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October 17, 2018

Mr. Gabe Roth
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Re: DOJ-2018-007104 (OLP)
18-cv-02091 (D.D.C.)
VRB:SJD

Dear Mr. Roth:

This is our second interim response to your Freedom of Information Act (FOIA) request dated and received in this Office on July 24, 2018, for correspondence between the Office of Legal Policy and Brett Kavanaugh from January 20, 2001 to May 30, 2006. This response is made on behalf of the Office of Legal Policy (OLP).

In our letter dated October 5, 2018, we provided you with an interim release of seventy-four pages containing records responsive to your request. At this time, I have determined that an additional 619 pages are appropriate for release without excision, and copies are enclosed.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2012 & Supp. V 2017). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Laura Hunt of the Department's Civil Division, Federal Programs Branch at (202) 616-8207.

Sincerely,

Vanessa R. Brinkmann
Senior Counsel

Enclosures

Schauder, Andrew

From: Schauder, Andrew
Sent: Wednesday, September 5, 2001 11:28 AM
To: Newstead, Jennifer; Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw'; 'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw'; 'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; Martinson, Wanda S; 'Ziad_S._Ojakli@who.eop.gov%inetgw'
Subject: Judicial Media Review
Attachments: Judicial Media Review 9-04-01.wpd

Attached is the Judicial Media Review from yesterday (9/4)

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General Judicial Articles

Schumer Says Bush's Nominees Should Have To Persuade Senators To Give Them Judgeships

By Jesse Holland
The Associated Press
Tuesday, September 4, 2001

President Bush's judicial nominees should have to fight to get lifetime federal judgeships instead of senators having to find reasons to keep them off the federal bench once they're nominated, a top Judiciary Committee Democrat said Tuesday.

"Given the stakes at hand, it makes sense that the burden should rest with the nominees," said Sen. Charles Schumer, D-N.Y., head of the Senate Judiciary subcommittee on judges. "We require parties who appear before a court to prove their case. It is not unreasonable to ask those who come before the Senate seeking a lifetime appointment to the federal bench to do the same." Conservatives immediately accused Schumer of trying to find ways to keep Bush's nominees from being confirmed in the Democrat-controlled Senate by changing the traditional deference senators give most presidential nominees.

"Democrats want an excuse to vote against a qualified nominee if he doesn't share their politics," said Thomas Jipping, director of the Free Congress Foundation's Judicial Selection Monitoring Project. "In advocating a shifting of the burden of proof, Democrats want an excuse to vote against a qualified nominee who doesn't answer their political questions."

The GOP has been complaining about the pace of approval of judicial nominations under the Democrat-controlled Senate. There are at least 107 vacancies in the federal court system, and there are 44 judicial nominations pending.

Only four judges have been confirmed by the Senate this year.

Sen. Jeff Sessions, R-Ala., the ranking Republican on the subcommittee said he could see that very thing happening.

"The Democrats could say that they would vote against a nominee if he answers a question in a

manner that shows he is conservative," he said. "On the other hand, the Democrats could say they would vote against a nominee if he refuses to answer their questions because he hasn't borne his burden."

Schumer, who held a hearing to explore whether nominees should have to prove they're worthy to get a lifetime judgeship, said forcing candidates to defend their nominations would net more qualified judges.

"Imagine a job interview where you walk in and it's up to the interviewer to either automatically hire you or find something in your past that disqualifies you," Schumer said. "Provided you sit there with your mouth shut, or at the most, voice meaningless platitudes, and as long as there's no major skeleton in your closet, you're a shoo-in for the job. Is that the best way to find the best person for the job? Of course not."

Republicans disagreed. "The most significant burden born by a candidate for a judgeship is to convince the president that he or she is the best person for the job," said Sen. Orrin Hatch of Utah, the Judiciary Committee's top Republican.

Added Sen. Mitch McConnell, R-Ken.: If nominees "are men and women of integrity, are qualified, have a judicial temperament, and will follow the Constitution and statutes as they are written and intended, then we should confirm them."

Bar Questions Bush Nominee About Ethics

By Courtney Kinney
The Kentucky Post
Friday, August 31, 2001

The American Bar Association is asking questions about the ethics of a Lexington lawyer whose nomination for a federal judgeship by President Bush could station him in Covington.

Prestonsburg lawyer Ned Pillersdorf said an attorney from the ABA called him earlier this week asking about Danny Reeves, 44, a judicial nominee who defended environmental lawsuits against Ashland Inc. in the 1990s.

The ABA caller wanted more information about a letter Pillersdorf wrote to the Senate Judiciary Committee last month saying Reeves negotiated a settlement in 1997 that required several plaintiffs' lawyers to agree not to sue Ashland Inc. in the future with new clients.

The cases involved nearly 40 residents of Lawrence and Johnson counties who claimed Ashland harmed their health and property when it dredged up radioactive material in the Martha oil field.

Shortly before the cases were to go to trial, a confidential settlement agreement giving residents an undisclosed amount of money was signed.

A Kentucky Supreme Court rule says lawyers can't make part of a settlement any agreement that would keep another lawyer from practicing.

"I don't think this is a trivial ethical violation," said Pillersdorf, who is representing a second batch of residents suing Ashland, now based in Covington. "There's a reason the Supreme Court has that rule."

Because the settlement was confidential, it is not known whether such a provision was actually in the agreement. But Pillersdorf said the lawyers' deal not to sue again has been common knowledge.

"I'm kind of surprised to see Ashland disputing it. It's not been a secret," he said.

Shortly after the March 1997 settlement, several dozen more residents of the Martha area filed their own suits against Ashland Inc.

No lawyer from the first group of cases is handling cases for the second.

"It's quite odd," Pillersdorf said.

The ABA will not say whether it is investigating Reeves, said Boston lawyer Roscoe Trimmier Jr., chairman of the ABA standing committee on the federal judiciary. The ABA has been asked by the Senate Judiciary Committee, which confirms appointments, to review all judicial nominations.

Ashland spokesman Stan Lampe said Pillerdorf's allegation is bogus and no one at Ashland has been contacted by the ABA regarding Reeves.

"The charge is unwarranted and groundless," he said.

Reeves did not return calls made to his Lexington office.

He is one of three lawyers nominated by Bush to fill judicial vacancies in the Eastern District. One vacancy is in Covington.

The other nominees are attorney Karen Caldwell of Lexington and David Bunning, an assistant U.S. attorney in Covington and son of U.S. Sen. Jim Bunning, R-Ky., of Southgate.

Hispanic Leaders Rally In Support of Judicial Nominee

The Associated Press
Friday, August 31, 2001

Area Hispanic leaders are urging Colorado's senators to push for the appointment of Chief Deputy Attorney General Christine Arguello as a U.S. District judge in Denver.

Arguello was appointed to the 10th U.S. Circuit Court of Appeals by President Clinton, but that appointment lapsed because the Senate never held confirmation hearings before Clinton left office.

She was among a group of nine people nominated for the federal judgeship by U.S. Sens. Ben Nighthorse Campbell and Wayne Allard, both R-Colo. During a rally Thursday at the state Capitol, about 60 people including leaders of the Hispanic community demanded her appointment to the federal bench.

"There has never been a Latino appointed to a federal judgeship in Colorado," said Awilda Marquez, a lawyer and political activist. "One of the country's best and brightest attorneys, Christine Arguello, is a candidate for such a historic opportunity."

Allard said there might not be much he and Campbell can do. He said while President Bush has not made an announcement, the two most likely nominees are Robert Blackburn of Las Animas, a former state prosecutor who is now a state district judge; and Marcia Krieger of Littleton, chief judge of the U.S. Bankruptcy Court for Colorado.

"It's the president's decision at this point," Allard said. "We've done our part."

Allard said he supported Arguello's appointment to the federal appeals court during the Clinton administration.

"The bottom line is this president has made it fairly clear to our office that he's interested in putting Republicans in the judiciary," Allard said.

Arguello is a Democrat.

Marquez said Allard and Campbell still should urge Bush to appoint Arguello.

"They have the power to do something about it," she said. "The White House will do whatever the senators want."

Arguello, 46, graduated first in her class at the University of Colorado in Boulder and was the first Hispanic woman admitted to Harvard Law School.

Trial Lawyer Blasts Judge Nomination

Maria Titze
The Deseret News
Friday, August 31, 2001

In a letter to the chairman of the Senate Judiciary Committee, a Salt Lake City defense attorney is harshly critical of U.S. Sen. Orrin Hatch's latest nomination to the federal bench -- University

of Utah law professor Paul Cassell.

"He's not a practicing Utah lawyer, and I believe that there are lots of trial lawyers in the state who deserve consideration of this judgeship," defense attorney Ron Yengich told the Deseret News.

Cassell practiced law in Virginia and Washington, D.C., before joining the faculty at the U.

News of Yengich's letter to Vermont Democrat Patrick Leahy came after the American Bar Association made public a mixed review of Cassell's qualifications. While the majority of the 14-member ABA rating committee called Cassell "well qualified," a few called him "not qualified."

Senior administration officials took the ABA to task Thursday, calling the mixed rating "bizarre," and hinting that the entire rating system was unfair.

Roscoe Trimmier Jr., head of the ABA rating committee, insisted the ratings aren't political, but said the committee normally wants a nominee to have been a member of the bar for 12 years.

Yengich agrees, but doesn't hold his criticism to Cassell's lack of courtroom experience in Utah.

With a growing Hispanic community, Yengich said, "it would be nice to have a little diversity."

There is only one minority magistrate -- Samuel Alba -- and no minority judges on Utah's federal bench.

Yengich roundly criticized Hatch for making federal judge nominations without more input from local attorneys.

"I don't believe that belonging to the Federalist Society and espousing a conservative law-and-order agenda automatically qualifies you to be a federal judge, just because we have a conservative Republican president," Yengich said.

But Makan Delrahim, the Republican staff director for the Senate Judiciary committee, said Cassell has bipartisan support in Washington.

"This guy's been a litigator, worked at the justice department, and is one of the most prolific (legal) writers," Delrahim said. "And he's a Utahn."

Cassell clerked for former Chief Justice of the United States Warren Burger and for current Justice Antonin Scalia when he served on a lower court**.**

Utah Defense Attorneys Oppose Nomination of Cassell To Federal Court

The Associated Press
Friday, August 31, 2001

The nomination of University of Utah law professor Paul Cassell to the federal bench is being opposed by a group of Utah defense lawyers.

Ron Yengich, one of Utah's most prominent defense attorneys, challenged Cassell's courtroom credentials in a letter this week to the chairman of the Senate Judiciary Committee, Patrick Leahy, D-Vt.

"The fact of the matter is that (President) Bush's appointments are being scrutinized more carefully for ideological bent by the people who are now heading the Judiciary Committee," Yengich said Thursday. "And Cassell's ideological stance ... is such that he doesn't deserve to be on the bench - he has never stood up for the rights of the dispossessed or for those charged with a crime," he said.

Cassell, an advocate of victims' rights and an opponent of requiring suspects be read their Miranda rights, declined comment, referring questions to the Justice Department.

"All of our candidates are highly qualified," said Viet Dinh, assistant attorney general for the Justice Department's Office of Legal Policy. "He has relevant legal experience; I cannot see a reason that anyone would question his ability."

Cassell, who practiced law in Virginia and Washington, D.C., before joining the university faculty, never has argued a case in Utah's federal court, according to U.S. District Court records. He has intervened in five cases, arguing each time that defendants' statements should not be suppressed.

He is listed as a member of the Salt Lake City law firm of Utah Sen. Orrin Hatch's son, Brent Hatch of Hatch James & Dodge.

The U.S. Justice Department held a briefing Thursday on the recently-released American Bar Association rating report on Cassell, in which a majority of the rating committee found him highly qualified. A minority rated him qualified and a small minority rated him not qualified.

Dinh called the minority opinion "irrational and bizarre."

Dinh and Cassell are both members of the conservative Federalist Society.

Salt Lake defense attorney Greg Skordas, a Cassell supporter, said he believes "the inexplicable rating was the result of a somewhat aggressive letter-writing campaign by a minority of defense lawyers in Utah."

The nine-member board of directors of the Utah Association of Criminal Defense Lawyers voted unanimously to oppose Cassell's nomination. Skordas, an association member, claims most lawyers in Utah support Cassell.

Mark Moffat, president-elect of the defense lawyers association, said, "Cassell has been at the forefront of limiting or doing away with a whole host of constitutional rights. He's anti-defendant - it's a very deep-rooted belief in Professor Cassell's psyche and I'm afraid one he can't divorce himself from when he assumes the bench."

U. Prof's Bench Nomination Questioned; Cassell 's Road To Federal Bench Full Of Potholes

By Greg Burton and Michael Vigh
The Salt Lake Tribune
Friday, August 31, 2001

The nomination of University of Utah law professor Paul Cassell to the federal bench, already threatened by the U.S. Senate's political shift, now has been blindsided by a mixed review from the American Bar Association and a negative campaign by a group of Utah defense lawyers.

Utah's most prominent defense attorney, Ron Yengich, challenged Cassell's courtroom credentials in a letter this week to the chairman of the Senate Judiciary Committee, Vermont Democrat Patrick Leahy.

