. "The role Mr. Haynes played as DOD general counsel formulating these policies and whether he was receptive to legal advice from the military will be a line of inquiry when his nomination is brought up," said Kevin D. Bishop, communications director for Graham.

Haynes was nominated in 2003.

Opposing conservatives on one of their pet issues carries political risks for both Graham and McCain. Since winning the seat vacated by the late Sen. Strom Thurmond (R) in 2002, Graham has faced occasional opposition from his party's base, a resistance that hardened when he joined a bipartisan group of senators -- the "Gang of 14" -- to defuse a showdown on judicial nominees.

Charleston developer Thomas Ravenel, who narrowly lost a bid for the GOP Senate nomination in 2004, has encouraged speculation that he might mount a primary challenge to Graham in 2008 but is seeking state office in 2006.

McCain, who has made clear his intentions to run for president in 2008, has openly courted conservatives over the past year in an attempt to heal rifts caused by his primary challenge to George W. Bush in 2000. That effort has met with considerable success to date, progress that could be jeopardized by another high-profile battle over judicial nominations.

JUDGE TERRENCE BOYLE'S ALLEGED CONFLICTS MIRROR SUPREME COURT JUSTICES

Dems Use Alleged Conflict Of Interest Charges Against Circuit Court Nominee Terrence Boyle,
Ignore Conflict Of Interest Questions Justices Ruth Bader Ginsberg And Stephen Breyer Faced

IN 1997, SUPREME COURT NOMINEE RUTH BADER GINSBURG FACED CONFLICT OF INTEREST QUESTIONS

Questions Were Raised About Judge Ginsburg And Recusals From Cases Affecting Her Husband's Work:

"Supreme Court Justice Ruth Bader Ginsburg May Have Violated A Federal Law 21 Times Since 1995 By Participating In Cases Involving Companies In Which Her Husband Owned Stock." (Richard Carelli, "Justice Took Part In Cases Involving Husband's Stocks," *The Associated Press*, 7/10/97)

"Appointed To The Nation's Highest Court By President Clinton In 1993, Justice Ginsburg Did Not Disqualify Herself In Cases Involving Eight Companies In Which Her Husband Owned Common Stock In 1995 And 1996. The Companies Are Nynex, Exxon, General Electric, American International Group, Procter & Gamble, Johnson & Johnson,

American Home Products And AT&T." (Richard Carelli, "Justice Took Part In Cases Involving Husband's Stocks," *The Associated Press*, 7/10/97)

- **"The Problematic Stock Holdings Are Traceable To A Smith Barney Account Martin Ginsburg Opened Sometime In 1995."** (Richard Carelli, "Justice Took Part In Cases Involving Husband's Stocks," *The Associated Press*, 7/10/97)

- **"The Nomination Of Ruth Bader Ginsburg To The Supreme Court Poses Anew A Question That Two-Career Couples Are Making More And More Common: When Can The Legal Work Of A Judge's Spouse Or Other Loved One Require That He Or She Bow Out Of A Case?"** (Jonathan Groner, "Ruth Bader Ginsburg's Recusal Questions," *Legal Times*, 6/28/93)

- **"Never Has A Supreme Court Justice Been Married To Someone With As High A Profile As Martin Ginsburg's. The Voluble Federal-Tax Expert, Law Professor, And Private Attorney Has Been A Prolific Writer And An Adviser To The Internal Revenue Service, To The Department Of Justice, And To A Dozen Private Tax Publishers And Bar Panels."** (Jonathan Groner, "Ruth Bader Ginsburg's Recusal Questions," *Legal Times*, 6/28/93)

"[That] Clearly Doesn't Mean That Ruth Ginsburg, Assuming She Is Confirmed, Would Have Any Reason Not To Hear Tax Cases At The Supreme Court. She Would, Of Course, Have To Recuse Herself From Any Matter In Which Her Husband Was Directly Involved As A Lawyer." (Jonathan Groner, "Ruth Bader Ginsburg's Recusal Questions," *Legal Times*, 6/28/93)

"A Judge Must Recuse In A Case When His Or Her Spouse Or Other Close Relative Has A 'More Than *De Minimis* Interest' That Could Be Substantially Affected By The Case." (Jonathan Groner, "Ruth Bader Ginsburg's Recusal Questions," *Legal Times*, 6/28/93)

IN 1994, DEMOCRATS DISMISSED SIMILAR CONFLICTS OF INTEREST AGAINST SUPREME COURT NOMINEE STEPHEN BREYER

Then Judge Stephen Breyer Ruled On Several Cases That Had The Potential For An Enormous Financial Impact On His Own Holdings In Lloyds Of London:

"Supreme Court Nominee Stephen Breyer, Who As A Federal Appeals Court Judge Has Ruled In A Number Of Toxic Waste Cases, Had A Major Financial Interest In The Outcome Of Similar Liability Suits Against U.S. Polluters …" (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

- **"While Breyer Was Not Involved With Any Of The Parties In The Toxic Waste Cases He Handled … He Could Conceivably Stand To Benefit In General If Standards Were Relaxed In Toxic Waste Clean-Up Efforts."** (Ana Puga, "Breyer's Financial Interests Detailed," *The Boston Globe*, 6/25/94)

"Breyer's Financial Disclosure Statements Filed With The Judicial Ethics Committee In Washington Reveal That The Judge — Who Has Written A Book Critical Of The Environmental Protection Agency's Handling Of Superfund Cases As Well As Ruling On Them — Had Between $ 250,000 And $ 500,000 Invested In The Lloyd's Of London

Insurance Company In The Mid And Late 1980s." (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

- **"The Forms Do Not Reveal Which Syndicates Breyer Invested In. But Internal Lloyd's Documents Obtained By Newsday In The United States And Britain Indicate That One Of Breyer's Investments Was A Syndicate Known As Merrett 418 (1985), Whose Liabilities For American Superfund And Asbestos Claims Were So Great For That Underwriting Year That The Group Is Unable To Close Its Books Nine Years After It Stopped Operating. Lloyd's Investors (Known In England As 'Names') Are Personally Liable For All Claims."** (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

- **"As A Federal Appeals Court Judge In Boston For The Past 13 Years, Breyer Has Ruled On A Number Of Superfund Cases, Including Two That Environmental Lawyers Describe As Major Legal Precedents. In Both Of Those, Breyer Ruled Against The Government And In Favor Of The Defendants In Cases Brought Under The 1986 Law That Authorized A Sweeping Program To Clean Up 375 Of The Nation's Most Contaminated Sites."** (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

"Only After He Was Nominated By President Bill Clinton To The Court Last Month To Replace The Retiring Harry Blackmun Did Breyer Reveal To The Senate Judiciary Committee That He Had Liabilities At Lloyd's That He Said 'Cannot Be Reasonably Estimated.'" (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

"According To Judge Breyer's Answers To The Judiciary Committee's Questionnaire, He Is A Member Of A 1985 Syndicate That Is Not Closed, Meaning It Is Still Liable For Losses." (Neil A. Lewis, "Nominee Has A Net Worth Of $8 Million," *The New York Times*, 6/11/94)

- **"A Person Who Is A Name In Lloyd's Agrees To Help Underwrite A Group Of Policies. Many People Who Became Names In Syndicates In The 1980's Were Bankrupted After They Had Insured Companies Against Environmental Cleanup Costs And Damages Resulting From Lawsuits Involving Asbestos, Both Of Which Generated Huge, Huge Liabilities."** (Neil A. Lewis, "Nominee Has A Net Worth Of $8 Million," *The New York Times*, 6/11/94)

- **"[White House Counsel Lloyd] Cutler Said That Breyer Did Decide To Recuse, Or Remove, Himself From Sitting On Asbestos Cases 'Once It Became Generally Clear That Lloyd's Had Some Risk In Asbestos Cases.'"** (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

"Asked Why Breyer Did Not Then Step Out Of Superfund Cases As Well, Cutler Said There Was 'A Great Deal Of Publicity' About Lloyd's Involvement With Asbestos And That He Had Recused Himself There 'Out Of An Abundance Of Caution.'" (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

- **"In Fact There Have Been Numerous News Articles About Lloyds' Exposure To Superfund Liability."** (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

"Lloyd's is a market, rather than a corporation, and individual investors face unlimited liability. Breyer invested in a syndicate, Merrett 418, that underwrote risks whose extent are still unknown -- covering asbestos, pollution and other environmental hazards." Liability Week, Aug. 1, 1994.

Ethics Experts Questioned Breyer Ruling On Cases Where He Had Financial Interest:

"Breyer's Financial Disclosure Statements Filed With The Judicial Ethics Committee In Washington Reveal That The Judge … Had Between $ 250,000 And $ 500,000 Invested In The Lloyd's Of London Insurance Company In The Mid And Late 1980s." (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

- **"Judge Breyer Was A Member Of Lloyd's From 1978 Through 1988. His Syndicate Memberships Included Marine Syndicate 418 In 1985, An Account That Remains Open With Reported Total Losses Of $245 Million Through 1993."** (Gavin Souter, "Breyer Superfund Rulings Raise Ethics Questions," *Business Insurance*, 7/4/94)

