

William_K._Kelley@who.eop.gov

From: William_K._Kelley@who.eop.gov
Sent: Thursday, December 22, 2005 5:49 PM
To: Bradbury, Steve; Brett_M._Kavanaugh@who.eop.gov
Attachments: tmp.htm; NSA (b) (5).final.doc

Attached is the final of the (b) (5) talker for DOJ to finalize and distribute. Steve, can you send back a pdf? Thanks.

duplicate

Bradbury, Steve

From: Bradbury, Steve
Sent: Thursday, December 22, 2005 6:41 PM
To: 'William_K._Kelley@who.eop.gov'
Cc: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: PDF of (b) (5) talkers
Attachments: NSA (b) (5) final.pdf

Bill: As you requested, PDF of the final (b) (5) talkers. Steve

Harriet_Miers@who.eop.gov

From: Harriet_Miers@who.eop.gov
Sent: Saturday, December 24, 2005 9:15 AM
To: Bradbury, Steve; Brett_M._Kavanaugh@who.eop.gov;
William_K._Kelley@who.eop.gov
Subject: Re: New article

Have seen it.

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

From: Steve.Bradbury@usdoj.gov <Steve.Bradbury@usdoj.gov>
To: Miers, Harriet <Harriet_Miers@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; Kelley, William K. <William_K._Kelley@who.eop.gov>
Sent: Sat Dec 24 08:33:42 2005
Subject: New article

There's a new article by Risen and Lichtblau in today's NYT.

William_K._Kelley@who.eop.gov

From: William_K._Kelley@who.eop.gov
Sent: Friday, January 06, 2006 6:15 PM
To: Bradbury, Steve; Elwood, John; Harriet_Miers@who.eop.gov;
David_S._Addington@ovp.eop.gov; Brett_M._Kavanaugh@who.eop.gov
Subject: RE: (b) (5) Talkers.doc

I agree with Harriet that (b) (5)
In addition:

Paragraph 1: (b) (5)

Paragraph 6: (b) (5)

Finally, the last sentence is a run-on, which should be separated into two sentences.

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

From: Miers, Harriet
Sent: Friday, January 06, 2006 5:48 PM
To: 'Steve.Bradbury@usdoj.gov'; Kelley, William K.; Addington, David S.;
Kavanaugh, Brett M.
Subject: RE: (b) (5) Talkers.doc

Should there be (b) (5)

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

From: Steve.Bradbury@usdoj.gov [mailto:Steve.Bradbury@usdoj.gov]
Sent: Friday, January 06, 2006 5:18 PM
To: Kelley, William K.; Addington, David S.; Kavanaugh, Brett M.;
Kyle.Sampson@usdoj.gov; Courtney.Elwood@usdoj.gov; Mitnick, John M.;
Miers, Harriet
Cc: John.Elwood@usdoj.gov; William.Moschella@usdoj.gov;
Brian.Roehrkasse@usdoj.gov
Subject: (b) (5) Talkers.doc

As promised, here are some talkers responding to (b) (5). I am also copying DOJ's Offices of Leg Affairs and Public Affairs. They will coordinate with you and WH Communications before sharing outside. I'm running now to a meeting at the Sit Room. Thx.

Bradbury, Steve

From: Bradbury, Steve
Sent: Saturday, January 07, 2006 8:45 AM
To: 'Harriet_Miers@who.eop.gov'; 'Katie_Levinson@who.eop.gov'; 'Dana_M._Perino@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'John_M._Mitnick@who.eop.gov'
Subject: Re: (b) (5) Talkers.doc

Pls note that (b) (5)

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

From: Bradbury, Steve <Steve.Bradbury@SMOJMD.USDOJ.gov>
To: 'Harriet_Miers@who.eop.gov' <Harriet_Miers@who.eop.gov>; 'Katie_Levinson@who.eop.gov' <Katie_Levinson@who.eop.gov>; 'Dana_M._Perino@who.eop.gov' <Dana_M._Perino@who.eop.gov>; 'Brett_M._Kavanaugh@who.eop.gov' <Brett_M._Kavanaugh@who.eop.gov>; 'John_M._Mitnick@who.eop.gov' <John_M._Mitnick@who.eop.gov>
Sent: Sat Jan 07 08:38:30 2006
Subject: Re: (b) (5) Talkers.doc

(b) (5)

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

From: Harriet_Miers@who.eop.gov <Harriet_Miers@who.eop.gov>
To: Bradbury, Steve <Steve.Bradbury@SMOJMD.USDOJ.gov>; Katie_Levinson@who.eop.gov <Katie_Levinson@who.eop.gov>; Dana_M._Perino@who.eop.gov <Dana_M._Perino@who.eop.gov>; Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>; John_M._Mitnick@who.eop.gov <John_M._Mitnick@who.eop.gov>
Sent: Sat Jan 07 08:34:13 2006
Subject: RE: (b) (5) Talkers.doc

(b) (5)

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

From: Levinson, Katie
Sent: Saturday, January 07, 2006 8:29 AM
To: Perino, Dana M.; Miers, Harriet; Kavanaugh, Brett M.; 'Steve.Bradbury@usdoj.gov'; Mitnick, John M.
Subject: Re: (b) (5) Talkers.doc

(b) (5)

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

From: Perino, Dana M. <Dana_M._Perino@who.eop.gov>
To: Miers, Harriet <Harriet_Miers@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M. <John_M._Mitnick@who.eop.gov>
CC: Levinson, Katie <Katie_Levinson@who.eop.gov>
Sent: Sat Jan 07 07:53:42 2006
Subject: Re: (b) (5) Talkers.doc

(b) (5)

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

From: Miers, Harriet <Harriet_Miers@who.eop.gov>
To: Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M. <John_M._Mitnick@who.eop.gov>
CC: Perino, Dana M. <Dana_M._Perino@who.eop.gov>
Sent: Sat Jan 07 07:47:11 2006
Subject: RE: (b) (5) Talkers.doc

That was my understanding. (b) (5)

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

From: Kavanaugh, Brett M.
Sent: Saturday, January 07, 2006 7:40 AM
To: 'Steve.Bradbury@usdoj.gov'; Mitnick, John M.; Miers, Harriet
Subject: RE: (b) (5) Talkers.doc

Am I right in assuming (b) (5) ?

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

From: Steve.Bradbury@usdoj.gov [mailto:Steve.Bradbury@usdoj.gov]
Sent: Friday, January 06, 2006 8:44 PM
To: Mitnick, John M.; Miers, Harriet; Kavanaugh, Brett M.
Subject: (b) (5) Talkers.doc

Attached are revised talkers that incorporate WHC comments. John Elwood earlier sent a copy of these revised talkers to Bill Kelley. Thx.

<<(b) (5) Talking Points.doc>>

Bradbury, Steve

From: Bradbury, Steve
Sent: Saturday, January 07, 2006 9:13 AM
To: 'Katie_Levinson@who.eop.gov'; 'Dana_M._Perino@who.eop.gov'; 'Harriet_Miers@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'John_M._Mitnick@who.eop.gov'
Cc: 'Debbie_S._Fiddelke@who.eop.gov'; Moschella, William; Scolinos, Tasia; Roehrkas, Brian
Subject: Re: (b) (5) Talkers.doc

Copying Will Moschella, Tasia Scolinos, and Tasia's Deputy Brian Roehrkas on this message for contact purposes. They can also be reached at any time through the Justice Command Center at 514-5000. Thx

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

From: Katie_Levinson@who.eop.gov <Katie_Levinson@who.eop.gov>
To: Bradbury, Steve <Steve.Bradbury@SMOJMD.USDOJ.gov>; Dana_M._Perino@who.eop.gov <Dana_M._Perino@who.eop.gov>; Harriet_Miers@who.eop.gov <Harriet_Miers@who.eop.gov>; Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>; John_M._Mitnick@who.eop.gov <John_M._Mitnick@who.eop.gov>
CC: Debbie_S._Fiddelke@who.eop.gov <Debbie_S._Fiddelke@who.eop.gov>
Sent: Sat Jan 07 09:01:19 2006
Subject: Re: (b) (5) Talkers.doc

Deb - can your shop handle? I only have member cell phones with me on bberry (b) (5) .

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

From: Perino, Dana M. <Dana_M._Perino@who.eop.gov>
To: Miers, Harriet <Harriet_Miers@who.eop.gov>; Levinson, Katie <Katie_Levinson@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M. <John_M._Mitnick@who.eop.gov>
Sent: Sat Jan 07 08:59:14 2006
Subject: Re: (b) (5) Talkers.doc

I can help coordinate with doj - katie, do you happen to have contact info for their staff?

