

Received(Date): 23 JAN 2002 15:09:54
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To: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN]), Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
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Subject: : FW: INFO ON JUDICIAL NOMS SNEWZER

Begin Original ARMS Header #####
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"McMahon, Lori" <Lori.McMahon@usdoj.gov> ("McMahon, Lori" <Lori.McMahon@usdoj.gov> [UNKNOWN])
CREATION DATE/TIME:23-JAN-2002 15:09:54.00
SUBJECT:: FW: INFO ON JUDICIAL NOMS SNEWZER
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READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) ("Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) [UNKNOWN])
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My voice mail is full of reporters looking for comment on the press conference tomorrow by the liberal groups. Let's put our heads together on this one.

James Meek from the LA Daily Journal sent me this pres release for the event.

Lori

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

From: James Meek [redacted] P6/b6
Sent: Wednesday, January 23, 2002 2:33 PM
To: McMahon, Lori
Subject: INFO ON JUDICIAL NOMS SNEWZER

hiya lori.

here's the info on thursday's snewzer. again, i'm not interested so much in reax to pickering blasts as i am to the broader notion that this is the opening salvo by the lefties to 2002's judicial nominations fight ... secondary concern is reax to what i've been told by democrats: that carolyn kuhl is not going to be confirmed for a 9th circuit judgeship.

cheers, james

FIRST BUSH JUDGE BATTLE IS LAUNCHED TOMORROW

The first major fight against a right-wing ideologue Bush nominee for the federal appeals courts will be launched on Thursday, when a coalition of civil rights leaders announces opposition to the nomination of Judge Charles

Pickering to the 5th Circuit Court of Appeals. Sen. Minority Leader Trent Lott is pushing for quick approval of Pickering. Several national organizations will release detailed reports analyzing Pickering's record on civil rights, access to justice, reproductive choice, and more. Speakers will include Ralph G. Neas; President, People For the American Way; Wade Henderson, Executive Director, Leadership Conference on Civil Rights; Nan Aron, President, Alliance for Justice; and Kate Michelman, President, NARAL

WHERE:

National Press Club
529 14th Street, NW
Washington, DC
Holeman Lounge

WHEN:

Thursday, January 24, 2002
10:00 AM

<http://www.pfaw.org/issues/democracy/RightWingJudges1.shtml>

Why The Senate Should Reject Attempts

To Pack the Federal Judiciary with Right-Wing Judges

Achieving ideological domination of the federal judiciary is the top goal of

right-wing politicians and political groups. Virtually all federal courts could soon be controlled by right-wing judges, a situation that would threaten the rights and impact the daily lives of all Americans, their children and their grandchildren.

ú The Supreme Court and other federal courts exercise enormous power in deciding cases on such issues as civil rights, the right to privacy, reproductive freedom, women's rights, religious liberty, consumer and worker

protection, and the environment.

ú Because most cases that raise fundamental constitutional questions are now

decided by slim majorities, more than 100 Supreme Court precedents could be overturned with just one or two more appointments who share the judicial philosophy of Justices Antonin Scalia and Clarence Thomas. It has now been more than seven years since the most recent Supreme Court appointment, the longest interval since the administration of James Monroe 178 years ago.

ú The vast majority of federal cases never make it to the Supreme Court, but

are decided by lower federal courts. These lower federal courts are extremely important, and every year decide thousands of cases that affect our lives. In 2000, for example, the federal appellate courts decided more than 27,000 cases, many of which were important rulings on privacy, the environment, and human and civil rights. This is in sharp contrast to the United States Supreme Court, which handed down only 74 opinions last term. In effect, many appeals court rulings stand as the final word governing the law in their regions.

ú As a result of right-wing Senators' unprecedented campaign, 35 percent of

President Clinton's appellate court nominees were blocked from 1995-2000;
45

percent failed to receive a vote in the congressional session during which they were nominated. Right-wing groups hope the White House will take advantage of the vacancies their Senate allies perpetuated by filling them with right-wing ideologues. Republican-nominated judges currently hold a majority on seven of the 13 circuit courts of appeal. If all President Bush's current nominees are approved, such judges will make up a majority on

11 circuit courts. And by the end of 2004, Republican-appointed judges could make up a majority on every one of the 13 circuit courts of appeals.

