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Just in case you missed the Neil Lewis piece in the NYT about judicial selection.

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March 11, 2001

President Moves Quickly on Judgeships

By NEIL A.  
LEWIS  
>ASHINGTON, March 10 ??? The Bush administration is moving with extraordinary swiftness to put its stamp on the federal courts, setting aside evenings in which more than 50 candidates have already been interviewed for judgeships, with an emphasis on filling vacancies on the federal appeals courts."This is a very real priority for us and we've

been working pretty hard at it," said Alberto R. Gonzales, a former Texas judge who is the new White House counsel. Mr. Gonzales heads a committee of about 15 people from the White House and the Justice Department who are screening lawyers for judgeships. The quickness with which officials are addressing the selection of judges is a revealing window into the priorities of the administration's lawyers. It is also in marked contrast to the eight years of the Clinton administration, in which the White House did not make judicial selection a major priority. Scholars and

lawyers said that the Bush process appears to most resemble the 12 years of

Republican rule under President Ronald Reagan and Mr. Bush's father in which

there was a concerted effort to turn the courts rightward. Although the

screening process is not yet fully in place, it has won strong plaudits from

conservatives not only for the kinds of qualities it is seeking in

candidates, but for the credentials of the senior staff members doing the

screening. The lawyers under Mr. Gonzalez in the counsel's office who do much

of the questioning of the candidates are

part of a cadre of young lawyers who have a strong ideological commitment

to conservative jurisprudence. They

typically have collected similar

credentials for entry in that elite group;

most have been law clerks for

conservative judges and Supreme Court justices

and are members of the

Federalist Society, a conservative organization

heavily involved in

promoting its members through ideological networking. Some of Mr.

Gonzales' deputy counsels also have impeccable anti-Clinton credentials,

having worked for Kenneth W. Starr, the Whitewater special prosecutor.

Others were involved in pressing Mr. Bush's case in Florida during the

post-Election Day dispute. For example, one of the six associate counsels,

Brett Kavanaugh, led Mr. Starr's investigation into the death of Vincent

Foster, the deputy White House counsel in the Clinton administration.

Mr.

Kavanaugh, who is 35, also wrote a large portion of Mr. Starr's report to

Congress that resulted in Mr. Clinton's impeachment in the House. At least

three of the lawyers involved in judicial selection worked on Congressional Whitewater investigations. Another prominent conservative who will have a major role in selecting judicial candidates will be Viet Dinh, a Georgetown University law professor who has been nominated to be an assistant attorney general to head the Office of Policy Development. In that capacity, Professor Dinh will probably be responsible for reviewing judicial candidates' writings and records after they are selected by Mr. Gonzales' committee, officials said. Mr. Gonzales said that the candidates are typically interviewed into the night when he has time, and that they are asked about their judicial philosophy. "We don't have any litmus-test questions," he said, meaning the kind that directly seek answers to how a person would vote on a given issue like abortion. "The truth of the matter is that a judge's personal views of an

issue is irrelevant or should be irrelevant if a judge does her job right,"

he said. "We ask them questions about their philosophy," Mr. Gonzales said.

"We ask how they construe statutes, how do they resolve disputes and what do they believe is the appropriate role of judges." Mr. Gonzales said that he and President Bush agree that "the role of judges should be fairly limited."

During the presidential campaign, Mr. Bush identified Justices Antonin Scalia and Clarence Thomas as examples of his judicial ideal. Clint Bolick, the

director of the Institute for Justice, a conservative policy organization in Washington, said that "Gonzales has put together a top-notch team of young lawyers who are very committed to conservative ideals." Prof. Michael J. Gerhardt of William and Mary Law School, who is an authority on judicial selection, said that "for some of these people, these conservative lawyers, the issue of who gets to be a federal judge is the only thing that matters." Professor Gerhardt, the author of "The Federal Appointment Process"