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

From: Miers, Harriet <Harriet_Miers@who.eop.gov>
To: Levinson, Katie <Katie_Levinson@who.eop.gov>; Perino, Dana M. <Dana_M._Perino@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M. <John_M._Mitnick@who.eop.gov>
Sent: Sat Jan 07 08:34:13 2006

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Katie_Levinson@who.eop.gov

From: Katie_Levinson@who.eop.gov
Sent: Saturday, January 07, 2006 10:38 AM
To: Bradbury, Steve; Debbie_S._Fiddelke@who.eop.gov;
John_M._Mitnick@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Harriet_Miers@who.eop.gov; Dana_M._Perino@who.eop.gov
Cc: Moschella, William; Scolinos, Tasia; Roehrkassee, Brian;
Jamie_E._Brown@who.eop.gov
Subject: Re: (b) (5) Talkers.doc

Can you call me? 494-4745

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

From: Fiddelke, Debbie S. <Debbie_S._Fiddelke@who.eop.gov>
To: 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M.
<John_M._Mitnick@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; Miers,
Harriet <Harriet_Miers@who.eop.gov>; Perino, Dana M. <Dana_M._Perino@who.eop.gov>; Levinson,
Katie <Katie_Levinson@who.eop.gov>
CC: 'William.Moschella@usdoj.gov' <William.Moschella@usdoj.gov>; 'Tasia.Scolinos@usdoj.gov'
<Tasia.Scolinos@usdoj.gov>; 'Brian.Roehrkassee@usdoj.gov' <Brian.Roehrkassee@usdoj.gov>; Brown,
Jamie E. <Jamie_E._Brown@who.eop.gov>
Sent: Sat Jan 07 10:36:54 2006
Subject: Re: (b) (5) Talkers.doc

(b) (5)

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

From: Steve.Bradbury@usdoj.gov <Steve.Bradbury@usdoj.gov>
To: Mitnick, John M. <John_M._Mitnick@who.eop.gov>; Kavanaugh, Brett M.
<Brett_M._Kavanaugh@who.eop.gov>; Miers, Harriet <Harriet_Miers@who.eop.gov>; Perino, Dana M.
<Dana_M._Perino@who.eop.gov>; Levinson, Katie <Katie_Levinson@who.eop.gov>
CC: William.Moschella@usdoj.gov <William.Moschella@usdoj.gov>; Tasia.Scolinos@usdoj.gov
<Tasia.Scolinos@usdoj.gov>; Brian.Roehrkassee@usdoj.gov <Brian.Roehrkassee@usdoj.gov>; Fiddelke,
Debbie S. <Debbie_S._Fiddelke@who.eop.gov>
Sent: Sat Jan 07 09:12:17 2006

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Bradbury, Steve

From: Bradbury, Steve
Sent: Saturday, January 07, 2006 10:38 AM
To: 'Harriet_Miers@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'John_M._Mitnick@who.eop.gov'; Elwood, John; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian
Cc: 'Katie_Levinson@who.eop.gov'; 'Dana_M._Perino@who.eop.gov'; 'Debbie_S._Fidelke@who.eop.gov'; Eisenberg, John
Subject: Fw: (b) (5) talkers
Attachments: tmp.htm; (b) (5) Talking Points.doc

Here are the same talkers with two typos corrected.

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

From: (b)(6) Steve Bradbury (personal) <(b)(6) Steve Bradbury (personal)>
To: Bradbury, Steve <Steve.Bradbury@SMOJMD.USDOJ.gov>
Sent: Sat Jan 07 10:25:13 2006
Subject: (b) (5) talkers

Debbie_S._Fiddelke@who.eop.gov

From: Debbie_S._Fiddelke@who.eop.gov
Sent: Saturday, January 07, 2006 10:41 AM
To: Bradbury, Steve; Katie_Levinson@who.eop.gov; Harriet_Miers@who.eop.gov; Dana_M._Perino@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov; John_M._Mitnick@who.eop.gov
Cc: Michael_Allen@nsc.eop.gov
Subject: Re: (b) (5) Talkers.doc

Yes, sorry thought this was Alito related. Michael and I will handle.

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

From: Levinson, Katie <Katie_Levinson@who.eop.gov>
To: Miers, Harriet <Harriet_Miers@who.eop.gov>; Perino, Dana M. <Dana_M._Perino@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M. <John_M._Mitnick@who.eop.gov>
CC: Allen, Michael <Michael_Allen@nsc.eop.gov>; Fiddelke, Debbie S. <Debbie_S._Fiddelke@who.eop.gov>
Sent: Sat Jan 07 10:36:15 2006
Subject: Re: (b) (5) Talkers.doc

Was just on another email chain with Dan. Can WH leg affairs take lead in getting talkers to staff? Copying Michael Allen and Deb.

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

From: Miers, Harriet <Harriet_Miers@who.eop.gov>
To: Perino, Dana M. <Dana_M._Perino@who.eop.gov>; Levinson, Katie <Katie_Levinson@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M. <John_M._Mitnick@who.eop.gov>
Sent: Sat Jan 07 09:22:22 2006
Subject: RE: (b) (5) Talkers.doc

Dan was thinking (b) (5) .

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

From: Perino, Dana M.
Sent: Saturday, January 07, 2006 8:59 AM

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Harriet_Miers@who.eop.gov

From: Harriet_Miers@who.eop.gov
Sent: Saturday, January 07, 2006 12:40 PM
To: Bradbury, Steve; Katie_Levinson@who.eop.gov; Michael_Allen@nsc.eop.gov; Dana_M._Perino@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov; John_M._Mitnick@who.eop.gov
Cc: Debbie_S._Fiddelke@who.eop.gov; Matthew_Kirk@who.eop.gov
Subject: RE: (b) (5) Talkers.doc

Yes, I am in favor (b) (5).

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

From: Levinson, Katie
Sent: Saturday, January 07, 2006 12:39 PM
To: Allen, Michael; Miers, Harriet; Perino, Dana M.; Kavanaugh, Brett M.; 'Steve.Bradbury@usdoj.gov'; Mitnick, John M.
Cc: Fiddelke, Debbie S.; Kirk, Matthew
Subject: Re: (b) (5) Talkers.doc

Dan's rec is yes, but he defers to Harriet.

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

From: Allen, Michael <Michael_Allen@nsc.eop.gov>
To: Levinson, Katie <Katie_Levinson@who.eop.gov>; Miers, Harriet <Harriet_Miers@who.eop.gov>; Perino, Dana M. <Dana_M._Perino@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M. <John_M._Mitnick@who.eop.gov>
CC: Fiddelke, Debbie S. <Debbie_S._Fiddelke@who.eop.gov>; Kirk, Matthew <Matthew_Kirk@who.eop.gov>
Sent: Sat Jan 07 12:27:04 2006
Subject: Re: (b) (5) Talkers.doc

(b) (5)

?

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

From: Levinson, Katie <Katie_Levinson@who.eop.gov>
To: Miers, Harriet <Harriet_Miers@who.eop.gov>; Perino, Dana M. <Dana_M._Perino@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>; 'Steve.Bradbury@usdoj.gov' <Steve.Bradbury@usdoj.gov>; Mitnick, John M. <John_M._Mitnick@who.eop.gov>

CC: Allen, Michael <Michael_Allen@nsc.eop.gov>; Fiddelke, Debbie S.
<Debbie_S._Fiddelke@who.eop.gov>
Sent: Sat Jan 07 10:36:15 2006

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Harriet_Miers@who.eop.gov

From: Harriet_Miers@who.eop.gov
Sent: Saturday, January 07, 2006 12:41 PM
To: Bradbury, Steve; Matthew_Kirk@who.eop.gov; Katie_Levinson@who.eop.gov; Michael_Allen@nsc.eop.gov; Dana_M._Perino@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov; John_M._Mitnick@who.eop.gov
Cc: Debbie_S._Fiddelke@who.eop.gov
Subject: RE: (b) (5) Talkers.doc

And I defer to others as to the best way but I would make sure the info gets to him.

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

From: Kirk, Matthew
Sent: Saturday, January 07, 2006 12:40 PM
To: Levinson, Katie; Allen, Michael; Miers, Harriet; Perino, Dana M.; Kavanaugh, Brett M.; 'Steve.Bradbury@usdoj.gov'; Mitnick, John M.
Cc: Fiddelke, Debbie S.
Subject: RE: (b) (5) Talkers.doc

I am happy to [REDACTED] (b) (5)

Matt

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

From: Levinson, Katie
Sent: Saturday, January 07, 2006 12:39 PM

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Bradbury, Steve

From: Bradbury, Steve
Sent: Tuesday, January 10, 2006 5:39 PM
To: 'Harriet_Miers@who.eop.gov'; William_K._Kelley@who.eop.gov;
David_S._Addington@ovp.eop.gov; 'John_M._Mitnick@who.eop.gov';
'John_B._Wiegmann@nsc.eop.gov'
Cc: 'Brett_M._Kavanaugh@who.eop.gov'; 'Brett_C._Gerry@who.eop.gov'
Subject: White Paper re NSA activities
Attachments: Surveillance Authorities_1_10 (1).doc

Attached is a current, revised draft of our white paper addressing more fully the legal basis for the NSA activities described by the President. We would like to finalize this white paper by the beginning of next week. Your comments are welcome.

Bradbury, Steve

From: Bradbury, Steve
Sent: Thursday, January 12, 2006 5:22 PM
To: 'Harriet_Miers@who.eop.gov'; David_S._Addington@ovp.eop.gov;
William_K._Kelley@who.eop.gov; 'John_M._Mitnick@who.eop.gov';
'John_B._Wiegmann@nsc.eop.gov'
Cc: 'Brett_C._Gerry@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Draft white paper re NSA activities described by the President
Attachments: Surveillance Authorities_1_12_pm.doc

Attached is the current, revised draft of the white paper addressing the legal authorities supporting the NSA activities described by the President. Our intent is to finalize this paper by 1/16 for possible distribution by the AG early next week. Your comments are most welcome. Thx.

Gorsuch, Neil M

From: Gorsuch, Neil M
Sent: Monday, January 16, 2006 11:58 AM
To: 'Brett_C._Gerry@who.eop.gov'; Moschella, William; Scolinos, Tasia; McCallum, Robert (SMO); Sampson, Kyle; Roehrkasse, Brian; Harriet_Miers@who.eop.gov
Cc: Elwood, John; David_S._Addington@ovp.eop.gov; Brett_M._Kavanaugh@who.eop.gov
Subject: RE: USA Today update

(b) (5)

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

From: Brett_C._Gerry@who.eop.gov [mailto:Brett_C._Gerry@who.eop.gov]
Sent: Monday, January 16, 2006 11:50 AM
To: Moschella, William; Scolinos, Tasia; McCallum, Robert (SMO); Gorsuch, Neil M; Sampson, Kyle; Roehrkasse, Brian; Harriet_Miers@who.eop.gov
Cc: Elwood, John; David_S._Addington@ovp.eop.gov; Brett_M._Kavanaugh@who.eop.gov
Subject: Re: USA Today update

(b) (5)

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

From: Miers, Harriet <Harriet_Miers@who.eop.gov>
To: 'Neil.Gorsuch@usdoj.gov' <Neil.Gorsuch@usdoj.gov>; Robert.McCallum@usdoj.gov <Robert.McCallum@usdoj.gov>; Kyle.Sampson@usdoj.gov <Kyle.Sampson@usdoj.gov>; William.Moschella@usdoj.gov <William.Moschella@usdoj.gov>; Tasia.Scolinos@usdoj.gov <Tasia.Scolinos@usdoj.gov>; Brian.Roehrkasse@usdoj.gov <Brian.Roehrkasse@usdoj.gov>
CC: John.Elwood@usdoj.gov <John.Elwood@usdoj.gov>; Addington, David S. <David_S._Addington@ovp.eop.gov>; Gerry, Brett C. <Brett_C._Gerry@who.eop.gov>; Kavanaugh, Brett M. <Brett_M._Kavanaugh@who.eop.gov>
Sent: Mon Jan 16 11:30:43 2006
Subject: RE: USA Today update

I hate to add to the work here, but I asked Steve Hadley to review the draft and his doing so reminded me why we have staffing requirements. He had three comments that we need to consider, and through his comments pointed out the need for general staffing. So I am copying Brett Kavanaugh to make sure

he is aware of the development of this op ed. Steve's three thoughts were:

1. (b) (5)

2. (b) (5)

I think Brett G and Brett K and I assume others have the specifics on this analysis.

