

Received(Date): 24 SEP 2002 10:44:05
From: "Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
Subject: : FW: Edwards

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Dinh, Viet" <Viet.Dinh@usdoj.gov> ("Dinh, Viet" <Viet.Dinh@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:24-SEP-2002 10:44:05.00
SUBJECT:: FW: Edwards
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Brett, pls forward to Helgi. thanks so much.

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

From: [REDACTED]
Sent: Tuesday, September 24, 2002 10:23 AM
To: Willett, Don; Dinh, Viet; barbara_ledeen@src.senate.gov;
tim_goeglein@who.eop.gov; Manuel_Miranda@judiciary.senate.gov
Subject: Edwards

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Raleigh News & Observer 8/24/02

Edwards holds key to deadlock

By JOHN WAGNER, Washington Correspondent

Washington -- Sen. John Edwards is holding up President Bush's nomination of a Raleigh lawyer to a federal judgeship while lawyers who practice before the court -- and one of its sitting judges -- say it is becoming overwhelmed with a rising caseload.

Bush nominated James C. Dever in late May to one of four seats on the U.S. District Court for the Eastern District of North Carolina. The court, which hears federal cases from 44 eastern counties, has been operating with only two full-time judges since January 2001, a situation that Judge Malcolm J. Howard described as "almost insurmountable" in a court document this month.

Edwards, a Democrat, is holding onto a form that must be returned to the Senate Judiciary Committee before that panel can schedule a confirmation hearing for Dever.

"I haven't finished looking at his record yet," Edwards said in an interview late last week, adding that he wasn't sure whether he would finish his review before Congress goes home. "It depends on where it is in the context of other things we have to get done."

Edwards and Sen. Jesse Helms, a Republican, have been engaged in a feud over nominations to the 4th U.S. Circuit Court of Appeals, the next court above the district level. As a result, the 15-member appeals panel has not had a full-time judge from North Carolina since 1999. The court hears cases from five Southern states, including Virginia, which has four judges on the

panel.

Edwards said the nomination of Dever, a Republican, is not entangled in the 4th Circuit standoff. But on Monday, Edwards' spokesman, Mike Briggs, said Edwards remains concerned that Bush is not making more balanced nominations with the advice of both Tar Heel senators.

"It's not entirely in Senator Edwards' hands to make this work," Briggs said.

He suggested, for example, that Bush could nominate someone more acceptable to Edwards to the second open seat on the Eastern District court.

Briggs also noted that Edwards has endorsed a proposal by the N.C. Bar Association that would create a bipartisan commission to suggest federal judicial nominees for North Carolina. Helms has dismissed that idea.

On Monday, Jimmy Broughton, Helms' chief of staff, said "there's no reason" for Dever's nomination to be delayed, noting that the American Bar Association had rated him "qualified" in a statement issued Aug. 1.

Dever, a lawyer with the Raleigh firm Maupin Taylor & Ellis and a Duke Law School graduate, represented Republicans in a case that forced the General Assembly to redraw its districts this year.

Politics aside, there seems to be little dispute that the two sitting judges on the Eastern District Court are swamped.

"I think those judges are up to their eyeballs with having too much to do," said Christopher Graebe, a Raleigh lawyer with Womble Carlyle Sandridge & Rice who practices often in federal court. "I'm hopeful that people can put politics aside and realize that the court can't continue to function without more judges."

Graebe described himself as "a very apolitical Democrat."

In a Sept. 10 order delaying seven civil cases on his docket, Howard noted the strain of operating with two full-time judges.

"The result over time is that the caseload, civil and criminal, has become almost insurmountable," Howard wrote. "In addition to 364 pending civil cases and 195 pending criminal defendants, the court has five separate criminal trials scheduled which will consume most of September and October 2002."

Judge Terrence Boyle, the district's chief judge, has an even larger caseload. He would not comment for this story.

In addition to the two full-time judges, two judges on senior status hear some cases, though their workload is only a fraction of that of Boyle and Howard.

Between 1997, when the district court last had a full slate of four judges, and 2001, the annual caseload increased from 1,835 to 1,941.

This year has been busier. U.S. Attorney Frank Whitney, the top federal

prosecutor for Eastern North Carolina, said his office's criminal caseload has increased because of post-Sept. 11 investigations of potential terrorist threats.

While Dever's nomination languishes, the Senate Judiciary Committee, on which Edwards sits, has been considering other judicial nominees as Congress lurches toward adjournment.

Meanwhile, no one seems to have much hope that a nominee from North Carolina will be added to the 4th Circuit before the Senate breaks for the year. Bush nominated Boyle in September 2001. Edwards has blocked that nomination in response to Helms' refusal to accept a series of President Clinton's court nominees.

In proposing a bipartisan commission, leaders of the bar group said the "long-standing impasse ... has left our federal courts at less than full strength and deprived half a generation of North Carolina's finest lawyers and judges of an opportunity to serve their country."

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