Leahy seized agenda-setting power from U.S. Sen. Orrin Hatch, R-Utah, on June 6, after Vermont Sen. Jim Jeffords ended his affiliation with the Republican Party and gave Democrats a Senate majority and the right to name committee heads.

"The fact of the matter is that Bush's appointments are being scrutinized more carefully for ideological bent by the people who are now heading the Judiciary Committee," Yengich said Thursday. "And Cassell's ideological stance, vis-a-vis John Q. Public, is such that he doesn't deserve to be on the bench -- he has never stood up for the rights of the dispossessed or for those charged with a crime." Cassell, a high-profile advocate of victims' rights and one of the nation's harshest critics of the U.S. Supreme Court's landmark Miranda ruling, declined comment, referring questions to the Justice Department.

"All of our candidates are highly qualified," said Viet Dinh, assistant attorney general for the Justice Department's Office of Legal Policy. "He has relevant legal experience; I cannot see a reason that anyone would question his ability."

In taking aim at Cassell, Yengich also bemoaned the lack of racial diversity on the federal bench in Utah, which has no minority judges and just one minority magistrate, Samuel Alba.

Cassell, who practiced law in Virginia and Washington, D.C., before joining the U. faculty, never has argued a case in Utah's federal court as either a plaintiff or defense attorney, according to U.S. District Court records. He has intervened in five cases, arguing each time that defendants' statements should not be suppressed.

He is, however, listed by the ABA as a member of the Salt Lake City law firm of Sen. Hatch's son, Brent Hatch of Hatch James & Dodge.

"This is a Utah seat and it should be filled by a Utah lawyer, someone who is steeped in Utah's history, not somebody who just comes in here and carpetbags into a federal judgeship," Yengich said. "And besides, we already have enough representation from the Scotch-Irish; maybe we should consider somebody whose name ends in a vowel."

The U.S. Justice Department held a briefing Thursday on the recently-released ABA rating report on Cassell, in which a majority of the 14-member rating committee found him highly qualified, a minority rated him qualified and a small minority rated him not qualified.

Dinh blasted the minority opinion, calling it "irrational and bizarre."

The committee, which evaluates litigation, experience and temperament, does not release the numerical breakdown of its votes.

Dinh and Cassell are both members of the conservative Federalist Society. Before his appointment to the Justice Department, Dinh investigated Hillary Rodham Clinton, Whitewater and served as a special counsel to U.S. Sen. Pete Domenici during the impeachment trial of President Clinton.

Salt Lake City defense attorney Greg Skordas, a Cassell supporter, said he believes "the inexplicable rating was the result of a somewhat aggressive letter-writing campaign by a minority of defense lawyers in Utah."

The nine-member board of directors of the Utah Association of Criminal Defense Lawyers voted unanimously to oppose Cassell's nomination. But Skordas, an association member, claims most lawyers in Utah support Cassell.

He said Yengich and Cassell once clashed over the latter's intervention in a criminal prosecution against a defendant represented by Yengich. "I'm only trying to make sense of the rating," Skordas said. "He has somehow gotten sideways with Ron."

Concern runs much deeper than a single personal quarrel, said Mark Moffat, president-elect of the defense lawyers association.

"Cassell has been at the forefront of limiting or doing away with a whole host of constitutional rights," Moffat said. "He's anti-defendant -- it's a very deep-rooted belief in Professor Cassell's psyche and I'm afraid one he can't divorce himself from when he assumes the bench."

Cassell has been a law professor at the U. for the past nine years. Before that, he spent three years as an assistant U.S. attorney in Virginia, and he had previously worked for two years as an associate deputy U.S. attorney general in the Justice Department.

In the early 1980s, he clerked for then-U.S. Supreme Court Justice Warren Burger and for Judge Antonin Scalia, who was then in the U.S. Court of Appeals in Washington and now is a Supreme Court justice.

Last year, Cassell withdrew his name as one of 14 nominees to the Utah Supreme Court so he could argue a Miranda case before the nation's highest court. As with most of his recent legal experience, Cassell was an intervening attorney for the conservative Washington Legal Foundation on the Miranda case, arguing to weaken certain rights established for the accused by the landmark case.

Cassell also represented victims of the Oklahoma City bombing who wanted to attend Timothy McVeigh's Denver trial without jeopardizing their right to later testify about the bombing's impact on their lives.

Another U. professor, Michael McConnell, was nominated in May to the 10th U.S. Circuit Court of Appeals in Denver. Given the current Senate makeup and McConnell's controversial views on the separation of church and state, his confirmation is also facing a challenge.

Op/Eds

AR Joins 'Shake The Nation' Campaign, Says It's Time To Restore Sense To Judiciary; 'The Era Of Judicial Activism And Social Engineering Under The Color Of Law Must End,' Says Richard Lessner, Executive Director

The PR Newswire
Tuesday, September 4, 2001

For decades Americans effectively have been ruled by an out-of-control federal judiciary run by renegade activist judges who legislate from the bench, said Richard Lessner, Executive Director of American Renewal, the legislative action arm of Family Research Council.

Lessner's comments came today at a Washington press conference kicking off a campaign, backed by a broad coalition of conservative organizations, to "Shake the Nation." The campaign is aimed at influencing the U.S. Senate on behalf of President Bush's judicial nominations.

"President Bush has promised to nominate jurists who will respect the Constitution's separation of powers doctrine," Lessner said, "and resist the temptation to impose their own political opinions and policy desires upon the law -- often in flagrant disregard for the will of the American people. It is time to restore common sense and respect for the institutions of self-government to the federal judiciary. The era of judicial activism and social engineering under the color of law must end.

"For the better part of four decades, a majority of the U.S. Supreme Court has imposed grotesque and fanciful interpretations upon the Constitution, amended the document by judicial fiat, and invented new rights out of whole cloth, the most egregious examples of which are Roe v. Wade,

which fabricated a 'right' to abortion, and last year's Stenberg v. Carhart, which threw out 32 state laws against the odious practice of partial-birth abortion.

"The Shake the Nation campaign, which American Renewal enthusiastically supports, is meant to demonstrate to the members of the U.S. Senate that millions of Americans want to see fair and impartial jurists, not un-elected and unaccountable oligarchs, appointed to the federal courts and, ultimately, to the Supreme Court." American Renewal, the non-profit legislative action arm of Family Research Council, was founded in 1992 to educate the general public and cultural leaders about traditional American values and to promote the philosophy of America's founding fathers concerning the nature of ordered liberty.

Yes, Litmus-Test Judges

Joseph Califano, Jr.
The Washington Post
Friday, August 31, 2001

In considering presidential nominees for district and appellate judgeships, professional qualification alone should no longer be considered a ticket to a seat on the bench.

For years partisan gridlock and political pandering for campaign dollars have led to failures of the Congress and White House, whether Democratic or Republican, to legislate and execute laws on a variety of matters of urgent concern to our citizens. As a result, the federal courts have become increasingly powerful architects of public policy, and those who seek such power must be judged in the spotlight of that reality.

Years ago battles of the bench were pretty much limited to the Supreme Court: FDR's effort to stack the court with New Dealers, Johnson's attempt to name Abe Fortas chief justice, Nixon's push to seat Clement Haynsworth and Harrold Carswell, and the in-your-face street fights over Robert Bork and Clarence Thomas. Senate scrutiny was painstaking because the nine justices have such a potent voice in setting national policy. In those days, when it came to lower-court nominees, senators deferred to the wishes -- and litmus tests -- of their colleagues from the nominee's state and the president. Until Lyndon Johnson moved into the Oval Office, southern senators such as Mississippi's John Eastland, then Judiciary Committee chairman, insisted that presidents (including John F. Kennedy) nominate segregationist federal judges in their states. LBJ
believed Kennedy had made a mistake in bowing to these senators. If there was to be a litmus test, it would be his.

As a result, in selecting judicial nominees, those of us who helped check them out and interviewed them nailed down their views on civil rights, desegregation and racial justice. LBJ's insistence on this cost him the friendship of his mentor, Georgia senator Richard Russell, over a federal appellate court seat.

The litmus test of recent years has focused on the pro-life or pro-choice views of nominees. It is

as inconceivable that Ronald Reagan would have sent the Senate a decidedly pro-choice nominee as it was that Bill Clinton would have named a pro-life one.

Litmus tests are nothing new. What's new is the growing role of federal courts in crafting national policies once considered the exclusive preserve of the legislature and executive. As gridlock and big money have stymied the House and Senate and shaped the way laws are executed, concerned citizens have gone to court with petitions they once would have taken to legislators and executive appointees. As the federal courts have moved to fill the public policy vacuum, conservatives, liberals and a host of special interests have developed a sharp eye for those nominated to sit on the bench. So should the Senate.

The failure of Congress to enact sensible public health policies regarding tobacco to protect our children from nicotine pushers sent anti-smoking advocates to federal court to draft a settlement agreement with provisions that read like sections of a federal statute. While Republican and Democratic administrations and Congresses have been fiddling over a patients' bill of rights, patients have gone to federal court for relief likely to have at least as much impact on health maintenance organizations as anything the politicians at both ends of Pennsylvania Avenue can cobble together.

Despairing of more effective legislative or executive action, many cities are asking federal district judges for damages and court orders to restrict the way manufacturers sell handguns and other firearms. Federal District Judge Colleen Kollar-Kotelly's final orders to remedy Microsoft's monopolization may have more to say about the development of the Internet economy that any president, House speaker or Senate majority leader.

When the executive does act, say on cigarette marketing or environmental protection, adversely affected businesses rush to court to overturn its actions and regulations. The big bankrollers of drug legalization like George Soros know the difference between a federal judge who can find a way to uphold state medical marijuana laws and one who will find that federal statutes preempt them.

Environmentalists, prison reformers and consumer advocates have learned that what can't be won in the legislature or executive may be achievable in a federal district court where a sympathetic judge sits.

Federal district judges are the lords of their realms, and unless they open the gates, it can be impossible for the litigating parties to get out once they enter the courtroom kingdom. These judges can hold cases for years, tying up businesses and regulating prisons, cities and schools with detailed court orders.

The battle over who fills the record number of judicial vacancies has taken on an importance unimaginable just a generation. Who sits in federal district and appellate courts is more important than the struggle over the budget, the level of defense spending, second-guessing the tax bill and whose fingers are poised to dip into the Social Security and Medicare cookie jars.

President Bush and Republican Sen. Orrin Hatch understand this as surely as Democratic Senate Judiciary Chairman Patrick Leahy and subcommittee Chairman Charles Schumer do. Both sides know that many of the individuals who fill these seats will have more power over tobacco policy, prison reform, control of HMOs, the death penalty, abortion, environmental issues, the constitutionality of redistricting for House elections, gun control and the rights of women and minorities than the president or congressional leaders, and for a longer period of time.

That's why professional qualifications should be only the threshold step in the climb of judicial nominees to Senate confirmation. There is not sufficient time to examine each lower federal court nominee with the penetrating policy MRI reserved for Supreme Court justices. But the Senate must take enough time to give these men and women the kind of searching review their sweeping power to make national policies deserves.

The writer is president of the National Center on Addiction and Substance Abuse at Columbia University. He was Lyndon Johnson's special assistant for domestic affairs and secretary of health, education and welfare from 1977 to 1979.

Too Late For Arguello?

Rocky Mountain News
Saturday, September 1, 2001

If the Clinton administration had been a little less arrogant, Christine Arguello would probably already be a federal judge. She had not only superb qualifications, but the support of Colorado's two Republican senators, though she's a Democrat. But President Clinton mulishly insisted on pressing other nominations long after it was clear they would never go through, and so by the time he finally nominated Arguello for a vacant seat on the 10th Circuit Court of Appeals, in July 2000, the clock had almost run out on his term and the U.S. Senate never scheduled her confirmation hearings.

Now she's among nine candidates for federal judgeships whose names Sens. Wayne Allard and Ben Nighthorse Campbell submitted for President Bush's consideration. But the political reality is that presidents take political philosophy and party affiliation into account when nominating judges, and Arguello's best chance may have been squandered.

It's a pity.

It would be a bold act for Bush to break from tradition and nominate her. He shouldn't do it.

Judges And The Constitution; Everything Is Politics, Nothing Is Principle

By Roger Pilon
The National Review
Tuesday, September 4, 2001

By Roger Pilon, vice president for legal affairs at the Cato Institute &
director of Cato's Center for Constitutional Studies.

Timed nicely for Sen. Charles Schumer's hearings this afternoon on judicial ideology and the Senate confirmation process, Democratic party elder Joseph A. Califano Jr., placed an op-ed in last Friday's Washington Post entitled, "Yes, Litmus-Test Judges." The wraps are now fully off the Democrats' plan to block President Bush's nominees for the federal courts unless they meet a Democratic ideological litmus test. Early in the year, still smarting from the Supreme Court's ruling in Bush v. Gore, academics like Yale Law School's Bruce Ackerman urged Senate Democrats to reject every Bush nominee to the bench until the White House had a legitimate occupant. That was too much, of course. But Senate Democrats, once they regained power, did the next best thing. They've turned the judicial confirmation process into a full-blown ideological affair, with today's only the latest in a series of hearings not on the Bush nominees but on judicial ideology and the Senate's confirmation role.