3. (b) (5)

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

From: Neil.Gorsuch@usdoj.gov [mailto:Neil.Gorsuch@usdoj.gov]

Sent: Monday, January 16, 2006 11:08 AM

To: Neil.Gorsuch@usdoj.gov; Robert.McCallum@usdoj.gov; Kyle.Sampson@usdoj.gov; William.Moschella@usdoj.gov; Tasia.Scolinos@usdoj.gov; Brian.Roehrkas@usdoj.gov

Cc: John.Elwood@usdoj.gov; Addington, David S.; Miers, Harriet; Gerry, Brett C.

Subject: RE: USA Today update

Brett Gerry had an excellent suggestion for the penultimate paragraph that both strengthens its message and reduces words (by 4). The suggested revision is attached for your consideration.

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

From: Gorsuch, Neil M

Sent: Monday, January 16, 2006 10:27 AM

To: McCallum, Robert (SMO); Sampson, Kyle; Moschella, William; Scolinos, Tasia; Roehrkas, Brian

Cc: 'Harriet_Miers@who.eop.gov'; 'Brett_C._Gerry@who.eop.gov'; 'David_S._Addington@ovp.eop.gov'; Elwood, John

Subject: RE: USA Today update

I must say that it's mighty tough to find any fat in John's excellent work. I have managed in the attached to eke some to get a (b) (5) version down to 377 words and pass it along for the group's consideration. It also seeks to incorporate Harriet's suggestions.

(Getting a (b) (5) version to 350 should be very easy, but it would be nice if we could (b) (5)). NMG

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

From: McCallum, Robert (SMO)

Sent: Monday, January 16, 2006 8:57 AM

To: Gorsuch, Neil M; Sampson, Kyle; Moschella, William; Scolinos, Tasia; Roehrkas, Brian

Cc: 'Harriet_Miers@who.eop.gov'; 'Brett_C._Gerry@who.eop.gov'; 'David_S._Addington@ovp.eop.gov'; Elwood, John

Subject: FW: USA Today update

Copying Neil, Kyle, Tasia, Brian and Will with these edits. Robt.

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

From: Harriet_Miers@who.eop.gov [mailto:Harriet_Miers@who.eop.gov]
Sent: Monday, January 16, 2006 7:38 AM
To: McCallum, Robert (SMO); Elwood, John
Cc: David_S._Addington@ovp.eop.gov; Brett_C._Gerry@who.eop.gov
Subject: RE: USA Today update

I have three general comments to the drafts which are very good. First, (b) (5)
(b) (5). I also think there
should be (b) (5). Finally, (b) (5)
(b) (5)
(b) (5)
(b) (5)

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

From: Robert.McCallum@usdoj.gov [mailto:Robert.McCallum@usdoj.gov]
Sent: Sunday, January 15, 2006 10:24 PM
To: John.Elwood@usdoj.gov; Neil.Gorsuch@usdoj.gov; Kyle.Sampson@usdoj.gov; Gerry, Brett C.;
Addington, David S.; William.Moschella@usdoj.gov; Perino, Dana M.; Miers, Harriet
Cc: Tasia.Scolinos@usdoj.gov; Brian.Roehrkasse@usdoj.gov
Subject: RE: USA Today update

As per prior email to various folks, I will be in the office tomorrow am and can be reached by email, by direct dial at 514-7850, or through the DOJ command center. I will be reviewing the draft and be back in touch tomorrow am. Robt.

> -----Original Message-----

> From: Elwood, John
> Sent: Sunday, January 15, 2006 10:20 PM
> To: ' (Harriet_Miers@who.eop.gov)'; McCallum, Robert (SMO); Gorsuch,
> Neil M; Sampson, Kyle; 'Brett_C._Gerry@who.eop.gov';
> 'David_S._Addington@ovp.eop.gov'; 'Dana_M._Perino@who.eop.gov';
> Moschella, William
> Cc: Scolinos, Tasia; Roehrkasse, Brian
> Subject: USA Today update

>
> (b) (5)

> I have gotten the (b) (5) version of the op-ed
> down to the current target (350 words).

>
> I've gotten the (b) (5) version of the op-ed down to 403 words.
> We're checking to see whether USA Today will extend the word count in
> view of the number and complexity of issues. If not, I'll find
> another 53 words that don't need to be said.

>
> I've attached copies of the (b) (5) op-eds to this
> e-mail. In case you're reading this on blackberry, I've cut and
> pasted the (b) (5) version into the body of the e-mail below. This

> incorporates all comments I've received so far.

>

> Thanks! << File: USA Today op-ed (v2.8) ((b) (5)).doc >> << File:

> USA Today op-ed (v2.8) ((b) (5)).doc >>

>

> DRAFT OP-ED=====

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(b) (5) [REDACTED]
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[REDACTED]
[REDACTED]

Scolinos, Tasia

From: Scolinos, Tasia
Sent: Monday, January 16, 2006 12:07 PM
To: Gorsuch, Neil M; 'Harriet_Miers@who.eop.gov'; Moschella, William; McCallum, Robert (SMO); Sampson, Kyle; Roehrkasse, Brian
Cc: Elwood, John; 'David_S._Addington@ovp.eop.gov'; 'Brett_C._Gerry@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Re: USA Today update

That is correct. We have directed reporters to them on this issue in the past and they are on the record with very strong statements supporting our interpretation.

Sent from my BlackBerry Wireless Handheld

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

From: Gorsuch, Neil M <Neil.Gorsuch@SMOJMD.USDOJ.gov>
To: 'Harriet_Miers@who.eop.gov' <Harriet_Miers@who.eop.gov>; Moschella, William <William.Moschella@SMOJMD.USDOJ.gov>; Scolinos, Tasia <Tasia.Scolinos@SMOJMD.USDOJ.gov>; McCallum, Robert (SMO) <Robert.McCallum@SMOJMD.USDOJ.gov>; Sampson, Kyle <Kyle.Sampson@SMOJMD.USDOJ.gov>; Roehrkasse, Brian <Brian.Roehrkasse@SMOJMD.USDOJ.gov>
CC: Elwood, John <John.Elwood@SMOJMD.USDOJ.gov>; David_S._Addington@ovp.eop.gov <David_S._Addington@ovp.eop.gov>; Brett_C._Gerry@who.eop.gov <Brett_C._Gerry@who.eop.gov>; Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
Sent: Mon Jan 16 11:39:31 2006
Subject: RE: USA Today update

On #3, both Sen. Kyl and Graham are on record publicly stating that their legislation affects lawsuits "retroactively." Will and Tasia may be able to add more.

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

From: Harriet_Miers@who.eop.gov [mailto:Harriet_Miers@who.eop.gov]
Sent: Monday, January 16, 2006 11:31 AM

duplicate

duplicate

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Roehrkasse, Brian

From: Roehrkasse, Brian
Sent: Monday, January 16, 2006 1:21 PM
To: Gorsuch, Neil M; McCallum, Robert (SMO); Elwood, John; Scolinos, Tasia; 'Brett_C._Gerry@who.eop.gov'; Moschella, William; 'Harriet_Miers@who.eop.gov'; 'David_S._Addington@ovp.eop.gov'; Sampson, Kyle; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Re: USA Today update

USA Today has decided to kill another element on their editorial page and will now grant us 430-440 words. This will also give us a little more time. Please circulate a final draft by no later 3:30.

Sent from my BlackBerry Wireless Handheld

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

From: Gorsuch, Neil M <Neil.Gorsuch@SMOJMD.USDOJ.gov>
To: McCallum, Robert (SMO) <Robert.McCallum@SMOJMD.USDOJ.gov>; Elwood, John <John.Elwood@SMOJMD.USDOJ.gov>; Scolinos, Tasia <Tasia.Scolinos@SMOJMD.USDOJ.gov>; 'Brett_C._Gerry@who.eop.gov' <Brett_C._Gerry@who.eop.gov>; Roehrkasse, Brian <Brian.Roehrkasse@SMOJMD.USDOJ.gov>; Moschella, William <William.Moschella@SMOJMD.USDOJ.gov>; 'Harriet_Miers@who.eop.gov' <Harriet_Miers@who.eop.gov>; 'David_S._Addington@ovp.eop.gov' <David_S._Addington@ovp.eop.gov>; Sampson, Kyle <Kyle.Sampson@SMOJMD.USDOJ.gov>; 'Brett_M._Kavanaugh@who.eop.gov' <Brett_M._Kavanaugh@who.eop.gov>
Sent: Mon Jan 16 12:40:30 2006
Subject: RE: USA Today update

Will make sure these get in (not only do they clarify, they help reduce word count). John Elwood and Tasia Scolinos will pull the trigger here at DoJ after we get everyone's sign off at WH.

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

From: McCallum, Robert (SMO)
Sent: Monday, January 16, 2006 12:34 PM
To: Gorsuch, Neil M; Elwood, John; Scolinos, Tasia; 'Brett_C._Gerry@who.eop.gov'; Roehrkasse, Brian; Moschella, William; 'Harriet_Miers@who.eop.gov'; 'David_S._Addington@ovp.eop.gov'; Sampson, Kyle; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: USA Today update

I like the revised draft. I have three suggested edits as follows:

(b) (5)

(b) (5)

Obviously, none are critical to my signing it. Who will pull the trigger on it in final? Robt.

