

**Received(Date):** 4 JAN 2002 11:35:47

**From:** "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )

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

**Subject:** : FW: Analysis: Missing appointments By Peter Roff, UPI National Political An...

[P\\_92IM4003\\_WHO.TXT\\_1.txt](#)

##### Begin Original ARMS Header #####

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> ( "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> [ UNKNOWN ] )

CREATION DATE/TIME: 4-JAN-2002 11:35:47.00

SUBJECT:: FW: Analysis: Missing appointments By Peter Roff, UPI National Political An...

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

READ:UNKNOWN

##### End Original ARMS Header #####

Did you see this one? Might be more appropriate for the TPs than the WSJ.

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

From:

Sent:

To: k

P6/b6

Subject: Fwd: Analysis: Missing appointments By Peter Roff, UPI National Political An...

Date: Fri, 4 Jan 2002 11:32:42 -0500

From: Peter Roff

</S=PRoff#064#upi.com/O=JCON/P=GOV+DOJ/A=TELEMAIL/C=US/@intmail.usdoj.gov>

Subject: Analysis: Missing appointments By Peter Roff, UPI National Political Analyst

To: Peter Roff

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Message-id: <E07B23C1FBD2D511B2EB00508BCF87950BBC49@UPI-EX01>

MIME-version: 1.0

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Importance: Normal

X-Priority: 3 (Normal)

Analysis: Missing appointments <?xml:namespace prefix = o ns =  
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By Peter Roff, UPI National Political Analyst

Publication Date 01/03/2001

WASHINGTON, Jan. 2 (UPI) -- In his 2001 end-of-year report on the state of the federal judiciary, U.S. Chief Justice William Rehnquist came down hard on the Senate, excoriating its failure to confirm federal judicial nominees.

This is not a new theme for the chief justice. He made a similar admonition in his 1997 report. Then, however, it was directed at Senate Republicans who were not, in Rehnquist's view, moving quickly enough to confirm Clinton judicial nominees.

The process of confirming presidential nominees to the federal bench has always been contentious when a party other than the president's has controlled the Senate.

Because federal judges, especially those at the appellate level or higher, have so much power to make law from the bench, ideologues of all stripes are always watchful for nominees who might shift the balance of a particular court.

This tension was especially evident from 1986 forward.

From that point, the Democrat-controlled Senate took on President Ronald Reagan over judicial nominations. And, when President George Bush the elder replaced Reagan in the Oval Office, the conflict continued as Democrats feared the federal bench would be remade in a way that allowed conservative legal philosophy to dominate judicial opinions.

The high watermark in that struggle was the battle to confirm Clarence Thomas as an Associate Justice of the Supreme Court.

Only the second black to be named to the court, Thomas was embraced by conservatives and abhorred by liberals -- even though he had been confirmed for a lower federal bench by an overwhelming majority just a few years earlier.

Much has been written about the battle for Thomas. It was, as many who covered the hearings agree, always about his judicial philosophy -- even when it seemed to be about something else.

After 1994, the GOP-led Senate was almost as tough on Clinton appointees to the federal bench, again not for reasons of political payback so much as over concerns about ideological trends among nominees -- especially to U.S. circuit courts where the dominant legal philosophy might be shifted in one direction or the other by a single appointment.

Judicial nominations were, especially in the Reagan and post-Reagan presidencies, games of high-stakes political poker. Other presidential appointments did not receive the same kind of ideological scrutiny -- until now.

Much of the way Washington works is based on the appearance of political niceties. The much-ballyhooed "comity of the Senate" is frequently invoked, even in the most trying of circumstances, to keep the process moving.



Now the process has broken down.

The harsh political divisions that erupted during the Clinton years were sorely exacerbated by the post-election legal challenges to George W. Bush's victory. The Sept. 11 terror attack put the brakes for a short time on the ad hominem sniping that passed for reasoned political discourse.

As the New Year begins, most observers agree that the knives are once again sharpened and out and can be seen clearly in the confirmation process.

Many presidential and congressional scholars believe this new breakdown was inevitable. It might just as likely have occurred with a Democrat in the White House and Republicans in control of the Senate, but either way, the confirmation process has virtually ground to a halt.

The Constitution invests in the Senate the power to advise upon and confirm or reject presidential appointees. It is a check on the president's ability to stack his administration with favor-seekers, incompetents and political cronies.