Califano now gives us the rationale for it all. Gridlock and big money, he says, have long kept Congress from legislating on a wide range of urgent matters. As a result, concerned citizens have been plying the courts with petitions they once took to the legislative and executive branches, making the courts "increasingly powerful architects of public policy." Indeed, "who sits in federal district and appellate courts is more important than the struggle over the budget, the level of defense spending," and virtually everything else going on in Washington today. For we've all learned, he continues, "that what can't be won in the legislative or executive may be achievable in a federal district court where a sympathetic judge sits." Thus, it's time for the Senate to step in, not to legislate but to determine, on explicitly ideological grounds, who the judicial architects will be, who will be "setting national policy" from the bench.

What a striking picture. Everything is politics. Nothing is principle. Indeed, it is not a little noteworthy that over the entire article, devoted to our most basic political arrangements, the word "constitution" appears not even once. That's no accident. The Constitution sets forth the principles and the rules under which we're supposed to be governed. It divides and separates power, assigning different tasks to different parts of government.

But on Califano's view, judges don't apply law to decide disputes, as the Constitution contemplates. "Sympathetic judges" make law, like so many legislators, "setting national policy" in the process. As for our nominal legislators, the Senate is reduced to vetting and electing our true rulers. One imagines that the word "constitution" doesn't appear in Califano's article because the document is an embarrassing relic, utterly inconsistent with his picture of a thoroughly politicized judiciary.

Yet for all that, Califano's picture, unfortunately, is too close to the truth to be ignored. The lesson he and his fellow Democrats have drawn from it is wrong unless, of course, they like the picture. But we are today, in all candor, a very long way from living under constitutional principle.

The main origins of the problem are in the Progressive Era of a century ago, when the social

engineers of the time sought to do through government what the Constitution left to be done in the private sector. Things came to a head during the New Deal when a frustrated Franklin Roosevelt attempted to pack the Supreme Court, an event Califano notes without. The scheme failed, but FDR won the day when a cowed Court began rethinking the Constitution, effectively eviscerating constitutional limits on federal power. Although the Court that emerged, by virtue of its deference to the political branches, was called "restrained," it was, in truth, "activist" finding congressional and executive powers nowhere granted, ignoring individual rights plainly in the
Constitution. And the Court's rethinking led ineluctably to the shift of power to the judicial branch.

The shift had two aspects. First, with the political branches now free to rule almost every aspect of our lives, it was only a matter of time before their ever-expanding product ended up in the courts, with the courts asked to sort out the mess Congress was making of things. But second, those who had long pushed such programs didn't always win in the political branches. When that happened, they turned increasingly to the courts, trying to win there, from "sympathetic judges," what they had failed to win politically. Regrettably, the Warren and Burger Courts, already deferring to the political pursuit of "social justice," were too often only too willing to step into the fray, imagining themselves to be a legislature of nine.

The Rehnquist Court, by contrast, has taken modest steps over the past decade toward resurrecting constitutional principles of limited government. However modest, those steps have alarmed liberal Democrats. They can't imagine anyone thinking that Congress's powers are limited. They can't imagine that if an end is worthy, Congress might still not have the power to pursue it. They can't imagine that James Madison, the principal architect of the Constitution, was serious when he wrote in Federalist #45 that the powers of the new government would be "few and defined."

Do we want to ensure the separation of powers and an independent judiciary? Do we want to restore limited constitutional government and, let's be clear, the rule of law? Those are the stakes in the current debate. If Senate Republicans are serious, they cannot pretend otherwise as the
confirmation battles unfold.

Interest Groups/Press Releases

Judging Terry

By Jake Tapper
Salon.com
Saturday, September 1, 2001

Ex-GOP attack dog David Brock charges that Bush judicial nominee Terry Wooten gave him FBI files to discredit a key witness in the Clarence Thomas hearings. Will the Senate investigate?

It was the morning of Oct. 10, 1991, and Terry Wooten, the senior counsel to the Republicans on the Senate Judiciary Committee, was one of eight Senate staffers deposing Angela Wright over the telephone after she joined law professor Anita Hill in making allegations against their former boss at the Equal Employment Opportunity Commission, Supreme Court nominee Clarence Thomas.

"Now, the term 'boobs' came up," Wooten asked Wright. "Is that a term that he used when he spoke to you?"

"No, actually that is a term that I am using," Wright replied. "Actually, what he said was, 'What size are your breasts?'" The question came up, she said, while they were attending a seminar for the EEOC. A decade after the grisly Thomas confirmation circus, Wooten is coming under scrutiny as a federal judge nominee for the U.S. District Court in South Carolina. And his chief accuser is onetime right-wing reporter David Brock, who claims that not only was Wooten busily trying to discredit Wright as a committee lawyer, but to reporters as well -- slipping Wright's FBI files to Brock, who was at work on his 1993 book "The Real Anita Hill."

But while Wooten called Brock's charges "absolutely 100 percent not true" during a Senate hearing this week, and Senate Democratic sources confide that the controversial Brock has enough credibility problems to keep his charges from sticking, Brock is standing by his story and welcomes an investigation into the matter.

In fact, he tells Salon that he's willing to open his files to the Judiciary Committee -- if anyone on the committee, that is, would call him. If the FBI file is there, it's conceivable, he allows, that Wooten's fingerprints could be on it, which may help settle the issue once and for all.

Wooten, like other nominees before him, will not talk to the press before a confirmation vote. The Justice Department did not return a call for comment.

Whether or not the Judiciary Committee decides to take Brock up on his offer or not, Wooten's role in the Thomas confirmation hearings -- the modern TV scandal spectacle that all others, from O.J. to Monica to Chandra, followed -- is surely worth consideration. It's certainly not unprecedented to require former political operatives, even ones with J.D.'s, to answer questions about their various partisan machinations before they assume positions of judicial prominence.

Such was the case in the solicitor-general nomination of conservative attorney Ted Olson, who played some (though murky) role in the American Spectator magazine's war against all things Clinton (even penning under a pseudonym the article "Criminal Laws Implicated by the Clinton Scandals: A Partial List," February 1994). The solicitor general job, meanwhile, supposedly has the grandiose purpose once described as "not to achieve victory, but to establish justice."

During the Thomas scandal, Wooten and Brock were clearly both pursuing victory, not justice. Brock was the Spectator's star reporter, and was all about kicking ass for the GOP, he says now. Wooten, he says, was a big help.

"During the course of my research, I met with Mr. Terry Wooten in a Capitol Hill office," Brock wrote in an affidavit he faxed Aug. 24 to Judiciary Chairman Sen. Patrick Leahy, D-Vt., and ranking Republican Sen. Orrin Hatch of Utah. "Mr. Wooten handed me copies of several pages of Ms. Wright's raw FBI files. This material included FBI interviews of Ms. Wright's former employers and former co-workers. With Mr. Wooten's agreement, I removed the FBI material from his office." In his book "The Real Anita Hill," Brock makes references to "an FBI file" in which Wright is referred to as "vengeful, angry and immature."

Asked by Leahy if he gave confidential FBI material to Brock, as alleged both in Brock's affidavit and in a story in the Los Angeles Times, Wooten forcefully asserted "that allegation is absolutely, 100 percent untrue. There is not one scintilla or one iota of truth to that allegation."

But the question now has less to do with which person the committee believes -- the imperfect whistleblower Brock, or Wooten, currently a magistrate judge in Florence, S.C.-- than whether or not they'll take Brock's dare, and try to make sure, beyond any measure of doubt, that Wooten wasn't involved in a dirty tricks campaign against Wright. To many who followed the Thomas confirmation hearings, Angela Wright seemed as though she might have been the woman who ultimately could have sunk Thomas' nomination. That was certainly a concern of Wooten's.

Anita Hill, who had worked under Thomas at both the EEOC and the Department of Education, had been telling the Judiciary Committee, then chaired by Sen. Joe Biden, D-Del., that Thomas had repeatedly asked her out and, after being rebuffed, began to "use work situations to discuss sex."

As she later testified, despite her consistent protestations that such talk made her uncomfortable, Thomas continued to talk about sex, from graphic pornographic films to tales of "his own sexual prowess."

"I began to be concerned that Clarence Thomas might take out his anger with me by degrading me or not giving me important assignments," she testified. "I also thought that he might find an excuse for dismissing me."

On Oct. 11, 1991, Thomas, infuriated, "categorically denied all of the allegations and denied that I ever attempted to date Anita Hill," saying, "our relationship remained both cordial and professional."

"He said/she said" is one thing. "He said/they said" is something else entirely. Wooten recognized the problem posed by Wright, who had never met Anita Hill and who told the committee that Thomas fired her after years of hitting on her and making inappropriate comments to her. As Biden told Thomas during the hearing, "If there's not a pattern, to me, that's," or legally significant.

"Any time you had a second allegation, it was going to be a big problem," Wooten later told Mayer and Abramson.

During Wright's Oct. 10 deposition, Wooten took a somewhat aggressive tone with her, six times referring to her as having "come forward," as if politically motivated and eager to enter the fray, when in fact she'd been subpoenaed by the committee.

"I am sorry, Terry," she told Wooten at one point, "but I cannot answer, I cannot answer the questions if you are going to that I decided to 'come forward.' Obviously I did not come forward with anything. I am just answering questions that are just being asked of me."

Even after that point is made, however, Wooten continued to use the term. After Wright informed the Senate staffers that a friend of hers exists whom she had contemporaneously informed of Thomas' allegedly harassing behavior, Wooten said, "I think it may be helpful if you would check with that friend to see if he or she is willing to come forward."

"I will be glad to do that," Wright said. "But you keep using the term 'come forward.' I can pretty much assure you that this person is not going to 'come forward' or want to be very involved in this at all."

Wright ultimately told them how Thomas would "consistently pressure me to date him," how he hit on other women in the office, how he "made comments about my anatomy and ... about women's anatomy quite often," and how "at one point, Clarence Thomas came by my apartment at night, unannounced and uninvited."

Then, Wooten asked Wright about other employers with whom she's had a problem, citing the name of a former Wright boss whom Wright accused of racism. He then asked Wright, a registered Republican, "who you voted for in the '80, '84 and '88," a question she doesn't answer.

Wright was hardly a perfect witness, having been fired by Thomas six years beforehand for being "ineffective" and, Thomas claimed, for calling a fellow employee a "faggot," which Wright denied. Then-Sen. Alan Simpson, R-Wyo., later told the Washington Post that he was ready to put Wright through the wringer she wanted to put Thomas through. "I felt that when you are assassinating someone's character, you bring your own to the fore," Simpson said. "All I know is that if she wanted to expose herself to the committee with damaging information about Clarence Thomas ... I was fully ready to damage her character in the process."

In the end, curiously and to this day without a clear explanation, Wright was never called to testify before the Senate. Thus, a vast majority of the Senate remained ignorant of her story when Thomas was confirmed on Oct. 15. Sen. Paul Simon, D-Ill., a member of the committee, told the Washington Post in 1994 that he had no idea Wright existed to offer a similar story to Hill's. Had she been permitted to testify, Simon said, she "could have toppled Thomas."

It is unclear what role Wooten played in keeping Wright from the microphone, but it clearly was not in Thomas' best interest to have her testify. And, Wooten has said, he did his part to keep her story under wraps. In an interview for the book "Strange Justice," by Jane Mayer and Jill Abramson, Wooten allowed that he even kept Hill's charges -- which had been privately

divulged to the Senate Judiciary Committee staffers in August and September 1991 -- from his then-boss Sen. Strom Thurmond, R-S.C., as well as from other Republicans on the committee.

"Washington is the rumor mill of the world," he told them. "It didn't look like it was going to develop into any big deal. There was an effort to control the damage." Wooten has admitted to the Judiciary Committee that he had a brief conversation with Brock after Thomas had been confirmed on Oct. 15. "Whether or not Wright's name came up, I can't say that it did or didn't," Wooten said. But if it did, "there was no confidential information that was released or that was made available to him." He had access to the confidential materials about Wright from both FBI and Judiciary Committee files, but it was information he only discussed with his boss, Thurmond, and a committee investigator, Duke Short.

Leahy based his questions on the Times story, since at the time of the hearing he hadn't yet even seen Brock's affidavit. Speaking to reporters after the hearing, Leahy seemed to imply that, barring any new information, the "he said/he said" would culminate in a Wooten confirmation. "Mr. Wooten is under oath and he understands very well the importance of being accurate," Leahy said. "I can't believe that he would lie before the committee."

Brock disagrees, and thinks the committee should investigate. "The issue is obviously resolvable by the committee if it wants to resolve it," Brock tells Salon. "One of us has already committed perjury." Brock says that the dispute "doesn't have to remain 'he said/he said.' In the context of some kind of investigation there are potential witnesses and potential evidence."

Such as? Brock says his lawyers have 10 to 12 boxes of material from his days with the American Spectator. If Wright's FBI file is there, and Brock is telling the truth, Wooten's fingerprints could at least lend his story some credence.

But the Judiciary Committee has yet to contact Brock. When the Senate reconvenes on Tuesday, Leahy and Hatch will confer and decide how to proceed with the Wooten nomination, says Leahy spokesman David Carle.