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

From: Gorsuch, Neil M

Sent: Monday, January 16, 2006 12:09 PM

To: Elwood, John; McCallum, Robert (SMO); Scolinos, Tasia; Brett_C._Gerry@who.eop.gov; Roehrkasse, Brian; McCallum, Robert (SMO); Moschella, William; Harriet_Miers@who.eop.gov;

David S. Addington@ovp.eop.gov; Sampson, Kyle; Brett M. Kavanaugh@who.eop.gov

Subject: FW: USA Today update

At Brett and Harriet's suggestion, full version of a suggested draft, including Brett Gerry's great suggestion, follows in bb-friendly format below. It is 379 words. Per Brian R. of our press office, USA Today informs that it will "work with us" on words beyond the 350 limit it previously set, but the paper indicates that the sooner it has the document the more likely it will be able to work with us as other articles will come in later. Brian R. recommends getting a final to him by 2-ish. NMG

(b) (5)

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| Country | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|----------------|------|------|------|------|------|------|
| United States | 100 | 100 | 100 | 100 | 100 | 100 |
| Germany | 95 | 95 | 95 | 95 | 95 | 95 |
| France | 90 | 90 | 90 | 90 | 90 | 90 |
| Italy | 85 | 85 | 85 | 85 | 85 | 85 |
| Spain | 80 | 80 | 80 | 80 | 80 | 80 |
| Japan | 75 | 75 | 75 | 75 | 75 | 75 |
| China | 70 | 70 | 70 | 70 | 70 | 70 |
| India | 65 | 65 | 65 | 65 | 65 | 65 |
| South Korea | 60 | 60 | 60 | 60 | 60 | 60 |
| United Kingdom | 55 | 55 | 55 | 55 | 55 | 55 |
| Canada | 50 | 50 | 50 | 50 | 50 | 50 |
| Brazil | 45 | 45 | 45 | 45 | 45 | 45 |
| Russia | 40 | 40 | 40 | 40 | 40 | 40 |
| South Africa | 35 | 35 | 35 | 35 | 35 | 35 |
| India | 30 | 30 | 30 | 30 | 30 | 30 |
| China | 25 | 25 | 25 | 25 | 25 | 25 |
| United States | 20 | 20 | 20 | 20 | 20 | 20 |
| Germany | 15 | 15 | 15 | 15 | 15 | 15 |
| France | 10 | 10 | 10 | 10 | 10 | 10 |
| Italy | 5 | 5 | 5 | 5 | 5 | 5 |
| Spain | 0 | 0 | 0 | 0 | 0 | 0 |

[REDACTED]

(b) (5)

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

From: McCallum, Robert (SMO)

Sent: Monday, January 16, 2006 10:43 AM

To: Gorsuch, Neil M

Subject: RE: USA Today update

I thought yours was better than mine although great minds obviously think alike. (b) (5)

Robt.

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

From: Gorsuch, Neil M

Sent: Monday, January 16, 2006 10:41 AM

To: McCallum, Robert (SMO)

Subject: RE: USA Today update

Sorry, didn't see this before sending my draft! (b) (5)

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

From: McCallum, Robert (SMO)

Sent: Monday, January 16, 2006 10:24 AM

To: Scolinos, Tasia; Elwood, John; 'Harriet_Miers@who.eop.gov'

Cc: 'Brett_C._Gerry@who.eop.gov'; 'David_S._Addington@ovp.eop.gov'; Gorsuch, Neil M; Sampson, Kyle; Moschella, William; Roehrkas, Brian

Subject: RE: USA Today update

Gentlepersons: I have made various edits below for your consideration, trying to incorporate Harriet's comments, cut some words, etc. (b) (5)

No pride of authorship precludes rejection of these edits, other suggestions, etc. I am in the office for the day and can be reached by phone or email. Robt.

(b) (5)

(b) (5)

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

From: McCallum, Robert (SMO)

Sent: Monday, January 16, 2006 8:57 AM

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From: McCallum, Robert (SMO)
Sent: Monday, January 16, 2006 2:06 PM
To: Gorsuch, Neil M; 'Brett_M._Kavanaugh@who.eop.gov';
'Harriet_Miers@who.eop.gov'; 'Brett_C._Gerry@who.eop.gov'; Sampson, Kyle;
Elwood, Courtney; Scolinos, Tasia; Roehrkasse, Brian; Moschella, William
Cc: Elwood, John
Subject: RE: LATEST version of USA Today

From: Gorsuch, Neil M
Sent: Monday, January 16, 2006 2:01 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; 'Harriet_Miers@who.eop.gov'; 'Brett_C._Gerry@who.eop.gov'; Sampson, Kyle; Elwood, Courtney; McCallum, Robert (SMO); Scolinos, Tasia; Roehrkasse, Brian; Moschella, William
Cc: Elwood, John
Subject: LATEST version of USA Today

<< File: USA Today op-ed ((b) (5)) NMG 2.doc >>

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Elwood, John

From: Elwood, John
Sent: Monday, January 16, 2006 3:56 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Gorsuch, Neil M
Subject: RE: cutting 10 words ...

Not yet.

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

From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, January 16, 2006 3:53 PM
To: Gorsuch, Neil M; Elwood, John
Subject: RE: cutting 10 words ...

Have you heard from her?

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

From: Neil.Gorsuch@usdoj.gov [mailto:Neil.Gorsuch@usdoj.gov]
Sent: Monday, January 16, 2006 3:34 PM
To: John.Elwood@usdoj.gov; Kavanaugh, Brett M.
Subject: Re: cutting 10 words ...

Thanks, Brett.

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

From: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Gorsuch, Neil M <Neil.Gorsuch@SMOJMD.USDOJ.gov>; Elwood, John
<John.Elwood@SMOJMD.USDOJ.gov>
Sent: Mon Jan 16 15:29:53 2006
Subject: RE: cutting 10 words ...

Checking now with HM.

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

From: John.Elwood@usdoj.gov [mailto:John.Elwood@usdoj.gov]
Sent: Monday, January 16, 2006 3:16 PM
To: Neil.Gorsuch@usdoj.gov; Kavanaugh, Brett M.
Subject: RE: cutting 10 words ...

Brett:

We're supposed to get this to DOJ's Office of Public Affairs by 3:30.
Let me know if you or Harriet have any final comments. Thank you.

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

-----Original message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, January 16, 2006 2:43 PM
To: Gorsuch, Neil M
Cc: Scolinos, Tasia; Elwood, John
Subject: RE: cutting 10 words ...

Waiting to get final word from Harriet. Thanks.

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

From: Neil.Gorsuch@usdoj.gov [mailto:Neil.Gorsuch@usdoj.gov]
Sent: Monday, January 16, 2006 2:13 PM
To: Kavanaugh, Brett M.
Cc: John.Elwood@usdoj.gov; Tasia.Scolinos@usdoj.gov
Subject: RE: cutting 10 words ...

Brett, With Robert's ok we are (hopefully) finished on this end. We will wait to hear from you, however, before giving Tasia's shop the all clear. Thanks! NMG

Gorsuch, Neil M

From: Gorsuch, Neil M
Sent: Monday, January 16, 2006 3:57 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Elwood, John
Subject: Re: cutting 10 words ...

Thanks for helping push this across the finish line.

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

From: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Gorsuch, Neil M <Neil.Gorsuch@SMOJMD.USDOJ.gov>; Elwood, John
<John.Elwood@SMOJMD.USDOJ.gov>
Sent: Mon Jan 16 15:54:14 2006
Subject: RE: cutting 10 words ...

Good to go per Harriet.

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

From: Neil.Gorsuch@usdoj.gov [mailto:Neil.Gorsuch@usdoj.gov]
Sent: Monday, January 16, 2006 3:34 PM

duplicate

duplicate

Elwood, John

From: Elwood, John
Sent: Monday, January 16, 2006 4:01 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Gorsuch, Neil M
Subject: RE: cutting 10 words ...

Will do.

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

From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, January 16, 2006 3:58 PM
To: Gorsuch, Neil M; Elwood, John; Brett_M._Kavanaugh@who.eop.gov
Subject: RE: cutting 10 words ...

Got one more comment that [REDACTED] (b) (5)
[REDACTED] Up to you.

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

From: Kavanaugh, Brett M.
Sent: Monday, January 16, 2006 3:54 PM

duplicate

duplicate

Elwood, John

From: Elwood, John
Sent: Monday, January 16, 2006 4:03 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Gorsuch, Neil M
Subject: RE: cutting 10 words ...

