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Subject: : talking points attached

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CREATOR:Matthew E. Smith (CN=Matthew E. Smith/OU=WHO/O=EOP [WHO])

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

READ:UNKNOWN

TO:Jason B. Torchinsky (CN=Jason B. Torchinsky/OU=WHO/O=EOP@EOP [WHO])

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BCC:Lezlee J. Westine (CN=Lezlee J. Westine/OU=WHO/O=EOP [WHO])

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These went out to the Judicial folks.

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THE PRESIDENT'S JUDICIAL NOMINEES: STATE OF PLAY

1. Senator Leahy is not even keeping pace with the vacancy rate

- When President Bush took office there were 82 vacancies. Right now there are 100 vacancies in the federal judiciary, meaning that under Chairman Leahy, the federal judiciary is actually shrinking, despite a record pace of nominations by the President.

2. The percentages tell the whole story

- President Bush only had 42% of his first-year nominees confirmed. By comparison President Clinton had 57% of his first-year nominees confirmed in the first year and President George H.W. Bush had 62% of his first-year nominees confirmed before the Senate recessed at the end of the year.
- In President Clinton's first year in office he had nominated 32 individuals before the end of October, and 28 of them were confirmed (88%) before the end of the Senate's session. By comparison, President Bush nominated 60 judges by October 31st, yet only 28 have been confirmed (47%). This is true despite the fact President Clinton did not nominate a single District or Circuit judge until August 6th, and President Bush submitted his first nominations on May 9th.
- President Bush has only had 21% of his Circuit Court nominees confirmed. This number pales in comparison to the treatment the Circuit Court nominees of Presidents Clinton and George H.W. Bush received. President Clinton had 60% of his Circuit Court nominees confirmed in the first year, while President George H.W. Bush had 62% of his Circuit Court nominees confirmed by the Democrat-controlled Senate. Chairman Leahy has thus fallen far below the traditional confirmation rate for circuit court nominees that have applied regardless of which party was in the White House and which party controlled the Senate.

3. First group of nominees still waiting

- On May 9th President Bush announced his first 11 nominees, 8 of which have yet to receive a hearing. All 8 of these nominees have been waiting more than 230 days for a hearing, or approximately 8 months. All of these nominees have been rated Qualified or Well-Qualified by the American Bar Association, and four of these nominees are pending for positions designated as judicial emergencies.

4. A 6th Circuit Crisis

- The 6th Circuit has only 8/16 seats filled, leaving the court half-empty. No one can remember a federal circuit court ever having a vacancy rate this high, and the Chief Judge of the 6th Circuit said that the court was "hurting badly" with half this number of vacancies. The President has nominated 7 individuals to fill these vacancies, and none have received a hearing. Two of these nominees have been pending since May 9th.

First Year Judicial Nomination Confirmation Chart

President	District Nominees Submitted	District Nominees Confirmed	Circuit Nominees Submitted	Circuit Nominees Confirmed	Total Submitted	Total Confirmed
Bush 2001	37	22 (59% Confirmed)	29	6 (21% confirmed)	66	28 (42 % Confirmed)
Clinton 1993¹	42	24 (57 % Confirmed)	5	3 (60% Confirmed)	47	27 (57% Confirmed)
Bush 1989	16	10 (62 % Confirmed)	9	8 (88% Confirmed)	45	41 (91% Confirmed)

Clinton v. Bush: A Comparison of the Confirmation Pace in the First Year

President	Nominees Submitted Before 11/01	Nominees Confirmed In the First Year	Nominees Submitted Before August Recess	Nominees Confirmed In the First Year
Bush 2001	60	28 (47% Confirmed)	44	25 (57% confirmed)
Clinton 1993	32	28 (88 % Confirmed)	14	13 (93% Confirmed)

¹ President Clinton nominated 29 individuals on October 25th or later. Considering the Senate recessed one month later on November 26th, it was impossible to get many of these nominees confirmed before the end of the year. In particular, the 11 individuals nominated on November 19th were not able to be confirmed before the recess and consequently made the confirmation rates in Clinton's first year lower than the actual confirmation pace.