Established procedures on the committee would have the chief investigators for both the Democrats and the Republicans working together to get to the bottom of the charges, but Hatch and Leahy would have to agree to such cooperation. In May, before the Senate fell into Democratic hands, then-Chairman Hatch declined to invoke those procedures when Brock raised questions about the role played by Olson in the Spectator's "Arkansas Project," a multi-year, multimillion-dollar investigation into the lives of the Clintons. Despite serious questions about how forthcoming Olson was being before the Senate, he was confirmed on May 25 on a 51-47 vote.

Senate insiders predict a similar result with the Wooten nomination. It's not that members of the Judiciary Committee don't take Brock's charges seriously, a Senate Democratic source told Salon. But those who believe Anita Hill shouldn't get their hopes up for a showdown. There doesn't appear to be any evidence or witness who can corroborate Brock's story, the source says, apparently unaware that Brock believes he may have some evidence locked away with his

lawyers.

But so far, only the liberal Alliance for Justice has issued any sort of public position against Wooten, saying in a statement that he's "been accused of a serious ethical impropriety" and calling for the "committee's bipartisan investigative staff (to) ... fully look into these charges before deciding whether to confirm Judge Wooten." Moreover, the Senate source says, the credibility of the contradictory witnesses is at play. Wooten is a judge whom many of the committee members remember from when he worked as chief GOP counsel on the committee. Brock, on the other hand, has since renounced his political alliances and admitted lying in some of his past reporting.

In the August Talk magazine excerpt of his forthcoming book "Blinded by the Right," Brock wrote that he "lost my soul" printing things he knew to be untrue, both in favor of Thomas and against Hill, her collaborating witnesses and the rival book, "Strange Justice," by Mayer and Abramson. He also detailed his 1994 intimidation of Kaye Savage, a woman who'd supported Hill and her story, meeting her armed with "unverified embarrassing personal information ... that Thomas claimed had been raised against her in a divorce proceeding." Brock claimed he'd gotten the information from Thomas through an intermediary, former White House assistant counsel Mark Paoletta. "Thomas was playing dirty, and so was I," Brock wrote.

But Abramson, the New York Times Washington bureau chief, is quoted in the Washington Post as pointing out that the "problem with Brock's credibility" is that "once you admit you've knowingly written false things, how do you know when to believe what he writes?" Paoletta, now counsel to the House Committee on Energy and Commerce, has denied Brock's charges, while Thomas has refused comment.

The Bush administration has already begun to assault Brock's credibility. In the Los Angeles Times story, Justice Department spokeswoman Mindy Tucker ascribed fiduciary motives to Brock's allegation. "I think it would be unfortunate if the desire for book sales promulgated a charge involving a man's integrity, such as this might," Tucker said.

Brock insists that "the Wooten thing has no connection to any kind of book publication strategy." Still uncompleted, his book has been pushed back until November at the earliest and more likely January 2002, he says, and "the only relationship at all between Wooten and the book is in the process of writing the book obviously I've revisited this issue. The fact that Wooten was nominated to a judgeship is just a coincidence."

What about the fact that the Los Angeles Times apparently knew about Brock's affidavit long before Leahy did? Brock says that reporter David Savage had been contacting him for days, not the other way around, which Savage confirms. Brock hadn't been paying attention to Wooten's nomination, he says, until Savage -- informed by a third party that Brock had said Wooten had leaked him Wright's FBI file -- contacted him. After speaking to Savage, Brock faxed his affidavit to Leahy's Senate office late Friday, after 6:50 p.m. Leahy didn't receive the affidavit until after the Monday hearing.

Does there exist evidence in those files to prove Brock right and Wooten wrong? That remains to be answered, as do questions about how willing Leahy and the Senate Democrats are to engage in a confirmation fight.

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, September 06, 2001 7:30 PM
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Subject: Judicial Media Review
Attachments: Judicial Media Review 9-06-01.wpd

Please see attached

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General Judicial Articles

Liberal Alliance Forms A Lobbying Arm

By Judy Sarasohn
The Associated Press
Thursday, September 6, 2001

The Alliance for Justice, the liberal national association of environmental, civil rights, mental health, women's and other advocacy organizations, recently set up a separate entity that will allow the umbrella group to expand its lobbying efforts on judicial selection and other initiatives "to advance the cause of justice."

The Alliance is known nationally for its work on federal judicial appointments. But as a nonprofit, tax-exempt group, its ability to lobby is limited.

Through the establishment of a "501(c)(4)" organization under Internal Revenue Service regulations, the Alliance may engage in an unlimited amount of lobbying for -- or against -- judicial nominations and legislation. The new entity is known as the Alliance for Justice Action Campaign. And it's clear that the Alliance believes it is going to want to lobby against a bunch of President Bush's judicial nominations.

"We are receiving an unprecedented number of calls from people all over the country who want to get involved. Since Bush v. Gore, they understand the threats of the [Bush] administration's judicial selections," said the Alliance's president, Nan Aron.

She said there is a greater sense among people around the nation "that lower court [federal] judges really matter," as do Supreme Court justices.

The new organization will "add some firepower to our efforts," she said, and allow the group to increase grass-roots involvement in the states.

New staff members will be hired for the new organization, Aron said.

The Alliance has recruited a new full-time communications director, its first. Julie Bernstein signed on last month as the group's PR chieftain after doing the same job at the Feminist Majority Foundation.

Senate Democrats Say Nominees Could Lose Confirmation Battles
EXCERPT

By Karen DeYoung and Amy Goldstein

The Washington Post
Thursday, September 6, 2001

The Bush judicial selection who has attracted the greatest opposition is Jeffrey S. Sutton, appointed to the Ohio-based 6th Circuit Court of Appeals. His nomination has prompted an aggressive campaign by civil rights groups. Several other court appointees -- including Miguel Estrada and John Robert Jr., nominated to the D.C. Circuit -- also face uncertain prospects before the Senate Judiciary Committee.

Sensitive to any appearance that he is delaying the confirmation of judges for political purposes -- a strategy Democrats accused Republicans of using during the Clinton administration -- Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) has said he will move swiftly this fall to confirm as many judges as possible, as long as they are relatively uncontroversial. As a result, congressional aides say, more polarizing figures such as Sutton may not come before the committee this year.

Hatch Adamant: Demos Tinkering

By Lee Davidson
The Deseret News
Wednesday, September 5, 2001

Sen. Orrin Hatch is accusing the new Democratic majority of trying to change the rules to make it more
difficult to confirm conservative judges.

Hatch, R-Utah, said a hearing that Democrats called Tuesday about changes that they seek appears "to be part of a partisan strategy to change the long-standing practice of this committee by injecting partisanship into the judiciary."

Sen. Charles Schumer, D-N.Y., chairman of a Judiciary Subcommittee on Administrative Oversight and the Courts, says the Senate should be able to consider the ideology of nominees -- and reject them if their views are "out of the mainstream."

Hatch submitted a statement saying he worries that "any nominee who disagrees with my Democratic colleagues on various social issues will be labeled as an extremist who is out of the mainstream and who should therefore not be confirmed."

"The Senate's responsibility does not include establishing an ideological litmus test to gauge a candidate's fitness based on his or her position on controversial issues," said Hatch, ranking Republican on the Judiciary Committee, who was chairman until Democrats gained a one-vote majority in the Senate.

"The hallmark of a good jurist is one who does not allow personal opinion to affect objective legal decision-making."

But Schumer told the hearing that "openly considering judicial ideology benefits the judiciary itself by helping ensure that our courts remain balanced and moderate, and represent the views and beliefs held by the majority of the American people."

Schumer added, "On whose shoulders should the confirmation burden rest? Should the Senate ask itself, 'Why shouldn't we confirm this nominee?' Or should the Senate ask the nominee, 'Why should we confirm you?'

"Given the stakes at hand, it makes sense that the burden should rest with the nominee" and not the Senate for
or rejection.

Hatch said such an approach is vastly different than in the past when the Senate generally tried to give presidents deference their nominees, unless they were shown not to have proper judicial temperament and good character.

"I believe the president's power to nominate judges is an essential part of the balance of powers. This is the reason that despite many ideological and political differences, the Judiciary Committee under Republican leadership confirmed 377 of President Clinton's judicial nominees (a near-record number)," Hatch said.

"If Republicans had infused ideological litmus tests into the process -- as some Democrats are toying with doing now -- those numbers would be dramatically different."

Showtime At Senate Judiciary

By Jonathan Ringel and Jonathan Groner
Legal Times
Monday, September 3, 2001

The White House and Sen. Leahy have set the stage for a battle over the federal bench

By almost any measure, August is more pleasant in the Green Mountains than in the swampy heat of the nation's capital. Still, Democratic Sen. Patrick Leahy left his Vermont farm last month to get started on what promises to be a tense season in the judicial confirmation process.

The Senate Judiciary Committee chairman called two nominations hearings in the dog days-at the
first, he was the only senator present.

Leahy used the second hearing to defend himself in the debate over which party is the most slow-footed on judicial nominations. Reeling off dates and numbers, Leahy said the Senate is "ahead of the pace" this year on moving court of appeals judges.

Sen. Mike DeWine (R-Ohio) responded, "I'm not going to get into a statistical battle." With a knowing smile, he added, "I know you and I will have further discussions on this."

The exchange was telling. Behind the posturing, the process of confirming judges for the federal bench this year will turn-as ever-on a power struggle between the Democratic majority and the White House
and its GOP allies in the Senate.

Both the Bush administration and Leahy have moved quickly into position. President George W. Bush has made 48 judicial nominations, and administration officials and GOP senators have called for all to be voted on before the Senate adjourns in a few months. Meanwhile, Leahy has shepherded four nominees to confirmation in the short time he has been committee chair and held hearings on three more.

But while moving forward on nominees that have drawn no controversy, Leahy and other players have taken their positions on the nominations that promise a fight.

In August, Leahy said the White House should consider offering Senate Democrats the same deference that former GOP Sen. Slade Gorton wrested from President Bill Clinton. Such a move could give Democratic senators greater power to block Bush nominees to several key circuit court seats.

In a famous 1997 deal, Gorton, then the senior senator from Washington state, muscled into the usual arrangement that grants senators from the same party as the White House the authority to help select judicial nominees. Though Sen. Patty Murray, a Democrat, nominally had the president's ear, Gorton was able to hold up the nomination of William Fletcher, a California-based nominee to the U.S. Court of Appeals for the 9th Circuit, until Clinton also named a 9th Circuit judge in Washington whom Gorton liked.

Now, President Bush finds himself in a similar standoff with Michigan's two Democratic senators: Carl Levin and Debbie Stabenow.

Levin and Stabenow have asked Leahy to hold up action on all nominees to the 6th Circuit because they want Bush to renominate two former Clinton nominees from Michigan, state Court of Appeals Judge Helene White and Detroit litigator Kathleen McRee Lewis. Originally blocked in
a fight between then-Sen. Spencer Abraham and the White House, White waited more than four years without getting a hearing, while Lewis waited more than 18 months.

Bush's two 6th Circuit nominees from Ohio-states' rights expert Jeffrey Sutton and state Supreme Court Justice Deborah Cook-have been pending since May.

The Cincinnati-based 6th Circuit covers Michigan, Ohio, Kentucky, and Tennessee. Seven of the court's 16 seats are vacant, and another will open up at the end of the year.

Leahy spokesman David Carle says that, despite the entreaty from the Michigan delegation, the chairman won't stop action on any nomination. However, Carle also says the Michigan matter is unresolved. At an Aug. 27 judicial nominations hearing, Leahy said, "We're trying to follow the same rule" suggested by Gorton's deal, which ultimately collapsed when Gorton's hand-picked nominee withdrew for personal reasons.

Leahy added, "The White House should consult with senators in the area" covered by a circuit court, not just senators from a nominee's home state.

That notion does not please the White House. Administration officials and GOP senators have already been locked in battle with Leahy on the power of home state senators to nix judicial nominees, and White House Counsel Alberto Gonzales says that the disputed power of home-state senators certainly should not be expanded to senators from all states within a circuit.

"There's no reason this White House should be expected to do that," says Gonzales. He acknowledges that previous presidents have occasionally consulted with senators from neighboring states in a given
circuit when considering appellate nominees, but adds that this has never been the consistent precedent.

In an Aug. 17 letter to Leahy, Gonzales argued that granting the Levin-Stabenow request would "distort the Senate's exercise of its advice and consent function by institutionalizing a practice whereby
well-qualified nominees may be held hostage to the non-germane demands of individual Senators from other states."

Gonzales and Leahy held a previously scheduled meeting in Leahy's office on Aug. 27. Neither would discuss the details of the meeting.

Meanwhile, Leahy used the hearings in August, when three Bush judicial nominees experienced very mild, upbeat screenings, as evidence that he is trying in good faith to confirm nominees quickly. "I am attempting to go the extra mile to help fill the vacancies on the federal courts with qualified, consensus nominees," Leahy said.

The key word, though, is consensus.