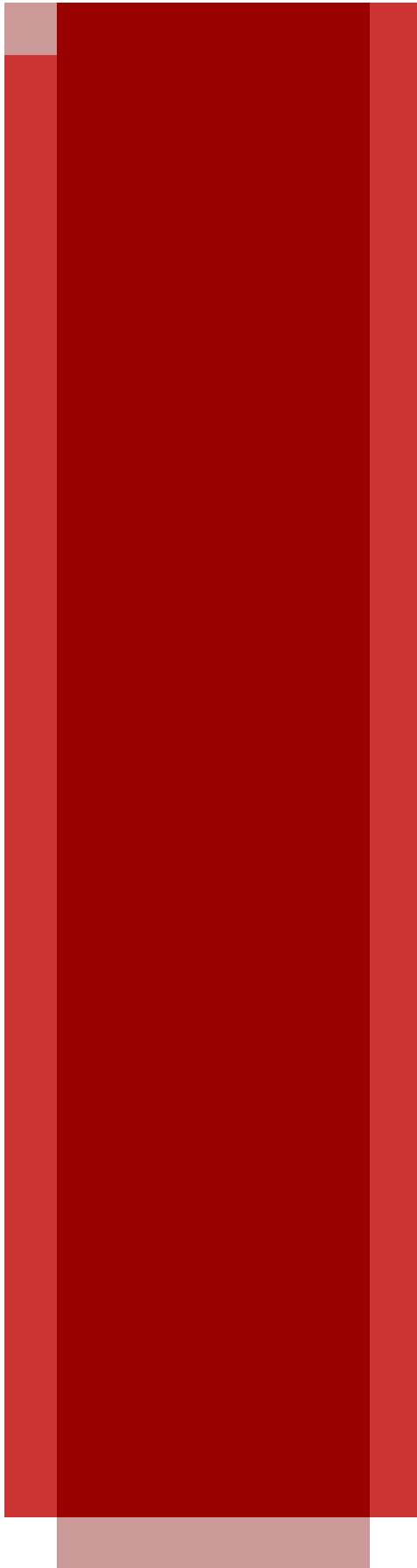
Good catch. [REDACTED] (b) (5)

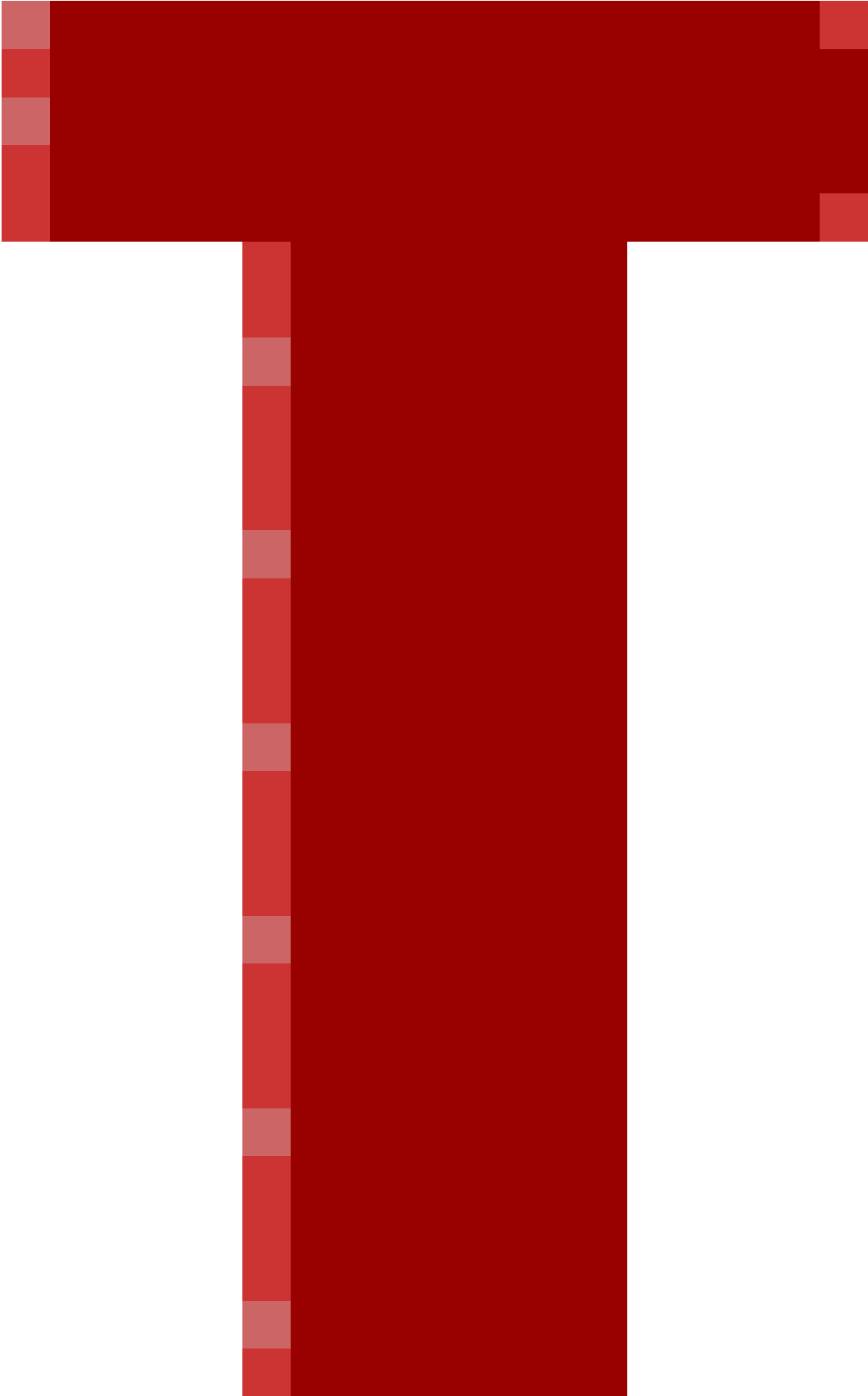
-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, January 16, 2006 3:58 PM

duplicate

duplicate











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 The New Republic Online

WHAT IF WIRETAPPING WORKS?

Wire Trap

by Richard A. Posner

Post date: 01.26.06

Issue date: 02.06.06

`<!--[if !vml]--><!--[endif]-->`he revelation by *The New York Times* that the National Security Agency (NSA) is conducting a secret program of electronic surveillance outside the framework of the Foreign Intelligence Surveillance Act (fisa) has sparked a hot debate in the press and in the blogosphere. But there is something odd about the debate: It is aridly legal. Civil libertarians contend that the program is illegal, even unconstitutional; some want President Bush impeached for breaking the law. The administration and its defenders have responded that the program is perfectly legal; if it does violate fisa (the administration denies that it does), then, to that extent, the law is unconstitutional. This legal debate is complex, even esoteric. But, apart from a handful of not very impressive anecdotes (did the NSA program really prevent the Brooklyn Bridge from being destroyed by *blowtorches*?), there has been little discussion of the program's concrete value as a counterterrorism measure or of the inroads it has or has not made on liberty or privacy.

Not only are these questions more important to most people than the legal questions; they are fundamental to those questions. Lawyers who are busily debating legality without first trying to assess the consequences of the program have put the cart before the horse. Law in the United States is not a Platonic abstraction but a flexible tool of social policy. In analyzing all but the simplest legal questions, one is well advised to begin by asking what social policies are at stake. Suppose the NSA program is vital to the nation's defense, and its impingements on civil liberties are slight. That would not prove the program's legality, because not every good thing is legal; law and policy are not perfectly aligned. But a conviction that the program had great merit would shape and hone the legal inquiry. We would search harder for grounds to affirm its legality, and, if our search were to fail, at least we would know how to change the law--or how to change the program to make it comply with the law--without destroying its effectiveness. Similarly, if the program's contribution to national security were negligible--as we learn, also from the *Times*, that some FBI personnel are indiscreetly whispering--and it is undermining our civil liberties, this would push the legal analysis in the opposite direction.

Ronald Dworkin, the distinguished legal philosopher and constitutional theorist, wrote in *The New York Review of Books* in the aftermath of the September 11 attacks that "we cannot allow our Constitution and our shared sense of decency to become a suicide pact." He would doubtless have said the same thing about fisa. If you approach legal issues in that spirit rather than in the spirit of *ruat caelum fiat iusticia* (let the heavens fall so long as justice is done), you will want to know how close to suicide a particular legal interpretation will bring you before you decide whether to embrace it. The legal critics of the surveillance program have not done this, and the defenders have for the most part been content to play on the critics' turf.

Washington, D.C., which happens to be the home of The New Republic, could be destroyed by an atomic bomb the size of a suitcase. Portions of the city could be rendered uninhabitable, perhaps for decades, merely by the explosion of a conventional bomb that had been coated with radioactive material. The smallpox virus--bioengineered to make it even more toxic and the vaccine against it ineffectual, then aerosolized and sprayed in a major airport--could kill millions of people. Our terrorist enemies have the will to do such things. They may soon have the means as well. Access to weapons of mass destruction is becoming ever easier. With the September 11 attacks now more than four years in the past, forgetfulness and complacency are the order of the day. Are we safer today, or do we just feel safer? The terrorist leaders, scattered by our invasion of Afghanistan and by our stepped-up efforts at counterterrorism (including the NSA program), may even now be regrouping and preparing an attack that will produce destruction on a scale to dwarf September 11. Osama bin Laden's latest audiotape claims that Al Qaeda is planning new attacks on the United States.

The next terrorist attack (if there is one) will likely be mounted, as the last one was, from within the United States but orchestrated by leaders safely ensconced abroad. So suppose the NSA learns the phone number of a suspected terrorist in a foreign country. If the NSA just wants to listen to his calls to others abroad, *fisa* doesn't require a warrant. But it does if either (a) one party to the call is in the United States and the interception takes place here or (b) the party on the U.S. side of the conversation is a "U.S. person"--primarily either a citizen or a permanent resident. If both parties are in the United States, *no* warrant can be issued; interception is prohibited. The problem with *fisa* is that, in order to get a warrant, the government must have grounds to believe the "U.S. person" it wishes to monitor is a foreign spy or a terrorist. Even if a person is here on a student or tourist visa, or on no visa, the government can't get a warrant to find out whether he is a terrorist; it must already have a reason to believe he is one.

As far as an outsider can tell, the NSA program is designed to fill these gaps by conducting warrantless interceptions of communications in which one party is in the United States (whether or not he is a "U.S. person") and the other party is abroad and suspected of being a terrorist. But there may be more to the program. Once a phone number in the United States was discovered to have been called by a terrorist suspect abroad, the NSA would probably want to conduct a computer search of all international calls to and from that local number for suspicious patterns or content. A computer search does not invade privacy or violate *fisa*, because a computer program is not a sentient being. But, if the program picked out a conversation that seemed likely to have intelligence value and an intelligence officer wanted to scrutinize it, he would come up against *fisa*'s limitations. One can imagine an even broader surveillance program, in which *all* electronic communications were scanned by computers for suspicious messages that would then be scrutinized by an intelligence officer, but, again, he would be operating outside the framework created by *fisa*.

The benefits of such programs are easy to see. At worst, they might cause terrorists to abandon or greatly curtail their use of telephone, e-mail, and other means of communicating electronically with people in the United States. That would be a boon to us, because it is far more difficult for terrorist leaders to orchestrate an attack when communicating by courier. At best, our enemies might continue communicating electronically in the mistaken belief that, through use of code words or electronic encryption, they could thwart the NSA.