"Monroe Freedman, A Law Professor At Hofstra University And A Leading Expert On Legal Ethics, Said In An Interview That Because Of Breyer's Interest In Lloyd's He Should Have, Under Federal Law, Either Recused Himself From Participation In Superfund And Asbestos Cases Or, At The Very Least, Informed The Parties To The Lawsuits So That They Could Raise An Objection." (Timothy M. Phelps and Michael Weber, "Supreme Court Conflict?" *Newsday*, 6/24/94)

- **Freeman:** "There was conflict of interest. He still stands to lose money (at Lloyd's), but somewhat less money than he would have because of the decisions he made." (Gavin Souter, "Breyer Superfund Rulings Raise Ethics Questions," *Business Insurance*, 7/4/94)

In 1994, Sen. Ted Kennedy (D-MA) Took The High Road When Judge Stephen Breyer Was Questioned Over Recusals:

"Sen. Edward M. Kennedy, A Strong Supporter Who Is Expected To Introduce The Judge At The Hearing, Issued A Statement Backing Breyer. 'Judge Breyer's Actions Were Fully Consistent With The Code Of Judicial Ethics. He Recused Himself From Asbestos Cases, And Participated In No Other Cases Where He Knew He Might Have Any Financial Interest. It Is Hard To See How He Could Have Done More,' Kennedy Said." (Ana Puga, "Breyer's Financial Interests Detailed," *The Boston Globe*, 6/25/94)

"Sen. Edward M. Kennedy And Sen. Howard M. Metzenbaum, Democrat Of Ohio, Squabbled Over Whether Breyer Had Exercised Poor Judgment In Ruling On Environmental Cases While He Held Investments In A Firm That Insures Polluters." (Ana Puga, "Biden Accuses Breyer Of Elitism," *The Boston Globe*, 7/15/94)

- **"Metzenbaum Appeared To Irritate Kennedy, Biden And Sen. Orrin G. Hatch Of Utah, The Committee's Senior Republican, By Raising Questions About Breyer's Investments In Lloyd's Of London, A Subject The Committee Leaders Had Hoped To Dismiss On Tuesday When Breyer Vowed To Divest Himself Of The Investment."** (Ana Puga, "Biden Accuses Breyer Of Elitism," *The Boston Globe*, 7/15/94)

- **Kennedy:** "You've asked for my opinion whether Judge Breyer's committed a violation of judicial ethics in investing in Lloyds name and insurance underwriting while being a Federal Judge. In my opinion, there was no violation of judicial ethics." (Sen. Edward Kennedy, Committee On The Judiciary, U.S. Senate, Hearing, 7/14/94)

IN 2006: DEMOCRATS PLAY PARTISAN POLITICS AGAINST CIRCUIT COURT NOMINEE TERRENCE BOYLE

Ethics Experts And Lawyers In The Cases Dismiss Claims Against Boyle:

Jonathan Turley, A Legal Ethics Expert And Professor Of Law At George Washington University: "For Judge Boyle, the problem may be more political than legal." ("Ethics Allegations Stir Democrats Opposed To Boyle Nomination," *The Associated Press*, 5/5/06)

"[Doug Kendall, Executive Director Of Community Rights Counsel, A Nonprofit Group That Works To Expose Ethical Conflicts Of Judges], Who Also Reviewed Boyle's Records, Said There's Not Enough Money Involved To Conclude That Boyle Made Any Rulings For Personal Financial Gain." (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

- **"All Of The Stock Holdings At Issue Were Valued Below The $15,000 Mark According To His Financial Disclosure Forms, And Many Were Worth Substantially Less."** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

"Several Lawyers Litigating Against The Companies In Which Boyle Had Financial Interests Said They Trusted Boyle And Were Not Bothered By His Participation In The Cases, Even When He Had Ruled Against Them." (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

- **"Jerry Leonard, For Example, Is A Raleigh Lawyer Who Brought A Case Against AT&T, In Which Boyle Made Only One Routine, Administrative Order."** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)
    - **"A Former Judge And Self-Described 'Wide-Eyed Liberal,' Leonard Said He Shares The View Of Many Local Lawyers That Boyle Is Fair-Minded, And 'Probably The Best Judge We Have Around Here.'"** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)
- **"Andy Whiteman Of Hartzell & Whiteman In Raleigh, Who Had A Client In One Of The Cases Cited In The Report, Told *The News & Observer* Of Raleigh That Boyle Was Not Unfair To His Client In His Handling Of The Disability Case Against General Electric."** ("Ethics Allegations Stir Democrats Opposed To Boyle Nomination," *The Associated Press*, 5/5/06)