Of the four Bush picks confirmed by the Senate this year, three were jointly recommended by Republican and Democratic senators from the nominee's home state. The fourth, Judge Roger Gregory of the 4th Circuit, was originally chosen by Clinton and backed by Virginia's two GOP senators.

Likewise, the nominees who had hearings last month-Sharon Prost for the Federal Circuit; Terry Wooten for a district court seat in South Carolina; and Reggie Walton for the District Court in Washington, D.C.-had support from both Democrats and Republicans.

Except for Gregory, Leahy has not scheduled hearings for any of the 11 circuit court nominees Bush unveiled at a White House event in May-several of whom have generated a loud outcry from the left. Among them are Sutton from the 6th Circuit, Michael McConnell from the 10th Circuit, and D.C. Circuit nominees John Roberts Jr. and Miguel Estrada.

Leahy has not announced when the next hearing will be or who will be on the agenda. But on Sept. 4, Judiciary Committee member Sen. Charles Schumer (D-N.Y.) will hold the second of his subcommittee hearings looking at the Senate confirmation process-hearings that Republicans argue merely provide academic cover for blocking nominees and take time away from confirmation hearings.

The process of filling seats on the courts has grown increasingly contentious since Robert Bork's nomination to the Supreme Court failed in 1987. Fights over legal ideology, Senate process, and political payback have become routine, even in a year when Bush has pledged to soften the harsh tones of partisanship.

Gilbert Merritt, a Nashville-based senior judge on the 6th Circuit, says he hopes Leahy can break the syndrome that has plagued the circuit's nominations. But he's not hopeful.

"What they really need between the White House and the Senate Judiciary Committee is a mediator," says Merritt, a 1977 appointee of President Jimmy Carter.

The vacancies present a problem for the court, says Merritt, who was the 6th Circuit's chief judge for seven years and took senior status in January.

"You obviously have to give the cases shorter shrift," he says. "The quality [of the written decisions] goes down as well."

When Michigan nominees White and Lewis were stuck in the Judiciary Committee, then under the control of Sen. Orrin Hatch (R-Utah), Merritt wrote the Senate to ask that the pair get up or down votes so as to either confirm them or open the process to nominees who could get confirmed.

He says the same should occur today with Sutton and Cook. "They ought to vote on whoever's up there," says Merritt.

Three-Way Split

Paul Cassell, the University of Utah law professor who in 2000 led an unsuccessful challenge of the landmark Miranda v. Arizona decision, has received an odd three-way split rating from the American Bar Association's Standing Committee on the Federal Judiciary.

Last month, the group announced that a "substantial majority" of the 14-member committee found Cassell "well qualified" for a district court judgeship in Utah. A minority of the committee found Cassell merely "qualified," while another minority found Cassell "not qualified."

The ABA defines "substantial majority" as 10 or more members of the committee. Since the committee doesn't reveal exact votes, it's not clear how many members registered less than the highest opinion.

"The ABA has an obligation to be forthright and explain this decision," says Assistant Attorney General Viet Dinh, who handles judicial nominations for the Justice Department.

Of the 28 Bush nominees so far rated by the ABA, Cassell is only the second to get a negative vote.

Nonetheless, Dinh says, "the inexplicable inconsistency" of Cassell's evaluation "suggests that something is awry with the committee's ratings process."

In March, the Bush administration ended a 50-year tradition of giving the ABA a special role in working closely with the administration in rating potential nominees. But after the Democrats took control of the Senate, Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) revived the group's role by saying the committee would look closely at ABA ratings.

Roscoe Trimmier Jr. of Boston's Ropes & Gray chairs the ABA committee. He says the process is "inherently subjective," given that they do not use a scorecard when evaluating a nominee's integrity,
judicial temperament, and professional competence.

"That's why we have a committee," so the evaluation is based on more than one person's view.

-Jonathan Ringel

Walton's Waltz

D.C. Superior Court Judge Reggie Walton had a smooth sail on Aug. 22 during a brief Senate Judiciary Committee hearing on his nomination to a District Court judgeship in Washington, D.C.

At the hearing, the committee chairman, Sen. Patrick Leahy (D-Vt.), spent more time berating his Republican counterparts and justifying his own record on judicial nominations than he did querying the 52-year-old jurist.

"I have a guess that you're not going to have a lot of trouble [being confirmed] in the U.S. Senate," Leahy said to Walton. "I will urge the committee to move your nomination to the floor as soon as possible."

Leahy was the only senator present at the session, which he said was the first judiciary hearing held during the chamber's annual August recess since at least 1980. He said Walton's "prior

service" had
"prepared him abundantly for this position."

Leahy asked whether Walton, if confirmed, would feel bound by the precedents set by appeals courts. Walton said he had traveled in Russia a few years ago and had learned to his dismay "that they don't have that process" of adherence to precedent. "It is crucial to apply the rule of law," Walton said.

Walton received a glowing introduction from D.C. Democratic Delegate Eleanor Holmes Norton. In addition to family members and friends, Walton was accompanied by a delegation from D.C. Superior Court: Chief Judge Rufus King III and Judges Anita Josey-Herring, Mary Gooden Terrell, and Lee Satterfield.

Schumer: Half Of Democrats' One-Two Punch

By Jonathan Groner
Legal Times
Monday, September 3, 2001

Although he's been in the Senate for less than three years, Charles Schumer of New York is rapidly emerging as one of the Democrats' key assets in the escalating battle over President George W. Bush's judicial nominations.

When the Democrats took control of the Senate earlier this summer, Schumer, a plain-spoken first-termer, became chairman of the Judiciary Committee's Subcommittee on Administrative Oversight and the Courts. The panel had been relatively quiet under its previous chairman, Jeff Sessions (R-Ala.), but that was to change quickly.

On June 26, Schumer brought blue-ribbon witnesses such as Harvard Law professor Laurence Tribe and former White House Counsel C. Boyden Gray before his subcommittee in a frank discussion of the role of ideology in federal judicial selection. Schumer was open about his views-that ideology should count, and that in reaching their views about judges, senators should acknowledge that ideology matters.

This was the first Senate hearing on the broad issues surrounding the confirmation process in at least a decade-and it was also the kickoff of a three-part series that is set to resume now that Congress is back from recess.

Part two of the Schumer extravaganza is slated for Sept. 4. Schumer has dubbed this week's hearing "The Senate's Role in the Nomination and Confirmation Process: Whose Burden?" Witnesses set to testify for the Senate majority include former Sen. Paul Simon (D-Ill.), Georgetown University Law Center professor Mark Tushnet, University of Texas School of Law professor Sanford Levinson, and Yale Law School professor Judith Resnik.

Republicans will call University of Illinois College of Law professor Ronald Rotunda, Catholic University Columbus School of Law Dean Douglas Kmiec, and John Schmitz, former deputy White House counsel under the elder Bush.

The third installment, which will focus on the current Supreme Court's "conservative judicial activism," is expected to take place late this month.

Schumer's motives in deciding to step forward on the complicated nominations issue have sparked a fair amount of speculation in legal circles. Some say the senator, who has never shied from the press, is
trying to steal a publicity beat from his state's junior senator, Hillary Rodham Clinton. Some say conservative Bush judges are a politically potent issue in liberal New York.

A GOP Senate staffer offers a more nuanced reason: "Our understanding is that [Judiciary Chairman Patrick] Leahy wanted him as his deputy on nominees, much as [former Chairman Joseph] Biden [Jr.]
had used Leahy. If you're going to want to get someone out there to punch at nominees, Schumer has built-in credibility, and that way, Leahy can stay above the fray."

This staffer explains that Schumer, 50, is good for that attack role because he's considered a moderate rather than an out-and-out partisan-and because he plays well on camera.

Schumer spokesman Bradley Tusk downplays this theory. He says the senator is interested in Bush's judges primarily because he wants to improve the federal courts.

"This is his passion," Tusk says. "As an attorney who thinks in a legal way, he's very interested in crime issues, for example. He ran the crime subcommittee in the House before he was a senator. All his background and his work to date make this a natural next step. He's been working towards this for 30 years."

A Judiciary Committee aide says Schumer and Leahy did not sit down and work out a plan for the first-termer to assume any specific stance on judicial nominations. But an upfront Schumer role "may be something that results" from the personalities and politics of the judiciary panel, this staffer says.

"Schumer is a New Yorker who calls it the way it is," says the staffer. "He was very bothered, for example, by the fact that no one ever talked about [a prospective judge's] ideology."

"People may perceive him as an attack dog," the staffer continues, "but it will never be personal."

Leahy spokesman David Carle says, "As in the past, there is such a big workload involved in judicial nominations that Chairman Leahy, as earlier chairmen have done, is distributing the workload among several senators, and Sen. Schumer has picked up some of it."

Coalition Begins 'Rattle' Campaign For Pro-Life Justices
By Robert Stacy McCain
The Washington Times
Wednesday, September 5, 2001

Pro-life groups yesterday united for an unprecedented campaign to encourage the Senate to confirm pro-life judges for vacancies expected on the Supreme Court in the near future.

"Never before have so many pro-life groups joined together to coordinate our efforts to restore protection to children in our lifetime," said Janet Folger of the Center for Reclaiming America.

Miss Folger's Fort Lauderdale, Fla.-based pro-life organization, associated with D. James Kennedy's Coral Ridge Ministries, is one of 24 groups behind the "Shake the Nation" campaign. The coalition includes such religious and social conservative groups as the American Family Association, Eagle Forum, Family Research Council, Focus on the Family and the Traditional Values Coalition. Washington area television viewers will witness one element of the campaign, a TV ad that shows babies disappearing as a result of the Supreme Court's 1973 Roe v. Wade decision, which struck down state laws against abortion.

"Shake the Nation" is using baby rattles as a symbol, urging supporters to send rattles to senators with an attached note asking them "to confirm pro-life justices to the U.S. Supreme Court and . . . protect children from . . . abortion."

The campaign - budgeted at $2 million, Miss Folger said at a press conference yesterday - began the same day the Senate Judiciary Committee held a hearing about the Senate's constitutional role in confirming judicial nominees.

President Bush is expected to have the chance to name at least one new member to the court. Three Supreme Court justices are older than 70, and Justice John Paul Stevens, a liberal, is the court's senior member at 81.

With the closely divided Senate under Democratic control, pro-life activists are concerned about a tough confirmation battle if Mr. Bush keeps his campaign promise to name conservative "strict constructionist" judges to the federal bench. One liberal leader yesterday signaled just such a strategy.

"It's becoming clear that the top priority of the Bush administration is to pack the federal appeals court with . . . right-wing ideologues," Ralph Neas of the People for the American Way said in a statement. Mr. Neas said he "urged senators to reject . . . right-wing ideologues who have not demonstrated a commitment to civil rights, civil liberties, and equal opportunity under the law."

Pro-choice groups apparently chose to ignore yesterday's an-announcement of a new pro-life campaign. None issued a press release in response, and officials of the National Abortion and Reproductive Rights Action League (NARAL) did not respond to requests for comment.

Pro-life speakers at yesterday's event targeted what they called federal "judicial activism."

"Abortion was thrust upon us by Supreme Court justices, extended even to include partial-birth abortion," said Wendy Wright, director of communications of Concerned Women for America. "Our country cannot afford any more judges who view the federal bench as their throne."

Richard Lessner, executive director of American Renewal, a lobbying group affiliated with the conservative Family Research Council, said, "the era of judicial activism and social engineering under the color of law must end."

The campaign also aims to "get the message of truth out" and promote grass-roots pro-life support, Miss Folger said.

Op/Eds

Obstructing Justice; Democrats Block Bush's Judicial Nominees

By Thomas Jipping
The Washington Times
Thursday, September 6, 2001

On the Senate's first day back from the August recess, Sen. Charles Schumer chaired another of his hearings designed to change the confirmation rules and stack the deck against President Bush's nominees.

At the first hearing, left-wing academics and lawyers told senators to base their votes on a nominee's ideology; that is, the rulings they will likely render once on the bench. At this hearing, left-wing academics and lawyers told senators to base their votes on whether nominees have made the case for confirmation rather than in deference to the president. As Mr. Schumer put it, "the burden should rest with the nominee." This new rule would certainly facilitate Mr. Schumer's goal of defeating nominees; senators need only say that a nominee did not meet his burden. While this may be the system Mr. Schumer prefers, however, it is not the one America's Founders established.

In Article II, Section 2, the Constitution gives the president both the power to nominate and, subject to the Senate's "advice and consent," the power to appoint federal judges. As Alexander Hamilton put it in "The Federalist," No.65, "In the business of appointments the executive will be the principal agent." That's why there's not a word about appointments in Article I, which outlines the powers of the legislative branch.

The Senate is a check on the president's appointment power, as Hamilton wrote in "The Federalist," No. 76, to "prevent the appointment of unfit characters." A primary power - in this case, appointing judges - carries more weight than a check on that power. Therefore, the Senate must show that a president's nominees are unfit in order to reject them; the burden is on the Senate, not on the nominee. That's the system of checks and balances America's Founders

established, the one we all learned about in junior high civics class.