So the problem with *fisa* is that the surveillance it authorizes is unusable to discover who is a terrorist, as distinct from eavesdropping on known terrorists--yet the former is the more urgent task. Even to conduct *fisa*-compliant surveillance of non-U.S. persons, you have to know beforehand whether they are agents of a terrorist group, when what you really want to know is who those agents are.

Fisa's limitations are borrowed from law enforcement. When crimes are committed, there are usually suspects, and electronic surveillance can be used to nail them. In counterterrorist intelligence, you don't know whom to suspect--you need surveillance to find out. The recent leaks from within the FBI, expressing skepticism about the NSA program, reflect the FBI's continuing inability to internalize intelligence values. Criminal investigations are narrowly focused and usually fruitful. Intelligence is a search for the needle in the haystack. FBI agents don't like being asked to chase down clues gleaned from the NSA's interceptions, because 99 out of 100 (maybe even a higher percentage) turn out to lead nowhere. The agents think there are better uses of their time. Maybe so. But maybe we simply don't have enough

intelligence officers working on domestic threats.

<!--[if !vml]><!--[endif]>have no way of knowing how successful the NSA program has been or will be, though, in general, intelligence successes are underreported, while intelligence failures are fully reported. What seems clear is that fisa does not provide an adequate framework for counterterrorist intelligence. The statute was enacted in 1978, when apocalyptic terrorists scrambling to obtain weapons of mass destruction were not on the horizon. From a national security standpoint, the statute might as well have been enacted in 1878 to regulate the interception of telegrams. In the words of General Michael Hayden, director of NSA on September 11 and now the principal deputy director of national intelligence, the NSA program is designed to "detect and prevent," whereas "fisa was built for long-term coverage against known agents of an enemy power."

In the immediate aftermath of the September 11 attacks, Hayden, on his own initiative, expanded electronic surveillance by NSA without seeking fisa warrants. The United States had been invaded. There was fear of follow-up attacks by terrorists who might already be in the country. Hayden's initiative was within his military authority. But, if a provision of fisa that allows electronic surveillance without a warrant for up to 15 days following a declaration of war is taken literally (and I am not opining on whether it should or shouldn't be; I am not offering any legal opinions), Hayden was supposed to wait at least until September 14 to begin warrantless surveillance. That was the date on which Congress promulgated the Authorization for Use of Military Force, which the administration considers a declaration of war against Al Qaeda. Yet the need for such surveillance was at its most acute on September 11. And, if a war is raging inside the United States on the sixteenth day after an invasion begins and it is a matter of military necessity to continue warrantless interceptions of enemy communications with people in the United States, would anyone think the 15-day rule prohibitive?

We must not ignore the costs to liberty and privacy of intercepting phone calls and other electronic communications. No one wants strangers eavesdropping on his personal conversations. And wiretapping programs have been abused in the past. But, since the principal fear most people have of eavesdropping is what the government might do with the information, maybe we can have our cake and eat it, too: Permit surveillance intended to detect and prevent terrorist activity but flatly forbid the use of information gleaned by such surveillance for any purpose other than to protect national security. So, if the government discovered, in the course of surveillance, that an American was not a terrorist but was evading income tax, it could not use the discovery to prosecute him for tax evasion or sue him for back taxes. No such rule currently exists. But such a rule (if honored) would make more sense than requiring warrants for electronic surveillance.

Once you grant the legitimacy of surveillance aimed at detection rather than at gathering evidence of guilt, requiring a warrant to conduct it would be like requiring a warrant to ask people questions or to install surveillance cameras on city streets. Warrants are for situations where the police should not be allowed to do something (like search one's home) without particularized grounds for believing that there is illegal activity going on. That is too high a standard for surveillance designed to learn rather than to prove.

[RICHARD A. POSNER](#) is a federal circuit judge and the author of the forthcoming *Uncertain Shield: The U.S. Intelligence System in the Throes of Reform*.

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The president's domestic wiretapping program is illegal

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Bush's new strategy for defending the war? Take

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Bradbury, Steve

From: Bradbury, Steve
Sent: Tuesday, January 31, 2006 5:46 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; 'Raul_F._Yanes (b) (6)'
Cc: Harriet_Miers@who.eop.gov; Brett_C._Gerry@who.eop.gov;
'William_K._Kelley@who.eop.gov'; Sampson, Kyle; Eisenberg, John; Elwood, Courtney
Subject: AG's prepared statement & responses to Sen. Specter re NSA hearing
Attachments: Prepared_Statement_1_31.doc; Specter_Response_1_31_am3.doc

Attached for staffing purposes are drafts of (1) the Attorney General's prepared (written) statement for the February 6 Senate Judiciary Committee hearing on the NSA activities and (2) responses to the written questions posed by Chairman Specter in anticipation of the hearing. We intend (b) (5)

Raul_F._Yanes@ (b) (6)

From: Raul_F._Yanes@ (b) (6)
Sent: Wednesday, February 01, 2006 11:54 AM
To: Bradbury, Steve; Brett_M._Kavanaugh@who.eop.gov
Cc: Sampson, Kyle; Eisenberg, John; Elwood, Courtney; Harriet_Miers@who.eop.gov; Brett_C._Gerry@who.eop.gov; William_K._Kelley@who.eop.gov
Subject: RE: AG's prepared statement & responses to Sen. Specter re NSA hearing

We will be clearing this through OMB's usual process.

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

From: Steve.Bradbury@usdoj.gov [mailto:Steve.Bradbury@usdoj.gov]

Sent: Tuesday, January 31, 2006 5:47 PM

duplicate

(b) (5)

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

From: Miers, Harriet

Sent: Tuesday, May 02, 2006 7:50 PM

To: Perino, Dana M.; 'tasia.scolinos@usdoj.gov'; Gerry, Brett C.; Brown, Jamie E.

Cc: Mamo, Jeanie S.; 'Steve.Bradbury@usdoj.gov'; Kelley, William K.; Kavanaugh, Brett M.

Subject: RE: Boston globe

(b) (5)

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

From: Perino, Dana M.

Sent: Tuesday, May 02, 2006 7:41 PM

To: 'tasia.scolinos@usdoj.gov'; Gerry, Brett C.; Miers, Harriet; Brown, Jamie E.

Cc: Mamo, Jeanie S.

Subject: Boston globe

(b) (5)

Here

are his additional questions:

How about real answers to questions such as:

- How can Bush assert that he believes the Constitution forbids Congress from giving executive branch officials the power to act independently of his direction (whistleblower provisions, empowering inspectors and researchers to do things without political interference), given a long line of precedents in which the Supreme Court has upheld such laws (Morrison, Humphrey's Executor, etc)? Same thing on flagging the affirmative action provisions - especially after the '03 Michigan Law School decision?

- In what way is Bush not using this tool as an override-proof line-item veto, given his otherwise inexplicable failure to veto a single bill over the past 5+ years unlike every other president in modern history (including Reagan/Bush41/Clinton)? If that is how it's functioning, under what constitutional theory is that justifiable?

- If that's not it, then what is the real explanation for why Bush is doing this so much more frequently than any predecessor? The talking point that previous administrations have also done this is not an answer, because it's a question of degree. He's broken all records - by far. And he's never issued a veto. Something new and important is obviously happening. What is it, and why?

Etc.

Bradbury, Steve

From: Bradbury, Steve
Sent: Friday, May 05, 2006 2:38 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Macklin, Kristi R
Subject: FW: (b) (5) issues ...
Attachments: tmp.htm; (b) (5) Final.doc

Brett: Attached is summary of (b) (5) cases and materials. I hope this is helpful.

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

From: Macklin, Kristi R
Sent: Friday, May 05, 2006 2:18 PM
To: Bradbury, Steve
Subject: FW: (b) (5) issues ...

Do you have any recommendations?

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

From: Brett_M._Kavanaugh@who.eop.gov [mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, May 05, 2006 2:14 PM
To: Brett_C._Gerry@who.eop.gov
Cc: Macklin, Kristi R
Subject: (b) (5) issues ...

(b) (5)

(b) (5)

(b) (5)

duplicate

Macklin, Kristi R

From: Macklin, Kristi R
Sent: Friday, May 05, 2006 4:17 PM
To: Macklin, Kristi R; Brand, Rachel; Cook, Elisebeth C; Jaffer, Jamil N; Sampson, Kyle; 'Neomi_J._Rao@who.eop.gov'; 'Grant_Dixton@who.eop.gov'; 'Brett_C._Gerry@who.eop.gov'; 'Chris Bartolomucci (HBartolomucci@HHLAW.com)'; 'Brian.Benczkowski@mail.house.gov'; 'Raul_F._Yanes@omb.eop.gov'; Richard Klingler (Richard_D._Klingler@who.eop.gov); Bradbury, Steve
Cc: 'William_K._Kelley@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; John Persinger (John_M._Persinger@who.eop.gov); 'Kristen_K._Slaughter@who.eop.gov'
Subject: RE: BK Moot - revised
Attachments: BK Moots.doc

Attached is a revised chart noting the addition of Steve Bradbury and Richard Klingler. The moot times are included on the chart. The moots will be held in Room 180 of the EEOB each day. Over the weekend, if you are driving and are not a WH passholder (and have already provided me with your information), please enter at 17th and E - you will be able to park on State Place, which will be the first driveway after entering the gate on the left. My cell phone number is (b) (6).

BK Moots: 180 EEOB

| Saturday: 11:00 – 2:00 | Sunday: 1:30 -4:30 | Monday: 11:00 – 2:00 |
|-------------------------------|---------------------------|-----------------------------|
| Kristi (b) (5) | Kristi (b) (5) | Kristi (b) (5) |
| Beth (b) (5) | Beth (b) (5) | Beth (b) (5) |
| | Rachel (b) (5) | Rachel (b) (5) |
| Jamil (b) (5) | | |
| | | Kyle (b) (5) |
| | Neomi (b) (5) | Neomi (b) (5) |
| Grant (b) (5) | | |
| Steve Bradbury (b) (5) | | |
| | Brett (b) (5) | Brett (b) (5) |
| | | Richard Klingler (b) (5) |
| | | Raul (b) (5) |
| | Chris B. (b) (5) | |
| Brian (b) (5) | Brian (b) (5) | |

Format: We'll plan on doing 10 minute rounds, probably with 2 rounds each. You should cover the topic you are assigned but can ask additional questions on other topic areas if time allows. You should stay out of other participants' topics, but can follow up on other Senators questions on your time. Please don't jump in on another questioner. If you see a big gap in topics, let me know.