(Duke University, 2001), said that the screening of candidates will not depend so much on the answers given to general questions about philosophy but on other indicators "like the kinds of causes people have been involved with. They have to have some record of supporting the ideology and membership in the Federalist Society is one very strong indicator." One factor that may distinguish the Bush administration from that of Ronald Reagan and the elder George Bush is that the Senate, which must confirm judges, is split 50-50

between Democrats and Republicans. The Republicans have an edge because the vice president can break any tie. So one possible reason for the haste in selecting new judges may be that the White House knows that Republicans could lose their majority at any time if a Republican senator should retire. Of the 862 federal judgeships, there are currently about 100 vacancies for President Bush to fill, with 29 of them on the appellate courts, the level just below the Supreme Court. Of the 13 regional circuit courts, eight currently have majorities of judges appointed by Republican presidents, two have Democratic majorities and three have equal numbers. During the Clinton administration, some Republican judges said that even though their circuits had unfilled slots, there was no need to name any new judges since they could handle their workload. Mr. Gonzales said that President Bush would, nonetheless, try to name new judges to fill those vacancies.

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Jason Torchinsky

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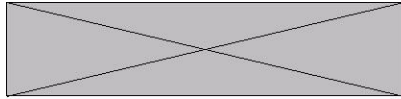
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March 11, 2001

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By NEIL A. LEWIS

WASHINGTON, March 10 The Bush administration is moving with extraordinary swiftness to put its stamp on the federal courts, setting aside evenings in which more than 50 candidates have already been interviewed for judgeships, with an emphasis on filling vacancies on the federal appeals courts. "This is a very real priority for us and we've been working pretty hard at it," said Alberto R. Gonzales, a former Texas judge who is the new White House counsel. Mr. Gonzales heads a committee of about 15 people from the White House and the Justice Department who are screening lawyers for judgeships. The quickness with which officials are addressing the selection of judges is a revealing window into the priorities of the administration's lawyers. It is also in marked contrast to the eight years of the Clinton administration, in which the White House did not make judicial selection a major priority. Scholars and lawyers said that the Bush process appears to most resemble the 12 years of Republican rule under President Ronald Reagan and Mr. Bush's father in which there was a concerted effort to turn the courts rightward. Although the screening process is not yet fully in place, it has won strong plaudits from conservatives not only for the kinds of qualities it is seeking in candidates, but for the credentials of the senior staff members doing the screening. The lawyers under Mr. Gonzalez in the counsel's office who do much of the questioning of the candidates are part of a cadre of young lawyers who have a strong ideological commitment to conservative jurisprudence. They typically have collected similar credentials for entry in that elite group; most have been law clerks for conservative judges and Supreme Court justices and are members of the Federalist Society, a conservative organization heavily involved in promoting its members through ideological networking. Some of Mr. Gonzales' deputy counsels also have impeccable anti-Clinton credentials, having worked for Kenneth W. Starr, the Whitewater special prosecutor. Others were involved in pressing Mr. Bush's case in Florida during the post-Election Day dispute. For example, one of the six associate counsels, Brett Kavanaugh, led Mr. Starr's investigation into the death of Vincent Foster, the deputy White House counsel in the Clinton administration. Mr. Kavanaugh, who is 35, also wrote a large portion of Mr. Starr's report to Congress that resulted in Mr. Clinton's impeachment in the House. At least three of the lawyers involved in judicial selection worked on Congressional Whitewater investigations. Another prominent conservative who will have a major role in selecting judicial candidates will be Viet Dinh, a Georgetown University law professor who has been nominated to be an assistant attorney general to head the Office of Policy Development. In that capacity, Professor Dinh will probably be responsible for reviewing judicial candidates' writings and records after they are selected by Mr. Gonzales' committee, officials said. Mr. Gonzales said that the candidates are typically interviewed into the night when he has time, and that they are asked about their judicial philosophy. "We don't have any litmus-test questions," he said, meaning the kind that directly seek answers to how a person would vote on a given issue like abortion. "The truth of the matter is that a judge's personal views of an



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