At the hearing, Mr. Schumer said America's Founders would be shocked at the state of the confirmation process today. Indeed, they would. Those who crafted the Constitution, who believed that the president would be the "principal agent" in judicial selection, would be shocked at Mr. Schumer insisting that the Senate is a co-equal partner with the president. Those who created the process of presidential nomination and appointment would be shocked at Mr. Schumer insisting that the Senate instead treat nominees as if they were applying for the job.

Sen. Strom Thurmond voiced the position America's Founders would recognize. He said the deference owed to a president should not change when the political party controlling the Senate or the White House changes. The Senate's constitutional responsibilities, Mr. Thurmond said, must remain consistent.

Consistency requires that Mr. Schumer practice what he has preached. In January 1998, for example, he called on the Senate leadership to "work with the president to confirm more judges."

Consistency means he should direct this at leaders such as Sen. Patrick Leahy, chairman of the Judiciary Committee on which Mr. Schumer serves. Mr. Leahy said on July 25, 2000, that it is the Senate's "constitutional responsibility" to "redouble our efforts to work with the president" to confirm more judges. That was when there were just 59 judicial vacancies. With nearly 110 vacancies today, you'd think Mr. Leahy would re-quadruple his efforts to confirm even a few of the 40 nominees
currently at his doorstep.

Consistency requires that Mr. Schumer direct this at senior Democrats such as Sen. Ted Kennedy, who in September 1999 said it was the Senate's "constitutional responsibility to work with the president" to confirm more judges. That was when there were just 68 vacancies.

Perhaps it just depends on the meaning of the word "president." Perhaps the only presidents senators such as Messrs. Schumer, Leahy and Kennedy want to work with are Democrats who nominate the liberal activist judges they need to impose their political agenda on the country.

This is all part of the same obstruction campaign Democrats have used in the past. The Sept. 1, 1992, edition of the New York Times reported that "the Democrats who control the Senate have begun to delay confirming some of President Bush's nominees for major judgeships to preserve the vacancies for a Democrat to fill if he is elected president." As Ronald Reagan would say, there they go again.

Public presidential leadership is necessary to break this logjam. Judicial vacancies are the highest in more than seven years and confirmations are the slowest in recent memory. Just wait, Senate Majority Leader Tom Daschle will soon say, the press of legislative business leaves no time to consider judicial nominees. The clock is ticking, and Mr. Bush must turn up the heat and tell Americans the truth about the Democrats' obstruction campaign.

Thomas L. Jipping is director of the Free Congress Foundation's Judicial Selection Monitoring Project.

Screening Judges; Not The Senate's Role To Micromanage

By Douglas Kmiec
The Washington Times
Wednesday, September 5, 2001

Douglas W. Kmiec, dean & St. Thomas More Professor of Law, the Catholic University of America, and former Assistant Attorney General, Office of Legal Counsel, in the Reagan administration

Yesterday, the Senate again conducted a hearing on the appropriate manner to evaluate judicial nominees. After 200 years of experience, one would have thought this settled. Hamilton explained in the Federalist Papers that the Senate's role would not be to micromanage. Rather, "the necessity of their concurrence would have a powerful, though, in general a silent operation." In other words, since the president would know that his choices could be rejected, it "would be an excellent check upon the spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachment, or from a view to popularity."

The latter remark outlines succinctly the nature of an appropriate Senate inquiry: integrity (to screen out improper cronyism or "family connection" in appointment); fitness (to eliminate those not possessing either the temperament or training); and fidelity to the rule of law (to ensure that rulings are not merely given with "a view to popularity"). So what's the point of belaboring the question today in hearings?

None. Or at least none envisioned by the Constitution. Democratic senators, newly energized by their majority status because of a party defection, want to "pay back" the Republicans for supposedly blocking Clinton nominees and a handful of academics have convinced Senator Schumer that partisan screening of judicial nominees is appropriate to bring greater balance to the federal courts.

Political rivalry aside, there is nothing to pay back. Mr. Clinton over his two terms appointed virtually the same number of judges as President Reagan (377 vs. 382). So too, the numbers of nominees left unexamined at the end of each term were comparable.

And as for the supposed need for balance, no one really has a fixed idea of what that means. A Supreme Court with a composition reflecting five presidential perspectives and yielding 5-4 decisions where the issues (federalism, affirmative action, religious participation in the public square) are sensitive and the people, themselves, rightly cautious is hardly unbalanced. And all the blather about there being too many former judges on the high bench (and not enough former politicians or people with other experience) either stands the Framers criteria for selection on its head or is untrue. Yes, Ruth Bader Ginsburg was an appellate judge, and so were Clarence

Thomas, Antonin Scalia, and Stephen
Breyer, but they also had distinguished careers as advocate for women's rights, senior legislative assistant, executive official, and teacher, respectively.

What the cry for balance really disguises is a desire for different outcomes in specific cases dealing with Congress' civil-rights enforcement power, the appropriate scope of federal commerce-clause authority, and the line between was is national and what is local. These are all important issues, but it is neither appropriate nor effective for the Senate to deal with them through the judicial confirmation process.
Attempting to do so indulges a host of erroneous suppositions not the least of which is that the courts are merely alternative policymaking venues. In the pages of the Washington Post last week, Joseph Califano Jr. contended for a partisan screening of federal judicial nominees because of Congress's
failure to address, among other things, big tobacco and handguns. Whether or not one subscribes to Mr. Califano's take on such matters, it is certainly an odd prescription to try to save us from the "political pandering and gridlock" (Mr. Califano's words) of one branch by manipulating the composition of another.

And lest it be forgotten, the other branch the judicial one is intended to be independent. The significance of an independent judiciary is well known to every school child. The point was made plain in the bill of indictment included against the English King in our Declaration of Independence. "He has made Judges dependent upon his Will alone, for the tenure of their offices," our founders complained.

Unfortunately, when times get rough we are inclined to forget the significance of judicial independence to the rule of law. FDR forgot it in trying to address the severity of the Depression. Yet, even under those dire circumstances, the idea of attempting to force judges to bend to the political will was overwhelmingly and loudly rejected. Wrote the Senate Judiciary Committee in rebuffing FDR's court-packing plan: "if we may force the hand of the Court to secure our interpretation of the Constitution, then some succeeding Congress may repeat the process to secure another and a different interpretation and one which may not sound so pleasant in our ears as that for which we now contend. . .
.[The] initial and ultimate effect [of undermining] the independence of the courts," and [violating] "all precedents in the history of our Government and would in itself be a dangerous precedent for the future."

One would think that the significance of an independent judiciary would be reasonably plain to us, less than a year distant from a disputed national election in which it took the courage of seven justices to highlight a fundamental breach of equal protection. However, it is the opposite. It seems that those calling most insistently for the partisan screening of judicial nominees are those wanting to relitigate Bush v. Gore. In his written testimony, one witness at the hearing stated: Bush v. Gore is "a patently illegitimate decision, . . . monumentally unpersuasive; and . . . its illegitimacy taints Mr. Bush's own status as our President."

This is not the place to reargue Bush v. Gore. However, it is clear that, unlike some academics,

the overwhelming percentage of people (and not just a majority of the Supreme Court) accept the proposition that equal protection when applied to ballots means at least this: If you're asked to count
votes, you have to know what you're counting. Even when the Florida supreme court reflected upon the matter after the High Court's disputed ruling, five of the state justices who had previously ordered the standardless recount affirmed that "the development of a specific, uniform standard necessary to
ensure equal application and to secure the fundamental right to vote throughout the State of Florida should be left to the body we believe best equipped to study and address it, the Legislature."

Respect for the lawmaking enterprise, for legislatures especially the Congress is a salutary byproduct of the proper exercise of advice and consent. If the confirmation process reflects that the judicial function is limited to interpreting the Constitution, policymaking is kept in the hands of those who are most accountable to the people. The Senate's power of advice and consent is broad, but a fair
interpretation of the qualities required of judicial nominees is legal capacity, personal integrity, and a commitment to abide by the Constitution.

The Constitution is not abided, but subverted, when the Senate seeks to obtain commitments for favored policy outcomes from those nominated.

Interest Groups/Press Releases

Attorney General John Ashcroft Installs Right-Wing "Dream Team" At Justice Department

People for the American Way
September 6, 2001
www.pfaw.org/issues/democracy/ash update.shtml

Direction of U.S. Justice Department in Ashcroft's First Six Months Signals Grave Threats to Americans' Fundamental Rights and Liberties, says People For the American Way Foundation Report

John Ashcroft's first six months as U.S. Attorney General have confirmed many of the concerns raised by opponents of his confirmation, according to a report released by People For the American Way Foundation.

"John Ashcroft has turned the Justice Department into the radical right's Dream Team," said People For the American Way Foundation President Ralph G. Neas. "The record in his first six months has been poor and it is likely to get worse. Many of these appointees are just getting

started. When they are really up and running, Americans' fundamental civil rights and civil liberties will be even more severely threatened."

The report released highlights some of the appointees to important Justice Department positions, discusses the relevance of the Federalist Society affiliation of many of those officials, considers the impact of John Ashcroft and his legal team on the federal judiciary and thus on American law and society, and reviews Department of Justice action and inaction under Ashcroft in more than a
dozen policy areas.

Neas said that Ashcroft's role in the administration's plans to pack the Supreme Court and federal judiciary with right-wing ideologues could be his most lasting legacy. "If Ashcroft and his allies in the White House and Senate are successful, the federal courts could turn back the clock on 70 years of social justice progress," he said. "If senators don't take a stand, we'll find ourselves right back in an era when states' rights trump civil rights, and we'll lose First Amendment freedoms, reproductive rights, environmental protection, and so much more."

Schauder, Andrew

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Subject: judicial media review
Attachments: Judicial Media Review 9-10-01.wpd

Please see attached review

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General Judicial Articles

Bush Pressed on Nominees; GOP Senators Urge Public Push for Judges

By Paul Kane
Roll Call
Monday, September 10, 2001

Seeking to raise the stakes in the confirmation process, Senate Republicans and some conservative activists are actively encouraging President Bush to mount a more forceful attack

against Democrats over the judicial nomination process.

At a Thursday meeting between Bush and Congressional GOP leaders, Republican Policy Committee Chairman Larry Craig (Idaho) said he and Minority Whip Don Nickles (Okla.) pointedly raised the judicial nomination issue, along with a list of other "must do's and priorities."

Craig said they asked Bush to become more engaged in the process by pressuring Senate Democrats to confirm judges and by accelerating the pace of appointments.

"I didn't hear any objection at all," Craig said, adding, "You're going to find the White House increasingly involved. What I heard [from White House officials] was the intent to become increasingly involved."

A week before the Craig-Nickles plea on judges, White House press secretary Ari Fleischer signaled that Bush was not yet ready for a full-scale fight with Majority Leader Thomas Daschle (D-S.D.) and Judiciary Chairman Patrick Leahy (D-Vt.) over the thorny issue.

"It's only fair to allow the Senate its due deliberation," Fleischer told Roll Call.

Fleischer didn't blame Leahy, whom he called "thoughtful" and "fair," for holding up the process, noting that "many of the judicial nominations were made towards the end of July."

At the same time, though, Fleischer said Bush would be prepared to fight if Democrats drag their feet. "He'll make the case for his nominees."

The debate over how to push for confirmation of judicial nominees has become a central focus in GOP quarters, intertwined with the appropriations process and potentially a major roadblock to the efforts to
conclude the Congressional session.

Republicans blocked Daschle's effort to move the Commerce, Justice, State and the judiciary appropriations bill last week until Democrats gave an assurance that Leahy would move judicial nominees in a "regular" order.

Democrats contend they are moving judges as swiftly as possible, having already confirmed two circuit court judges with another on the verge of passing this week and several more possible before the year ends. In the first year of the Clinton administration, just three circuit court judges were confirmed. In 1989 then President George Bush saw five of his circuit court nominees confirmed.

"The Democratic leadership has been very accommodating, very cooperative," Daschle said Friday.

And Leahy said more nominees could have been confirmed if not for Bush's decision to remove

the American Bar Association from the initial rating process for prospective judges, a step that is now handled once the nomination is sent to the panel.

Republican delays in the committee reorganization process after Democrats seized the majority took a month out of the committee calendar, Leahy contends.

"The Judiciary Committee has made up for lost time," said David Carle, Leahy's spokesman.

Carle warned that a rhetorical war from the White House would only hamper the confirmation process, making consensus difficult on some of the most controversial nominees. "The more consensus building there is, more nominees the Senate will be able to confirm," he said.

"The polarization that some Republicans seem to be calling for is a prescription for fewer confirmations, not more."

However, Republicans countered that they want to see all 44 of the judicial nominees who were sent to Capitol Hill prior to the August recess confirmed before adjournment, a standard they say applied to past administrations in their first year.

To date, just four of those 44 nominees have been confirmed, leaving Republicans complaining that there isn't enough time to have hearings on the nominees and confirm them.

Senate Minority Leader Trent Lott (R-Miss.) said he had to approach Leahy directly Thursday to ask about the status of U.S. District Judge Charles W. Pickering Sr. of Mississippi, who was nominated to be a United States circuit judge for the Fifth Circuit. Pickering, the father of Rep. Chip Pickering (R-Miss.), received a "well-qualified" rating from the American Bar Association on July 23, but has yet to have his hearing scheduled, according to a GOP source.