ú The result is that we are in an unprecedented situation in which the future of many of our civil rights and constitutional freedoms is literally at risk.

Many of President Bush's nominees to the appellate courts, recommended by the Federalist Society and other right-wing advocates, have troubling records and could cause serious damage to our rights and liberties. For example:

ú Charles Pickering, who is currently a federal trial judge and was previously chair of the Mississippi Republican Party, has been nominated to the Fifth Circuit Court of Appeals. His nomination has been opposed by the Mississippi state NAACP and the Congressional Black Caucus because of his "career and record on civil rights." This has included, for example, criticism as a judge of the one-person one-vote principle and aspects of the

Voting Rights Act, as well as an earlier law review article advocating the strengthening of a Mississippi law banning interracial marriage. Pickering has also opposed women's right to choose, including chairing the first national Republican platform committee that called for a constitutional amendment to ban abortion.

ú Carolyn Kuhl, a Federalist Society member and currently a California state

trial court judge, has been nominated to the Ninth Circuit Court of Appeals.

She has been severely criticized for her record on civil rights and abortion. For example, while in the Justice Department under the Reagan Administration, Kuhl urged the Supreme Court to overturn *Roe v. Wade* as "flawed." She also reportedly played a key role in convincing then-Attorney General Smith to reverse prior policy and support the granting of tax-exempt

status to Bob Jones University despite its racially discriminatory practices. A Supreme Court decision later rejected the Reagan administration's policy by an 8-1 vote.

ú Jeffrey Sutton, an officer in the Federalist Society's Separation of Powers and Federalism practice group, has been nominated to the Sixth Circuit Court of Appeals. Sutton is well known for his efforts as a lawyer to severely limit federal protections against discrimination and injury based on disability, race, age, sex, and religion. More than 50 national organizations and over 220 regional, state, and local groups have opposed his confirmation, including the American Association of Persons with Disabilities, the National Rehabilitation Association, the National Women's Political Caucus, and the Welfare Law Center.

ú Priscilla Owen, a Federalist Society member and currently a justice on the

Texas Supreme Court, has been nominated to the Fifth Circuit Court of Appeals. Owen has been criticized as one of two judges on the "far right wing" of the Texas court, further to the right than President Bush's own appointees to that court when he was governor. In one decision in which she dissented, Owen called for a very narrow view of a state law concerning the ability of minors to obtain an abortion without parental consent.

Then-Texas

Supreme Court Justice Alberto Gonzalez - who is now chief White House counsel - warned that adopting the dissenters' view would be an "unconscionable act of judicial activism."

Careful review and scrutiny of federal judicial nominees is critical to protecting our rights. In our system of checks and balances, the Senate has a co-equal role with the President in appointing federal judges, since it must provide its "advice and consent" before any nominee becomes a judge.

It is imperative that the Senate carries out this constitutional role in a careful, thorough and diligent manner. Judicial nominees - who are confirmed for lifetime appointments - must be carefully scrutinized. No nominee is presumptively entitled to confirmation to a lifetime

appointment to any federal court. Particularly for the courts of appeals and the Supreme Court, a nominee bears the burden of demonstrating that he or she meets the appropriate qualifications, which should include a demonstrated commitment to civil rights and individual liberties, and a clear respect for Congress' proper constitutional role in protecting constitutional and civil rights and the health and safety of all Americans. More than 200 law professors have written to the Senate, setting forth these qualifications.

ú In carrying out its role, the Senate must ensure that judicial nominees are subject to the highest standard of scrutiny. The decisions of judges last long after they and the President who appointed them have retired. The American people must be assured that judges who are given the solemn constitutional responsibility of protecting their rights and upholding the Constitution are unequivocally committed to justice and equality for all.

