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**Subject:** : Fw: Pittsburgh Post-Gazette Commentary for 2/26 - the published version of the Thornburgh letter

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CREATOR:H. Christopher Bartolomucci ( CN=H. Christopher Bartolomucci/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:25-FEB-2002 20:42:04.00

SUBJECT:: Fw: Pittsburgh Post-Gazette Commentary for 2/26 - the published version of the Thornburgh letter

TO:Anne Womack ( CN=Anne Womack/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

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

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Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

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

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Cc:

Date: 02/25/2002 08:20:58 PM

Subject: Pittsburgh Post-Gazette Commentary for 2/26 - the published version of the Thornburgh letter

FOIA(b)6  
PRA-P6

Here it is, as it will run in tomorrow's editions...

Perspectives: Setting the record straight on Judge D. Brooks Smith  
Tuesday, February 26, 2002  
By Dick Thornburgh

WASHINGTON - Today the Senate Judiciary Committee will consider

President Bush's nomination of Chief U.S. District Judge D. Brooks Smith for the 3rd U.S. Circuit Court of Appeals, headquartered in Philadelphia.

For 18 years, Judge Smith has served Pennsylvanians with distinction. Judge Smith boasts first-rate credentials in addition to his years of judicial experience, and the American Bar Association unanimously gave him its highest rating. Over 100 Democrats and Republicans alike have signed letters of support to the Senate Judiciary Committee. These letters from judges, public officials and leaders of civil liberties, labor, and women's organizations all praise Judge Smith's fairness and impartiality.

The Post-Gazette has detailed the campaign against Judge Smith by the Community Rights Counsel and other extreme interest groups. Just as night follows day, it seems the usual suspects are lining up for another effort to "Bork" a distinguished judge. Specifically, critics argue that Judge Smith should have immediately recused himself from a 1997 municipal fraud case involving an investment adviser later convicted of defrauding several Pennsylvania school districts. Critics say recusal was necessary as Judge Smith's wife worked at Mid-State Bank, where some of the defendants' assets were deposited, and the Smiths held stock in Mid-State's parent company.

Please allow me to set the record straight. I served as the trustee for the defrauded schools and bore a fiduciary duty to safeguard their funds. And I can say with front-row, firsthand knowledge that Judge Smith acted with absolute integrity, independence and honor.

First, Mid-State Bank was not a party to the case, and nothing at the outset suggested Mid-State was complicit in any fraudulent scheme. It was therefore unlikely that Judge Smith's wife, who worked in an unrelated part of the bank, would become a material witness. Since the complaint did not allege any wrongdoing by the bank holding the defendants' funds, any stock the Smiths owned in its parent company was immaterial. As trustee, I had sole possession of and control over the assets, and Judge Smith's initial order



distributing 50 percent of frozen funds to defrauded school districts just approved an interim plan proposed jointly by me and the Securities and Exchange Commission while the case proceeded.

When Judge Smith later received information that Mid-State could, in the future, conceivably play a role in the litigation, out of an excess of caution he immediately recused himself sua sponte, without being asked by either party.

The actions that Judge Smith took prior to his recusal in the civil case did nothing to limit Mid-State's eventual liability exposure or impact the victims' rights of recovery.

In fact, the attacks by interest groups ignore the fact that no funds were even deposited at Mid-State at the time Judge Smith granted his last orders. As trustee, I had transferred the assets to another bank several days before this order. Nothing that occurred between this order and Judge Smith's recusal days later benefited Mid-State. Judge Donetta Ambrose, who obtained the case after Judge Smith's recusal, agreed. She wrote to the Senate Judiciary Committee to say, "There was never any suggestion by me or the Court of Appeals that Judge Smith acted inappropriately or unethically. Rather, he acted prudently and cautiously. . . . The allegations of unethical conduct in the context of this case are without foundation."

Partisan critics also improperly fault Judge Smith for temporarily handling a later criminal case against the investment adviser. Nobody involved in the case has alleged that Judge Smith issued any improper orders or took any inappropriate action. The case was assigned to Judge Smith only after lawyers in the case agreed that it was unrelated to the SEC's civil case. Mid-State Bank was not a party. The U.S. attorney's office never sought recusal, and defense counsel did not seek recusal until four months later, when Judge Smith immediately recused himself.

As governor of Pennsylvania in 1984, I had the honor of originally nominating

Brooks Smith to sit on the Court of Common Pleas in Blair County. In 1988,

while attorney general of the United States, I had the honor of seeing the U.S.

Senate unanimously confirm Brooks Smith as a federal judge. This year, I

hope to see the same Senate set aside the recent attacks of extreme interest

groups and honor Judge Smith's long record of judicial service with a swift

and unanimous approval to the 3rd Circuit.

By any measure of judicial merit, Brooks Smith is qualified to serve. Like the

president who nominated him, Brooks Smith has rallied a broad coalition of

support. It would be wrong to allow extreme interest groups to delay his

confirmation by even one day. However, I am optimistic that this will not

occur. Judge Smith acquired his reputation for honesty, uprightness and

professionalism the old-fashioned way -- he earned it.

And it will see him through.