Lott said he is not happy about the status of Pickering and state Supreme Court Justice Michael P. Mills, up for a district court slot.

"I talked to [Leahy Thursday], and he said, 'Well, you hadn't talked to me!' I said, 'First of all, I don't want to ask for preferential treatment for our judges in Mississippi. Secondly, I'd assumed you'd get around to it. But I'm going to notice now that you may not. And I need to know what's going on,'" Lott said.

That's why some conservatives are calling for Bush to use the presidential powers of political persuasion on the issue, hoping he will emulate former President Bill Clinton, who often accused Senate Republicans of extremism for moving slow on female and minority nominees.

"If this continues to get worse, the White House is going to have to use the bully pulpit to protect their nominees," said Sen. Jeff Sessions (R-Ala.), chairman of the Judiciary subcommittee on the courts.

"We're very exited about his nominees. But a president who is very serious about his nominees

will not only nominate them but he will fight for them," said Thomas L. Jipping, director of the Judicial Selection Monitoring Project of the Free Congress Foundation.

Jipping said most conservative activists have little faith in the Senate Republican leadership's ability to, on its own, create enough political pressure to pass the nominees, having seen Daschle and the Democrats win many of the endgame battles of the past few years.

"If the President leaves it up to the Republicans in the Senate, he's not going to be successful," Jipping predicted.

But Senate Republicans say they are ready to do battle for their nominees, with or without a frontal attack by the White House. Craig said the GOP is ready to block more appropriations bills if Daschle and Leahy don't live up to their agreement to move more nominees.

"We don't want to do that, but that certainly is the right of the minority," said. "I believe we have the 41 votes to cause certain actions."

District Bench May Lose Another Bush; May Tap Smith for U.S. Appeals Court

By Rachel Smolkin and Torsten Ove
Pittsburgh Post-Gazette
Saturday, September 8, 2001

President Bush is expected to nominate Chief U.S. District Judge D. Brooks Smith to the federal appeals court, a move that could leave the federal bench in the Western District of Pennsylvania even more short-handed.

Although the White House made no official comment, Bush's nomination of Smith to the 3rd U.S. Circuit Court of Appeals is anticipated as early as next week.

"My hope is that he will be announced shortly," said U.S. Sen. Rick Santorum, R-Pa. "I have been advocating very strongly on his behalf. ... I think he'd be a good addition to the court." State Sen. Robert Jubelirer, R-Altoona, a friend of Smith's, said he didn't know when Bush would make the announcement but confirmed that Smith, 49, also of Altoona, is in line for the job.

"I know he's the guy. The FBI has been doing background checks for several months. I think it's coming very, very soon," he said.

"The president will never make a better choice than this one," Jubelirer said. "He's very knowledgeable. He's prepared. He truly is someone who is a role model."

After his nomination, Smith will have to be confirmed by the U.S. Senate, a process that could require several weeks.

Smith became chief judge of the district court in January and sits in Pittsburgh and Johnstown.

He was out of town yesterday and couldn't be reached. Staff members said they knew he was a candidate for the circuit court but said they didn't know he was soon to be nominated.

White House spokesman Scott Stanzel declined to confirm that Smith would be nominated but said the administration is moving swiftly to fill judicial vacancies.

"The president is moving forward with selecting candidates for judicial slots, selecting candidates who are of high character who have wide experience in the judicial system," Stanzel said. "President Bush has nominated judges at a record pace for a president in his first year."

Before the August congressional recess, Bush had nominated 44 federal circuit and district court judges, compared with former President Ronald Reagan's 13 nominations in 1981, the eight nominations in 1989 by Bush's father, and former President Bill Clinton's 13 in 1993, Stanzel said.

So far this year, the Senate has confirmed four of Bush's choices.

Of the 179 circuit judgeships nationwide, about 31 are vacant. There are 68 seats unfilled in federal district courts, Stanzel said.

Santorum said the lengthy background-check process for nominees has slowed the administration's effort to advance nominations. "They're so backed up because they can't get their background checks [completed] in a prompt fashion," he said. "It's just gotten more and more complex as time went on."

For years, U.S. District Court here has been handling its caseload with three vacancies in the 10 full-time judgeships it is supposed to have. The problem appears likely to get worse if new judges aren't appointed soon.

In addition to Smith's likely departure, Judge Donald Ziegler will go on senior status in October and Judge William Standish has said he'll take senior status in March -- leaving a total of six vacancies.

For years, judicial appointments have languished nationwide as nominees were held up in partisan disputes in Washington. Many of Clinton's nominees never even received a hearing.

When Bush assumed the presidency, Senate Judiciary Committee Chairman Orrin Hatch, R-Utah, seemed poised to offer a smoother ride to Bush's nominees. But James Jeffords, I-Vt., bolted from the Republican Party and handed control of the Senate to the Democrats.

"Everything was going swimmingly" until Jeffords' defection, said William J. Green, a GOP consultant based in Pittsburgh. "That plowed up everything."

The delay in getting local judgeships filled was rooted in a political dispute between Clinton and Pennsylvania's Republican senators, Santorum and Arlen Specter.

U.S. District Judge Robert Cindrich, a member of the bench in Pittsburgh, was among those nominated by Clinton for the 3rd Circuit. Clinton also nominated then-U.S. Attorney Harry Litman, Allegheny County Common Pleas Judge David Cercone and Downtown attorney Lynette Norton for district judgeships.

None of them cleared the Senate.

Santorum has complained that the White House violated an agreement that for every three nominations the president made, he and Specter would get one.

This spring, a merit selection committee prepared a list of judicial nominees for Bush. Although the list is confidential, these names are believed to be on it: Joy Flowers Conti and Arthur J. Schwab, both attorneys at the Downtown firm Buchanan Ingersoll; Alexander H. Lindsay Jr., a Butler attorney; Allegheny County Solicitor Terry McVerry; and Cercone.

Cercone, Schwab and McVerry didn't return calls. Conti and Lindsay said they couldn't comment.

Smith, a federal judge since 1988, has served as chief judge since January, replacing Ziegler in that role. By statute, the chief judge serves a seven-year term.

Smith started his law career in Altoona with the firm Jubelirer, Carothers, Krier & Halpern, and later became a managing partner there. During his years in private practice, he also served as an assistant district attorney in Blair County and a special assistant attorney general of Pennsylvania. In the early 1980s, he helped lead a grand jury investigation into organized crime in Blair County.

After serving as district attorney from 1983 to 1984, he was appointed judge in Common Pleas Court in 1984 and was elected to a full term the next year. In 1987, he was appointed administrative judge of the court.

Senators: Bush Intends to Nominate Bankruptcy Judge Julie Robinson

By Libby Quaid
The Associated Press
Friday, September 7, 2001

U.S. bankruptcy Judge Julie A. Robinson is officially President Bush's choice to be the next federal judge in Kansas, the two Kansas senators said.

The White House expects to announce Robinson's nomination on Monday, according to GOP Sens. Sam Brownback and Pat Roberts. Bush has appointed several women to serve on federal appellate courts, but Robinson would become his first black female nominee. Robinson, 44, has been a federal bankruptcy judge in Topeka, Kan. since 1994 and is a former assistant U.S.

attorney in Kansas City, Kan. She holds a 1981 law degree from the University of Kansas.

"I was deeply impressed with both her professional qualifications and her absolute fitness for elevation to the federal District Court in Kansas," Brownback said Friday. "I have known her to be a person of the highest honor and integrity, as well as a fine lawyer and jurist."

The president chooses nominees but tends to follow the wishes of his party's senior senator. That means Brownback named Robinson and two others for the post. The other candidates were Wichita attorney Eric Melgren, a political ally and contributor of Brownback's, and Overland Park attorney Bruce Keplinger.

Roberts said Robinson has "a long list of awards and honors."

"With her record, not only as a bankruptcy judge but as an individual person, she can certainly avoid a confirmation logjam," the senator said. "I believe very strongly that she's going to be one of the chosen few who we might be able to get confirmed on more of a fast track than all the rest."

Both parties have skirmished over judicial nominees since the Democrats' Senate takeover in June. Republicans complain the Senate has not moved fast enough, while Democrats have labeled some nominees as too divisive.

The last vacancy in Kansas went in 1999 to U.S. District Judge Carlos Murguia, who had been a Wyandotte County district judge.

The current opening came when U.S. District Judge Thomas Van Bebber took senior status. President Clinton tried unsuccessfully last year to name attorney Gary Sebelius, who is married to Democratic state Insurance Commissioner Kathleen Sebelius. But his nomination died because Brownback apparently refused to let it move forward.

White House Meets With Sutton's Foes; Wary about 6th Circuit Nominee and the Administration's ADA Efforts, Disability Rights Groups Air Their Concerns

By Jonathan Ringel
Legal Times
Monday, September 10, 2001

In May they marched to the White House in protest. Three months later they were invited inside the gates to air their grievances.

So it went for about 10 disability rights advocates who bitterly oppose the nomination of states' rights expert Jeffrey Sutton to the U.S. Court of Appeals for the 6th Circuit.

The Aug. 23 meeting was unusual because foes in the judicial nominations battle rarely meet face to face to discuss their differences. The ideological fights usually take place over the

airwaves and on the
Senate floor, and are not taken up in the Indian Treaty Room at the Old Executive Office Building.

Sutton has drawn the ire of the disabled community for arguing a series of Supreme Court cases that scaled back civil rights laws, including the landmark Americans With Disabilities Act.

Sutton's arguments and the Court's rulings were based on federalism, the principle that the Constitution limits Congress' power over the states. The high court is deeply divided over the subject, splitting 5-4 in case after case, including last term's ADA matter, Board of Trustees of the University of Alabama v. Garrett.

From descriptions of the meeting, the disability rights advocates and the Bush administration sound similarly at odds over Sutton, a partner at the Columbus, Ohio, office of Jones, Day, Reavis & Pogue.

But neither side expected to change the other's minds.

"We weren't going in there for the purpose of convincing the disability rights groups to change their public position on any nominee," says Brad Berenson, the associate White House counsel who argued the administration's point of view. "The agenda was broader than that."

The two-hour meeting went beyond judicial selections and into the administration's enforcement of the remaining parts of the ADA and other civil rights laws.

Berenson also says that he wanted to explain that while federalist principles may occasionally conflict with acts of Congress-and the policy goals of the disabled rights community-that does not mean that
President George W. Bush or his judicial nominees are hostile to disabled people.

"It's just a matter of applying the law," says Berenson, who once clerked for Justice Anthony Kennedy.

Jim Ward of ADA Watch, an umbrella organization of disabled rights groups, says, "It's great that they're reaching out to us."

But, Ward adds, "We can't have these intellectual debates about federalism without putting a human face on how people with disabilities are impacted" by Sutton's victories.

For example, Ward notes that Patricia Garrett, the plaintiff in the ADA case, sued the state of Alabama because she lost her job as a nurse at a state hospital after taking work off to get breast cancer treatments. Garrett lost her bid for redress when the high court majority said Congress overstepped the 11th Amendment by subjecting states to ADA lawsuits.

Berenson told the group that neither Sutton nor other nominees are picked because they pass any

litmus test-on anything from abortion to their views on federalism.

Responds Ward: "They say ideology is not a factor, but they're putting forth nominees who strongly support federalist views."

Other Bush nominees with particularly conservative reputations give the ADA community pause. Ward says he personally is concerned about Judge Terrence Boyle for the 4th Circuit, Judge Carolyn Kuhl for the 9th Circuit, Ohio Supreme Court Justice Deborah Cook for the 6th Circuit, and appellate advocate Miguel Estrada for the D.C. Circuit.

None has received a hearing before the Democrat-controlled Senate Judiciary Committee.

Sutton and Cook also have a separate problem: a fight over 6th Circuit nominees going on between the White House and the two Democratic senators from Michigan, which is one of the states covered by the 6th Circuit.

Andrew Imperato of the American Association of People With Disabilities says he pressed Berenson and Alex Acosta, deputy assistant attorney general for civil rights, for the administration's point of view of the Garrett decision.

If Bush views Garrett as wrongly decided, says Imperato, "we can work together to build a fire wall around this decision."

However, Imperato says, Berenson and Acosta weren't prepared to discuss the administration's stance on that specific case. Further meetings with Acosta and Ralph Boyd, assistant attorney general for
civil rights, are in the works.

The contacts between the White House and advocates for disabled people started earlier this summer, when Berenson saw in The Washington Post that Imperato, a fellow alum of Beverly Hills High and
Yale University, was a leading ADA advocate.

Justin Dart, a longtime disability rights activist who helped get the ADA passed and signed by Bush's father in 1990, calls the meeting "a very good example of democracy in action."

Nonetheless, he adds, "I'm deeply concerned about the possible appointment of people like Jeff Sutton and [Justices] Clarence Thomas and Antonin Scalia who don't believe in . . . the authority of the government of the United States to protect the rights of its citizens no matter what state they live in."

Rules of the Game

Before getting to the business of confirming any more judicial nominees, senators last week argued again over how they should go about doing so.

On Sept. 4, Sen. Charles Schumer (D-N.Y.) held his second judiciary subcommittee hearing on the nominations process and declared that the nominees themselves bear the burden of proving their worthiness for lifetime appointments to the bench.