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- [REDACTED] (b) (5)
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[REDACTED]

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[REDACTED]

- [REDACTED]
- [REDACTED]
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- [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

(b) (5)

- [REDACTED]
- [REDACTED]
- [REDACTED]

Bradbury, Steve

From: Bradbury, Steve
Sent: Friday, May 05, 2006 5:08 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Macklin, Kristi R
Subject: Presidential Signing Statements
Attachments: Presidential Signing Statements (5-5-2006).pdf

Brett: [REDACTED] (b) (5)
[REDACTED]. Please note that DOJ is sharing these talking points with reporters and others outside the Executive Branch. Steve

PRESIDENTIAL SIGNING STATEMENTS

Like many Presidents before him, President Bush has issued statements on signing legislation into law. Presidents have used these “signing statements” for a variety of purposes. Sometimes Presidents use signing statements to explain to the public, and more particularly to interested constituencies, what the President understands to be the likely effects of the bill.

Presidents throughout history also have issued what some have called “constitutional” signing statements, and it is this use of the signing statement that has recently been the subject of public attention. Presidents are sworn to “preserve, protect, and defend the Constitution,” and thus are responsible for ensuring that the manner in which they enforce acts of Congress is consistent with America’s founding document. Presidents have long used signing statements for the purpose of “informing Congress and the public that the Executive believes that a particular provision would be unconstitutional in certain of its applications,” Office of Legal Counsel, *The Legal Significance of Presidential Signing Statements*, 17 Op. O.L.C. 131, 131 (1993) (available at <http://www.usdoj.gov/olc/signing.htm>); Office of Legal Counsel, *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 Op. O.L.C. 199, 202 (1994) (“[E]very President since Eisenhower has issued signing statements in which he stated that he would refuse to execute unconstitutional provisions”) (available at <http://www.usdoj.gov/olc/nonexecut.htm>), or for stating that the President will interpret or execute provisions of a law in a manner that would avoid constitutional infirmities. As Assistant Attorney General Walter Dellinger noted early during the Clinton Administration, “[s]igning statements have *frequently* expressed the President’s intention to construe or administer a statute in a particular manner (*often* to save the statute from unconstitutionality).” 17 Op. O.L.C. at 132 (emphasis added).

President Bush, like many of his predecessors dating back at least to President James Monroe, has issued constitutional signing statements. The constitutional concerns identified in these statements often concern provisions of law that could be read to infringe explicit constitutional provisions (such as the Recommendations Clause, the Presentment Clauses, and the Appointments Clause) or to violate specific constitutional holdings of the Supreme Court. Common examples are provided below.

President Bush’s use of “signing statements” is consistent with tradition.

- Presidents have issued constitutional signing statements since the early years of the Republic. One scholar identifies President James Monroe as the first to issue a constitutional signing statement, when he stated that he would construe a statutory provision in a manner that did not conflict with his prerogative to appoint officers. See Christopher Kelley, *A Comparative Look at the Constitutional Signing Statement* 5 (2003) (available at <http://mpsa.indiana.edu/conf2003papers/1031858822>). Louis Fisher of the Congressional Research Service notes that in 1830, Andrew Jackson “signed a bill and simultaneously sent to Congress a message” setting forth his interpretation “that restricted the reach of

the statute.” 17 Op. O.L.C. at 138 (quoting Louis Fisher, *Constitutional Conflicts between Congress and the President* 128 (3d ed. 1991)). Assistant Attorney General Dellinger conducted a thorough study and concluded that “signing statements of this kind can be found as early as the Jackson and Tyler Administrations, and later Presidents, including Lincoln, Andrew Johnson, Theodore Roosevelt, Wilson, Franklin Roosevelt, Truman, Eisenhower, Lyndon Johnson, Nixon, Ford and Carter, also engaged in the practice.” 17 Op. O.L.C. at 138.

- In recent presidencies, the use of the constitutional signing statement has become more common. While the task of counting signing statements is inexact because of difficulties in characterizing some statements, Presidents Reagan, George H.W. Bush, Clinton, and George W. Bush have issued constitutional signing statements with respect to similar numbers of laws. According to one scholar, President Reagan issued constitutional signing statements with respect to 71 laws; George H.W. Bush, 146; Clinton, 105. *See* Kelley, *supra*, at 18. By our count, President Bush has issued such statements with respect to 104 laws as of January of this year.

The practice of issuing signing statements does not, as some critics have charged, mean that a President has acted contrary to law.

- The practice is consistent with, and derives from, the President’s constitutional obligations, and is an ordinary part of a respectful constitutional “dialogue” between the Branches.
- The Constitution requires the President to take an oath to “preserve, protect, and defend the Constitution,” and directs him to “take care that the Laws be faithfully executed.” When Congress passes legislation containing provisions that could be construed or applied in certain cases in a manner as contrary to well settled constitutional principles, the President can and should take steps to ensure that such laws are interpreted and executed in a manner consistent with the Constitution.
 - The Constitution contemplates that Presidents interpret laws in the course of implementing them. The Supreme Court specifically has stated that the President has the power to “supervise and guide [Executive officers’] construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which Article II of the Constitution evidently contemplated in vesting general executive power in the President alone,” *Myers v. United States*, 272 U.S. 52, 135 (1926); *see also Bowers v. Synar*, 478 U.S. 714, 733 (1986) (“Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of ‘execution’ of the law.”).

- Employing signing statements to advise Congress of constitutional objections is actually *more respectful* of Congress’s role as an equal branch of government than the alternatives proposed by some critics.
 - Recent administrations, including the Reagan, George H.W. Bush, and Clinton Administrations, consistently have taken the position that “the Constitution provides [the President] with the authority to decline to enforce a clearly unconstitutional law.” 17 Op. O.L.C. at 133 (opinion of Assistant Attorney General Dellinger) (noting that understanding is “consistent with the view of the Framers” and has been endorsed by many members of the Supreme Court); 18 Op. O.L.C. at 199 (opinion of Assistant Attorney General Dellinger) (noting that “consistent and substantial executive practice” since “at least 1860 assert[s] the President’s authority to decline to effectuate enactments that the President views as unconstitutional”); *Attorney General’s Duty to Defend and Enforce Constitutionally Objectionable Legislation*, 4A Op. O.L.C. 55, 59 (1980) (opinion of Benjamin R. Civiletti, Attorney General to President Carter) (“the President’s constitutional duty does not require him to execute unconstitutional statutes”); *see also* 2 Debates in the Several State Conventions on the Adoption of the Federal Constitution 446 (2d ed. 1836) (noting that just as judges have a duty “to pronounce [an unconstitutional law] void . . . In the same manner, the President of the United States could . . . refuse to carry into effect an act that violates the Constitution.”) (statement of James Wilson, signer of Constitution from Pennsylvania). Rather than tacitly placing limitations on the enforcement of provisions (or declining to enforce them), as has been done in the past, signing statements promote a constitutional dialogue with Congress by openly stating the interpretation that the President will give certain provisions.
 - It is not the case, as some have suggested, that the President’s only option when confronting a bill containing a provision that is constitutionally problematic is to veto the bill. Presidents Jefferson (*e.g.*, the Louisiana Purchase), Lincoln, Theodore Roosevelt, Wilson, Franklin Roosevelt, Truman, Eisenhower, Kennedy, Lyndon Johnson, Ford, and Carter have signed legislation rather than vetoing it despite concerns that the legislation posed constitutional concerns. *See* 17 Op. O.L.C. at 132 nn.3 & 5, 134, 138; *see INS v. Chadha*, 462 U.S. 919, 942 n.13 (1983) (“it is not uncommon for Presidents to approve legislation containing parts which are objectionable on constitutional grounds”).

- Compared to vetoing a bill, giving constitutionally infirm provisions a “saving” interpretation through a signing statement gives fuller effect to the wishes of Congress by giving complete effect to the vast majority of a law’s provisions. This approach is not, as some have suggested, an affront to Congress. Instead, it gives effect to the well established legal presumption that Congress did not enact an unconstitutional provision. As Assistant Attorney General Dellinger explained, this practice is “analogous to the Supreme Court’s practice of construing statutes, where possible, to avoid holding them unconstitutional.” A veto, by comparison, would render all of Congress’s work a nullity, even if, as is often the case, the constitutional concerns involve relatively minor provisions of major legislation.
- This approach is also fully consistent with past practice. As Assistant Attorney General Dellinger explained early during the Clinton Administration: “In light of our constitutional history, we do not believe that the President is under any duty to veto legislation containing a constitutionally infirm provision.” Rather, giving problematic provisions a “saving” construction in a signing statement “serve[s] legitimate and defensible purposes.” 17 Op. O.L.C. at 137; *see also* 18 Op. O.L.C. at 202-203 (“the President has the authority to sign legislation containing desirable elements while refusing to execute a constitutionally defective position”).

Many of President Bush’s constitutional signing statements have sought to preserve three specific constitutional provisions that are sometimes overlooked in the legislative process: the Recommendations Clause; the Presentment Clauses; and the Appointments Clause. While critics claim that the President has used signing statements in “unprecedented fashion,” his constitutional signing statements are completely consistent with those of his predecessors.

- **Recommendations Clause.** Presidents commonly have raised objections when Congress purports to *require* the President to submit legislative recommendations, because the Constitution vests the President with discretion to do so when he sees fit, stating that he “shall from time to time . . . recommend to [Congress’s] Consideration such Measures as he shall judge necessary and expedient.” U.S. Const., Art. II, § 3, cl. 1.
 - President Bush raised this objection 55 times in his 104 constitutional signing statements.
 - Bush: “To the extent that provisions of the Act, such as sections 614 and 615, purport to require or regulate submission by executive branch officials of legislative recommendations to the Congress, the executive branch shall construe such provisions in a manner consistent with the President’s constitutional authority to

supervise the unitary executive branch and to submit for congressional consideration such measures as the President judges necessary and expedient.” *Statement on Signing the Intelligence Authorization Act for Fiscal Year 2005* (Dec. 23, 2004).

