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Bcc: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP [WHO])
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CNN: Special Report With Aaron Brown

13 June 2003

(COMMERCIAL BREAK)

KATE SNOW: They're neck and neck with the gang at "60 Minutes" in terms of age, averaging right around 70 years old. And the question of who will replace them when they retire is one of the most important and controversial questions facing the country today.

We're talking, of course, about members of the Supreme Court, and the intense speculation over who's staying, who's going, and who might one day join them.

Here's CNN's Jeff Greenfield.

(BEGIN VIDEOTAPE)

JEFF GREENFIELD, CNN SENIOR ANALYST (voice-over): Question, what makes this television ad attacking the president's Supreme Court nominee unusual?

Answer, the president doesn't have a Supreme Court nominee.

But the mere possibility or rumor or hunch that Chief Justice William

Rehnquist or Justice Sandra Day O'Connor or some other Supreme Court justice might step down when the court term ends this summer, well, that was enough to start troop maneuvers in what will almost surely be the biggest domestic battle of this Bush's presidency.

While the Senate has battled over lower court federal judges for years, it's been more than nine years since a Supreme Court vacancy has occurred. That's the longest such gap since the 1820s.

And given the enormous power of these lifetime Supreme Court appointments, the power to strike down state and federal laws, the power to expand or limit or define rights, maybe it's not surprising that this nonpolitical branch of the federal government has in recent decades become an increasingly political battleground.

In 1968, after years of noncontroversial Supreme Court appointments, a Senate filibuster helped doom President Johnson's bid to elevate Justice Abe Fortas to chief justice. A Democratic Senate rejected both of President Nixon's first two high court nominees, Clement Haynesworth and Harold Carswell.

In 1987, another Democratic Senate turned down President Reagan's choice of Robert Bork. And in 1991, the Democratic-controlled Senate barely confirmed Clarence Thomas after perhaps the most bitter and divisive of fights.

Now, says former White House counsel Boyden Gray, who will help lead a political fight to confirm Bush's nominee, liberal interest groups are determined to block just about any choice.

C. BOYDEN GRAY, WHITE HOUSE COUNSEL, 1989-1993: What they have said is they will oppose anybody. They can't believe that the president will nominate someone who would be acceptable, so they're geared up to oppose whoever it is.

SEN. CHARLES SCHUMER (D), NEW YORK: The only time we really oppose things is when the president nominates someone way out of the mainstream. And this president, unfortunately, has chosen his judges through an ideological prism to a far greater extent than any president in history.

GREENFIELD: New York Senator Chuck Schumer says the Senate should quiz

nominees about their views. But he's also submitted to the president a list of judges appointed by Republicans who would, he said, find support from most Democrats. But, he adds...

SCHUMER: If the president is going to try to change America not through the Congress, not through the presidency, but rather through filling the courts, stacking the courts with nominees who are so far over, then obviously there'll be a fight.

GREENFIELD: On that point, Boyden Gray agrees.

GRAY: If the president nominates a justice or a potential justice that we should be prepared, he, the White House, and outside supporters, should be prepared to support and oppose those who would misrepresent the candidate, the nominee.

GREENFIELD (on camera): Mr. Bush's conservative base well remembers how the first President Bush put a moderate liberal, David Souter, on the court. They want no such nominee this time. And President Bush himself has cited conservative heroes Antonin Scalia and Clarence Thomas as his favorite justices.

Liberals see the court as their only protection against a rollback of precedents in areas such as abortion. They want Democrats in the Senate to use every measure they can to block any justice with strong conservative views. When it comes, this battle is going to be a doozy.

Jeff Greenfield, CNN, New York.

(END VIDEOTAPE)

SNOW: A doozy of a battle, as Jeff put it, but it might be coming. There are also some big decisions we know are coming over the next few weeks, decisions that are expected in cases involving homosexuality, affirmative action, and free speech at public libraries.

Sean Rushton

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