ú Each nominee's record must be examined carefully, including unpublished opinions and other information that may not be readily available. By its very nature, this sometimes is a time consuming process but one that is essential to the Senate's obligation to evaluate the full record of a nominee. The mere absence of disqualifying evidence in a nominee's record should not constitute sufficient grounds for confirmation.

ú The Senate should reject far right court-packing efforts, and should withhold its consent from right-wing nominees who do not demonstrate a commitment to civil rights and liberties. Senators should take a clear and unequivocal stand, including discussing openly the potential impact of right-wing domination of the federal courts and the importance of opposing nominees whose lifetime appointments would threaten America's rights and liberties. More moderate, mainstream nominees who reflect genuine bipartisan

consultation should receive priority in processing.

Since taking control of the U. S. Senate and the Senate Judiciary Committee in July 2001, Senators Daschle and Leahy have moved judicial nominees promptly and responsibly. The far right is wrong to charge Daschle and Leahy with improper delay and then use these charges to stampede nominations through the Senate.

ú The current pace of confirmations is on par with the first years of other administrations. Since Democrats assumed control of the Senate in July

2001, the Senate has confirmed 28 nominations to the federal judiciary-and several more nominations have been sent to the Senate floor by the Judiciary Committee. These 28 confirmations are almost twice the number confirmed during the entire first year of the first Bush administration (1989), and one more than the number confirmed during the first year of the Clinton administration (1993). The pace is significantly ahead of what occurred when Republican Senators deliberately delayed the process in the late 1990s.

For example, more Republican-nominated judges were confirmed in less than six months last year than the number of Democratic-nominated judges that were confirmed in all of 1996.

ú Since the shift in control of the Senate last July, the Judiciary committee has held 11 hearings. In less than six months, Senator Leahy has held 11 nomination hearings, averaging more than two every month-despite the

serious disruptions in Senate business and distractions caused by the September 11 and anthrax attacks. In contrast, during the previous six and one-half years of Republican Senate control, the Committee averaged only about nine hearings during a full year.

ú Under Democratic control, the Senate has reversed the significant rise in judicial vacancies caused by the previous Republican-controlled Senate. As a

result of the serious delays during the six and one-half years that the Republican Senate majority controlled the process, the total number of federal court vacancies increased from 65 to 111 last July, an increase of over 70 percent. Just since July, when Senate Democrats resumed control, the number of vacancies has decreased from 111 to 94 as of December 21, 2001, when the Senate completed its work for the year.

ú Recently, right-wing groups and their Senate Republican allies have held press conferences and issued statements attempting to push confirmation of Administration nominees by trying to link the war on terrorism and judicial nominations. They have accused Senate Majority Leader Tom Daschle and Senate Judiciary Committee Chairman Patrick Leahy of improper delay and being unpatriotic, claiming that there may not be enough federal judges to issue necessary search warrants and wiretap orders. They have asserted that Chief Justice Rehnquist supports their claim that the pace of confirmations has somehow harmed the war on terrorism.

ú These claims are false, and there is no evidence that the pace of confirmations has had even the slightest impact on law enforcement and the war on terrorism. Almost all of the right wing's complaints about the pace of confirmations concern nominees to the federal courts of appeals-judges who don't even consider requests for wiretaps and search warrants. In fact, federal magistrates and trial court judges consider such requests. Magistrates are not confirmed by the Senate, and any backlog in the confirmation of federal trial judges is attributable to the Bush Administration, not the Senate. As of January 4, the administration had submitted nominees for only 20 percent of the federal trial court vacancies (14 of 68). In contrast, the Senate had confirmed almost two-thirds of the nominees (22 out of 36) selected for these federal trial courts. Although Chief Justice Rehnquist recently called for filling judicial vacancies promptly at this critical time, he did not suggest that the current Senate pace is harming the war on terrorism, and did not even mention the Administration's failure to submit nominations for most federal trial court vacancies.

The current unprecedented situation calls for an unprecedented bipartisan solution. The President should reject the demands of the far right, and submit more moderate nominees who are truly qualified for the federal bench.

This should include genuine consultation with Senators of both parties both before and after nominations are made.