Under Majority Leader Tom Daschle's, D-S.D., leadership, that power is being exercised ruthlessly.

Some suggest that this is a case of turnabout being fair play, partisan vindication -- or vengeance, depending on political perspective -- for the way the GOP-controlled Senate treated Clinton administration nominees between 1995 and 2000.

As a counter, Republican leaders say that in the case of Clinton nominees -- especially judges -- care was exercised to base opposition on issues of competence and ethics, acknowledging the president's Constitutional prerogative to appoint whom he wanted to post in his administration.

True or not, Senate Democrats brought the idea that a nominee's ideology is now on the table to the forefront shortly after they took control of the process in 2001.

What had been behind-the-scenes, inside baseball became public spectacle.

There are now close to 200 Bush appointees awaiting confirmation. Many of them have not yet been given a hearing before the relevant Senate committee.

Holding up nominees is, as partisan strategists acknowledge, a way of sticking a senatorial thumb in a presidential eye. But for most of the latter half of the 20th Century, it was an extreme measure, not a general practice.

There are those who fear it is now so widespread as to cripple the administration's ability to carry out its duties.

In one example, Massachusetts Democrat Sen. John F. Kerry announced he was

placing a hold on all non-judicial confirmations in retaliation for an anonymous hold that had been placed on a bipartisan Kerry/Bond small business relief package.

The move is high-stakes political gamesmanship, designed to break a logjam on the Kerry/Bond bill.

Less explainable is the failure of the Senate to act on nominees like Otto Reich, whom the president has asked to be Assistant Secretary of State for Western Hemisphere Affairs.

A former U.S. ambassador to Venezuela and a Reagan appointee, Reich was named to the post on March 22, 2001. As of Jan. 3, 2002, he had still not come before the Senate Foreign Relations Committee for a hearing.

According to many Capitol Hill insiders, the roadblock to moving ahead is Connecticut Democrat Sen. Christopher Dodd, who, they suggest, is looking to settle an old policy score by keeping Reich from getting the job.

In the 1980s, Dodd was a vocal opponent of the Reagan administration's Central America policy. History records that he was on the wrong side of the issue, at least as far as the outcomes are concerned.

The Nicaraguan people tossed the Dodd-supported Sandinistas from power in the first democratic election. In El Salvador, the country has become a generally stable and prosperous democracy. The political ambitions of the FMLN guerillas, Communists backed by the Soviet Union, have been largely thwarted.

Reich, who has been endorsed for the State Department post by nine former U.S. ambassadors to the region, was an important player in the implementation of the Reagan doctrine in Central America -- policies that Dodd strongly and vocally opposed.

Dodd has publicly accused Reich of being a terrorist sympathizer while others have made serious allegations about his conduct during his time in the Reagan administration. And because Dodd is blocking Reich from a hearing before the Senate, the nominee is being denied the opportunity to face his accusers and to hear and defend against the allegations.

Conservative supporters of the nominee have called this a terribly un-American way of doing things. They are calling on Dodd to allow a hearing to go forward, in a spirit of post-Sept. 11 bi-partisanship.

They believe the linkage to Sept. 11 is appropriate because the post to which he has been nominated is of some importance in the war against terror -- with Cuba falling under his purview. And while it may be that President Bush names Reich to the job in a recess appointment, they still want the hearing to go forward so that the issues may be resolved, one way or another.

The Reich case is but one example of what some see as the collapse of the

confirmation process, which observers on both sides of the aisle agree is bad for America.

The political outcomes from the dispute cannot be forecast. If, Republicans say privately, the process is allowed to move forward, with all pending nominees given hearings and votes of the full Senate, then that will be sufficient to satisfy their concerns.

In the vision of the founders, a majority of senators should be allowed to reject a nominee on ideological grounds, putting their opposition on record for the voters to consider. There are few who will make the case that delays in the confirmation process -- if they are shields against political consequences of opposition on ideological grounds -- should be seen in the same light.

It is likely, political strategists say, that continued delays will show up in political ads in states, like Tom Daschle's South Dakota, that voted overwhelmingly for George W. Bush in 2000. But that is no guarantee that such a campaign will break the appointments logjam.

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File attachment <P\_92IM4003\_WHO.TXT\_1>



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**Publication Date 01/03/2001-**

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