Judge Terrence Boyle Is Accused Of Deciding Cases Where He Had A Financial Interest:

"[S]ince His May 2001 Nomination, Boyle Has Issued Orders In At Least Nine Cases That Involved Five Different Corporations In Which He Reported Stock Holdings, According To Financial And Court Documents." (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

- **"In March 2004 … He Also Ruled In Favor Of Midway Airlines In A Bankruptcy Case. At That Time, Boyle Owned Stock In Midway In A Trust Account. (The Stock Was Basically Worthless Because Of The Bankruptcy, Though He Still Listed It As A Financial Investment.)"** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

- **"On Sept. 17, 2004, He Ruled Against Deborah Virgil, Whose 11-Year-Old Son, Craig, Had Been Hit And Killed By An Amtrak Train In Elm City, N.C., In March 2003."** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

    - **"Virgil Sued The Conductor, Amtrak And CSX Transportation, The Company That Owned And Operated The Tracks. Boyle Reported Stock Holdings In Parent Company CSX Corp. While He Presided Over The Case."** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

- **"Starting In 2002, Terrence W. Boyle, A Longtime Federal District Court Judge In North Carolina, Presided Over A Lawsuit Against General Electric, In Which The Corporation Stood Accused Of Illegally Denying Disability Benefits To A Long-Standing Employee."** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

    - **"Deep Into The Case, On Jan. 15, 2004, Judge Boyle Bought Stock In General Electric, According To A Review Of His Financial Filings. Two Months Later, He Made His Ruling: Boyle Shot Down The Plaintiff's Claims … Granting Him Only A Fraction Of The Money In Short-Term Compensation …"** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

- **"In A Case In 2002 Against America Online And Other Companies, One Plaintiff Did Request That Judge Boyle Recuse Himself, But Boyle Refused. The Plaintiff Alleged He Was Biased Against Her – Though, Ironically, She Did Not Know At The Time Of Boyle's Reported Stock Holdings In AOL Time Warner, The Parent Company Of America Online."** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

- **"Early In His Nomination Process In 2001 … [Boyle] Was In The Middle Of A Case Involving Quintiles Transnational, A Pharmaceutical Services Company In Which He Reported Stock Holdings, And On Whose Behalf He Had Been Issuing Favorable Rulings."** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

"In Most Of The Cases, Boyle Ruled In Favor Of The Companies In Which He Had Financial Interests -- Though His Participation Was A Violation Of The Law Regardless Of How He Ruled." (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

- **"Federal Law And The Official Code Of Conduct For U.S. Judges Explicitly Prohibit Judges From Sitting On Such Cases – No Matter How Small Their Stock Holdings – In Order To Ensure Public Trust In The Judicial System."** (Will Evans, "Controversial Bush Judge Broke Ethics Law," *Salon.Com*, 5/1/06)

<u>Democrats Using Conflict Of Interest Allegations To Obstruct Boyle's Nomination:</u>

"[Sen. Harry Reid (D-NV)] Said He Is Considering A Filibuster Of [Judge Terrance Boyle Because He] … Ruled In A Case In Which He Had A Clear Conflict Of Interest." (Laurie Kellman, "Reid Mulls Filibuster Of Judicial Nominees," *The Associated Press*, 5/2/06)

- **"Reid Said He Had Read In An Online Article That Boyle Had Bought Stock In General Electric Midway Through Presiding Over A Pension Lawsuit Against The Company. Then Boyle Ruled Against The Plaintiff's Claims Of Long-Term And Pension Disability Benefits."** (Laurie Kellman, "Reid Mulls Filibuster Of Judicial Nominees," *The Associated Press*, 5/2/06)

"This Time, Reid And Other Democrats Are Pointing To A Report By Salon.Com And The Center For Investigative Reporting. The Report Said That Since Boyle's May 2001 Nomination To The Appeals Court, He Has Issued Orders In At Least Nine Cases That Involved Five Different Corporations In Which He Reported Stock Holdings." (Laurie Kellman, "Reid Mulls Filibuster Of Judicial Nominees," *The Associated Press*, 5/2/06)

- **Sen. Harry Reid (D-NV):** "He not only shouldn't be a trial court Judge as he is, but to think that he should be elevated to a Circuit Court of Appeals is outrageous." (Laurie Kellman, "Reid Mulls Filibuster Of Judicial Nominees," *The Associated Press*, 5/2/06)

- **Sen. Patrick Leahy (D-VT):** "Whether or not it turns out that Judge Boyle broke federal law or canons of judicial ethics, these types of conflicts of interest have no place on the federal bench." ("Ethics Allegations Stir Democrats Opposed To Boyle Nomination," *The Associated Press*, 5/5/06)