- Clinton: “Because the Constitution preserves to the President the authority to decide whether and when the executive branch should recommend new legislation, Congress may not require the President or his subordinates to present such recommendations (section 6). I therefore direct executive branch officials to carry out these provisions in a manner that is consistent with the President's constitutional responsibilities.” *Statement on Signing the Shark Finning Prohibition Act* (Dec. 26, 2000).
- **Presentment Clauses/Bicameralism/INS v. Chadha.** Presidents commonly raise objections when Congress purports to authorize a single House of Congress to take action on a matter in violation of the well established rule, embodied in the Supreme Court’s decision in *INS v. Chadha*, 462 U.S. 919, 958 (1983), that Congress can act only by “passage by a majority of both Houses and presentment to the President.” See U.S. Const., Art. I, § 7 (requiring that bills and resolutions pass both Houses before being presented to the President).
 - President Bush raised this objection 44 times in his 104 constitutional signing statements.
 - Bush: “The executive branch shall construe certain provisions of the Act that purport to require congressional committee approval for the execution of a law as calling solely for notification, as any other construction would be inconsistent with the constitutional principles enunciated by the Supreme Court of the United States in *INS v. Chadha*.” *Statement on Signing the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act* (Dec. 30, 2005).
 - Clinton: “There are provisions in the Act that purport to condition my authority or that of certain officers to use funds appropriated by the Act on the approval of congressional committees. My Administration will interpret such provisions to require notification only, since any other interpretation would contradict the Supreme Court ruling in *INS v. Chadha*.” *Statement on Signing the Consolidated Appropriations Act, FY 2001* (Dec. 21, 2000).
- **Appointments Clause.** The Appointments Clause of the Constitution, U.S. Const., Art. II, § 2, provides that the President, with the advice and consent of the Senate, shall appoint principal officers of the United States (heads of agencies, for example); and that “inferior officers” can be appointed *only* by the President, by the heads of “Departments” (agencies), or by the courts. Presidents commonly raise an objection when Congress purports to restrict the President’s ability to

appoint officers, or to vest entities other than the President, agency heads, or courts with the power to appoint officers.

- President Bush raised this objection 19 times in his 104 constitutional signing statements.
- Bush: “The executive branch shall construe the described qualifications and lists of nominees under section 4305(b) as recommendations only, consistent with the provisions of the Appointments Clause of the Constitution.” *Statement on Signing the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (Aug. 10, 2005).
- Clinton: “Under section 332(b)(1) of the bill, the President would be required to make such appointments from lists of candidates recommended by the National Association of Insurance Commissioners. The Appointments Clause, however, does not permit such restrictions to be imposed upon the President's power of appointment. I therefore do not interpret the restrictions of section 332(b)(1) as binding and will regard any such lists of recommended candidates as advisory only.” *Statement on Signing Legislation To Reform the Financial System* (Nov. 12, 1999).

Many of President Bush’s constitutional signing statements have sought to preserve the confidentiality of national security information.

- The Supreme Court has held that the Constitution gives the President authority to control the access of Executive Branch officials to classified information. The President’s “authority to classify and control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position in the Executive Branch that will give that person access to such information flows primarily from this constitutional investment of power in the President and *exists quite apart from any explicit congressional grant.*” *Dep’t of Navy v. Egan*, 484 U.S. 518, 527 (1988). Presidents commonly have issued signing statements when newly enacted provisions might be construed to involve the disclosure of sensitive information.
 - President Bush raised this objection 60 times in his 104 constitutional signing statements.
 - Bush: “Sections 2(5) and 2(6) of the Act purport to require the annual report of the Secretary of the Treasury to include a description of discussions between the United States and Mexican governments. In order to avoid intrusion into the President's negotiating authority and ability to maintain the confidentiality of diplomatic negotiations, the executive branch will not interpret this provision to require the disclosure of either the contents of diplomatic communications or specific plans for particular negotiations in the future.” *Statement on Signing Legislation on*

Amendments to the Mexico-United States Agreement on the Border Environment Cooperation Commission and the North American Development Bank (Apr. 5, 2004).

- Clinton: “A number of other provisions of this bill raise serious constitutional concerns. Because the President is the Commander in Chief and the Chief Executive under the Constitution, the Congress may not interfere with the President's duty to protect classified and other sensitive national security information or his responsibility to control the disclosure of such information by subordinate officials of the executive branch (sections 1042, 3150, and 3164) To the extent that these provisions conflict with my constitutional responsibilities in these areas, I will construe them where possible to avoid such conflicts, and where it is impossible to do so, I will treat them as advisory. I hereby direct all executive branch officials to do likewise.” *Statement on Signing the National Defense Authorization Act for Fiscal Year 2000* (Oct. 5, 1999).
- Eisenhower: “I have signed this bill on the express premise that the three amendments relating to disclosure are not intended to alter and cannot alter the recognized Constitutional duty and power of the Executive with respect to the disclosure of information, documents, and other materials. Indeed, any other construction of these amendments would raise grave Constitutional questions under the historic Separation of Powers Doctrine.” Pub. Papers of Dwight D. Eisenhower 549 (1959).

President Bush also has used signing statements to safeguard the President’s well-established role in the Nation’s foreign affairs and the President’s wartime power. These signing statements also are in keeping with the practice of his predecessors.

- While some critics have argued that President Bush has increased the use of Presidential signing statements, any such increase must be viewed in light of current events and the legislative response to those events. While President Bush has issued numerous signing statements of this sort, the significance of legislation affecting national security has increased markedly since the September 11th attacks and Congress’s authorization of the use of military force against the terrorists who perpetrated those attacks. Even before the War on Terror, President Clinton issued numerous such statements. One scholar identified this objection as the most common use of the constitutional signing statements by Presidents Clinton and George H.W. Bush, because it is in this area “where presidential power is at its zenith.” Kelley, *supra*, at 18.
 - Bush: “Section 107 of the Act purports to direct negotiations with foreign governments and international organizations. The executive branch shall implement section 107 in a manner consistent with the Constitution's grant to the President of the

authority to conduct the foreign affairs of the United States.”
Statement on Signing the North Korean Human Rights Act of 2004
 (Oct. 18, 2004).

- Bush: “The executive branch shall construe subsection 1025(d) of the Act, which purports to determine the command relationships among certain elements of the U.S. Navy forces, as advisory, as any other construction would conflict with the President's constitutional authority as Commander in Chief.” *Statement on Signing the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act, 2005* (May 11, 2005).
- Clinton: “Section 610 of the Commerce/Justice/State appropriations provision prohibits the use of appropriated funds for the participation of U.S. armed forces in a U.N. peacekeeping mission under foreign command unless the President's military advisers have recommended such involvement and the President has submitted such recommendations to the Congress. The ‘Contributions for International Peacekeeping Activities’ provision requires a report to the Congress prior to voting for a U.N. peacekeeping mission. These provisions unconstitutionally constrain my diplomatic authority and my authority as Commander in Chief, and I will apply them consistent with my constitutional responsibilities.” *Statement on Signing the Omnibus Consolidated and Emergency Supplemental Appropriations Act* (Oct. 23, 1998).
- Clinton: “I also oppose language in the Act related to the Kyoto Protocol. . . . My Administration's objections to these and other language provisions have been made clear in previous statements of Administration policy. I direct the agencies to construe these provisions to be consistent with the President's constitutional prerogatives and responsibilities and where such a construction is not possible, to treat them as not interfering with those prerogatives and responsibilities.” *Statement on Signing the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act* (Dec. 21, 2000).
- Carter: Congress “cannot mandate the establishment of consular relations at a time and place unacceptable to the President.” *Statement on Signing the FY 1980-81 Department of State Appropriations Act, see 2 Pub. Papers of Jimmy Carter 1434* (1979).
- Nixon: Mansfield Amendment setting a final date for the withdrawal of U.S. Forces from Indochina was “without binding force or effect.” *Pub. Papers of Richard Nixon 1114* (1971).
- Truman: “I do not regard this provision [involving loans to Spain] as a directive, which would be unconstitutional, but instead as an authorization, in addition to the authority already in existence under which loans to Spain may be made.” *Statement on Signing*

the General Appropriations Act of 1951, Pub. Papers of Harry S. Truman 616 (1950).

- Wilson: Expressed an intention not to enforce a provision on the grounds it was unconstitutional because doing so “would amount to nothing less than the breach or violation” of some thirty-two treaties. Louis Fisher, *Constitutional Conflicts between Congress and the President* 134 (4th ed. 1997).

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Friday, May 12, 2006 4:36 PM
To: Bradbury, Steve
Subject: RE:

Steve: Belated thanks for this kind email. I am glad to be on to the next step!

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

From: Steve.Bradbury@usdoj.gov [mailto:Steve.Bradbury@usdoj.gov]
Sent: Tuesday, May 09, 2006 6:00 PM
To: Kavanaugh, Brett M.
Subject:

Brett: Congratulations on successfully completing a second hearing.
You did a great job today!

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Monday, May 29, 2006 3:11 PM
To: Bradbury, Steve
Subject: RE: The Newest Judge on the D.C. Circuit

Steve:

Thanks for the kind words. I have appreciated and learned from the work ethic, sound judgment, and intellectual integrity you have demonstrated in your work at K&E and in the government. I look forward to seeing you soon.

Brett

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

From: Steve.Bradbury@usdoj.gov [mailto:Steve.Bradbury@usdoj.gov]
Sent: Friday, May 26, 2006 12:00 PM
To: Kavanaugh, Brett M.
Subject: FW: The Newest Judge on the D.C. Circuit

Congratulations to you, Brett, and to us all!!! Phenomenal news for the Republic!!!

From: Elwood, John
Sent: Friday, May 26, 2006 11:54 AM
To: OLC_Attorneys
Subject: The Newest Judge on the D.C. Circuit

http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00159