"We require parties who appear before a court to prove their case," said Schumer. "It is not unreasonable to ask those who come before the Senate seeking a lifetime appointment to the federal bench to do the same."

Schumer and Sen. Dick Durbin of Illinois represented the Democrats at the hearing, which featured liberal and conservative scholars discussing how the Senate has and should approach confirmations. While the experts addressed the issue, the hearing was instructive mostly as an illustration of the partisan divide among Judiciary Committee members as the nominations process heats up.

Five Republicans showed up-Sens. Jeff Sessions of Alabama, Strom Thurmond of South Carolina, Orrin Hatch of Utah, Mitch McConnell of Kentucky, and Jon Kyl of Arizona. Each declared in his own way that the Senate should generally defer to the president's choice of nominees.

"The most significant burden borne by a candidate for a judgeship is to convince the president that he or she is the best person for the job," said Hatch. "In other words, the burdens of the judicial nomination process do not begin when the Senate Judiciary Committee receives the official nomination from the White House."

Schumer will get a chance to test out his new burden of proof Sept. 13, when he presides over a Judiciary Committee hearing of U.S. District Judge Barrington Parker Jr., who's been nominated for a seat on the 2nd Circuit.

In 1994, then-President Bill Clinton nominated Parker to the federal trial court for the Southern District of New York. Bush tapped Parker for the 2nd Circuit in May, a move seen largely to placate Democrats who had been pressing for the White House to moderate his judicial picks.

On Sept. 6, the Senate Judiciary Committee moved two Bush nominees-Sharon Prost for the Federal Circuit and Reggie Walton for a district court seat in the District of Columbia-ahead for votes by the full
Senate.

If confirmed, they would be the fifth and sixth of Bush's 48 nominees approved. One more has had a hearing, not including Parker and any other nominees who get a hearing this week.

Bush to Nominate Mahan for Federal Bench

By Steve Tetreault
Las Vegas Review-Journal

Friday, September 7, 2001

President Bush today will nominate District Judge James C. Mahan to fill the final vacancy on Nevada's expanded federal court bench, Sen. John Ensign said.

Ensign said he was informed Thursday that Mahan, his pick for the post, has passed White House muster. Mahan has been a Clark County District Court judge since February 1999. 'The White House is going to send his name to the Senate Judiciary Committee,' Ensign said. 'This very much pleases us. He will make an incredible federal judge.'

Mahan's nomination completes White House activity on Nevada judicial and law enforcement vacancies, Ensign spokesman Traci Scott said.

On Wednesday, Bush formally nominated Reno prosecutor Daniel G. Bogden to become U.S. attorney for Nevada. On Aug. 2, Reno attorney Larry Hicks was nominated for a U.S. District Court judgeship.

The Senate Judiciary Committee has yet to act on any of the nominees. Chairman Patrick Leahy, D-Vt., has said he expects to move noncontroversial candidates this fall.

None of the Nevada picks has drawn controversy, and enjoy support from both Ensign, R-Nev., and Sen. Harry Reid, D-Nev.

'I feel very good about our chances,' Ensign said, predicting the new officers should be in place by November.

'Nothing moves fast in the Senate,' he said.

'Jim Mahan is exceptionally well-qualified to serve as a federal judge,' Reid said. 'I am pleased the president has forwarded his name to the Senate.'

Mahan was the local court's highest-rated jurist in the 2000 Judicial Performance Evaluation, conducted by the Las Vegas Review-Journal and the Clark County Bar Association. Ninety-five percent of the participating lawyers said he should be retained.

A White House spokesman said he could not confirm Mahan's nomination.

'The White House makes announcements when we have announcements to make,' press officer Ken Lisaius said.

Mahan also got the news on Thursday.

'It's a pinnacle for a judge to serve on the federal bench,' Mahan, 57, said from his chambers on Thursday. 'It's a tremendous honor and it's also humbling, because there are a lot of qualified people.'

As part of the Bush administration's vetting process, Mahan was called to the White House in May to meet with Alberto R. Gonzales, counsel to the president.

'He asked my philosophy about being a judge, how do you reach decisions, how do you use your law clerks,' Mahan recalled. He said he was not asked his opinions on specific cases.

'They didn't ask me about any specifics, and for a judge that would be unethical for me to say,' Mahan said.

Op/Eds

End the Impasse, Put a Judge in the Federal Courthouse

By Donald Russo
The Morning Call
Saturday, September 8, 2001

After another time-consuming and hair-raising trip to the federal courthouse in Philadelphia, having once again survived the rigors of the Schuylkill Expressway, I had to reflect upon the present state of our beautiful federal courthouse. There it stands, in all its opulence, magnificence and glory, at the corner of Fifth and Hamilton streets in Allentown. Nearly $20 million of taxpayers' money was poured into this striking edifice. Sadly, it now serves only as a monument to the poisonous state of American public affairs. The muted interior of this otherwise awe-inspiring structure reminds us of the price we pay for
elevating partisan gamesmanship over constitutional concerns.

Unlike the building itself, the behind-the-scenes maneuvering to appoint a judge to work in it has not been pretty. Pennsylvania has two Republican Senators, Arlen Specter and Rick Santorum. Mr.
Santorum's fingerprints can be found all over one of the earlier debacles that prevented the Lehigh Valley from getting a replacement for outgoing Chief Judge Edward N. Cahn. Beyond that, President Clinton's pique over former U.S. Rep. Paul McHale's vocal revulsion for his Oval Office antics
signaled the second death knell to any follow-up presidential efforts to appoint a federal judge for Allentown. In the midst of all of this, several excellent local jurists remain waiting in the wings. Exactly what, if anything, is really going on down there is somewhat murky to an ordinary citizen such as myself. Perhaps the politically powerful Sen. Specter could inform his Lehigh Valley constituency where this matter now stands in his Judiciary Committee. Are we getting a judge, or not? If so, will it be in my lifetime?

Until the recent party switch of Sen. Jim Jeffords of Vermont, Sen. Specter was the chairman of the Senate Judiciary Committee. If anyone is in a position to illuminate us about the current status of this matter, it would be a senator who has his finger on the pulse of the committee that handles judicial appointments. But unless I have missed something over these last few months --

there have been no informative press releases on the subject emanating from Sen. Specter's office. Closer to home, Rep. Pat Toomey claims that this is strictly a Senatorial matter.

Amid the silence, however, it is not as if the U.S. Congress is ignoring the Allentown federal courthouse. Legislation will be implemented naming the building after Judge Cahn.

This is a fitting tribute to a top-shelf jurist and an all-around gentleman. Judge Cahn was always fair, compassionate, and courteous to the lawyers who appeared in his courtroom. Even when he ruled against one of my clients, I always felt that he had listened to my arguments and had ruled on them according to his own interpretation of the law.

Everyone can agree that naming the courthouse after one of the Lehigh Valley's own was a nice touch. After sending out a heartfelt thank you to the politicians in Washington who came up with the idea, though, one is tempted to stop, and say: Excuse me Congress, didn't you forget something?

As a result of the continuing impasse, federal cases arising in Lehigh County are being assigned to federal judges sitting in Philadelphia. This burns up time, energy and money, and it is an imposition to litigants. Local witnesses must be transported to Philadelphia, hotel rooms must be rented, and the overall logistics involved in trying a case down there become problematic and attenuated. Local companies involved in federal cases lose more money because their personnel have to spend more
time away from the office. And, Lehigh Valley residents who get picked for federal jury duty now have little chance of being selected for an Allentown trial.

Last but not least, the judges themselves are not happy with this current state of affairs. More and more cases are being assigned to fewer judges. This is wrong.

Try this: do an Internet search under findlaw.com. After reading the average federal court decision, you will get a feel for the hours of research and the extraordinary amount of mental effort a judge and his or her staff will expend to write an opinion. How many opinions can a judge be expected to hand down in a year? And, if a judge is forced by circumstances to start churning them out like cheeseburgers at McDonald's, what is going to happen to the quality of the work? This situation guarantees that everyone comes out a loser.

The impasse also forces the court to set aside a specific rule of civil procedure, known as Local Rule 40.1(b). This rule states that parties in Lehigh and Northampton counties must have their cases heard in their home counties. Rule 40.1(b) is not being enforced, and it appears that no one has any good ideas what to do about it. To borrow a term that you are not going to find in any law dictionary, the Lehigh Valley is being dissed.

Perhaps this is something to bear in mind when Sens. Specter and Santorum come begging for your votes the next time they are up for re-election. President Bush also must nominate a moderate judge who will be acceptable to Senate Democrats. The President has to realize that he can no longer pay abject homage to the right-wing fringe of his party that wants to impose a

Jesse Helms-type litmus test on all his judicial appointments.

Schauder, Andrew

From: Schauder, Andrew
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Subject: judicial media review
Attachments: Judicial Media Review 10-09-01.wpd

Please see attached review

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General Judicial Articles

Terrorism May Alter Bush, Court Mood on Federalism

By Jonathan Ringel and Jonathan Groner
Fulton County Daily Report
Friday, October 5, 2001

EXCERPT

Judges: Business as Usual

While the events of Sept. 11 abruptly altered Washington policy agendas, the politics over the federal judiciary-for better or worse-barely have been affected.

On Thursday, the Democrat-controlled Senate Judiciary Committee hosted its second nominations hearing since the attacks. Just as before, Judiciary Chairman Patrick Leahy, D-Vt., favors those nominees who are not mired in controversy, while administration officials continue to grumble that Leahy's pace could be faster.

To be sure, putting forth a united front to respond to the terrorist attacks has eclipsed any public bickering among key players at the White House, the Justice Department and the Senate Judiciary Committee. As an example, last week Leahy warmly welcomed John Ashcroft to a hearing on anti-terrorism legislation, despite having been one of 42 Democrats who voted against Ashcroft's confirmation to be attorney general.

But the bipartisan spirit in Congress-which has put off debates on hot-button issues such as campaign finance reform, "faith-based" social programs, and changes in Social Security-has not spilled over into judicial politics.

Sheldon Goldman, a University of Massachusetts political science professor who has written extensively on judicial politics, says that right now would be a difficult time to deal with a contentious and ideological nomination.

"We've got to hope that a Supreme Court justice doesn't die," Goldman says. "A vacancy would make bipartisanship very fragile."

Since taking over the Judiciary Committee in June, Leahy has emphasized noncontroversial nominees who enjoy broad support from both Democrats and Republicans.

That approach is "all the more important now," says David Carle, Leahy's spokesman. "To take a controversial nomination would suck the oxygen out of the process and reduce the number of nominees we can work on."

But one administration official says that Leahy let the administration know back in August that consensus nominees would fare better than controversial picks such as Jeffrey Sutton, whom President George W. Bush has selected for a seat on the 6th U.S. Circuit Court of Appeals, or Michael McConnell, whom Bush tapped for the 10th Circuit.

President Bush announced both nominees at a White House ceremony in May.

"Leahy never had any intention of having hearings on those nominees," says the official.

Accordingly, the administration official figures it is highly unlikely that Sutton, vigorously opposed by disability rights groups, and McConnell, opposed by proponents of abortion rights and a church-state separation group, will get a hearing this year.

Similarly, D.C. Circuit nominees John Roberts Jr., a Hogan & Hartson partner opposed by abortion rights groups, and Gibson, Dunn & Crutcher's Miguel Estrada may have to wait until next year.

Slated for this week's hearing was New Orleans U.S. District Judge Edith Brown Clement, nominated for the 5th Circuit in May, and some district court nominees who had not been scheduled by press time.

Clement enjoys the support of both home-state senators, Democrats John Breaux and Mary Landrieu.

Under the Democrats' control, the Senate has confirmed three nominees to the courts of appeals and three to district courts. Two of those judges were confirmed by the full Senate after the terrorist attack: Sharon Prost for the U.S. Court of Appeals for the Federal Circuit and Reggie Walton for the U.S. District Court for the District of Columbia. Two more nominees, one each for the trial and appellate courts, are waiting for a vote by the Judiciary Committee.

Altogether, 53 Bush nominees are pending. There are 109 judicial vacancies.

White House Counsel Alberto Gonzales pledged over the summer that the administration would nominate close to 100 judges by the end of the year. That effort could be hindered by the terrorism crisis as resources at the Federal Bureau of Investigation, which conducts background checks, are diverted to the investigation.

One judicial nominee has been affected as well. Nebraska Deputy Attorney General Laurie Smith Camp, nominated for a district court seat, missed her Sept. 13 hearing because flights were grounded and she could not get to Washington. It is not clear when she will be rescheduled.

Hearings Start for Federal Judge Nominee

By Matt Kelley
Omaha World-Herald
Friday, October 5, 2001

So far, so good for U.S. District Court judge nominee Laurie Smith Camp, who won bipartisan plaudits Thursday during testimony before a Senate committee.

Camp, nominated by President Bush to become Nebraska's first female federal judge, was introduced to the Senate Judiciary Committee by Nebraska Sens. Chuck Hagel, a Republican, and Ben Nelson, a Democrat.

"This is a unique candidate," Hagel told the committee, "a well-qualified candidate."

Barring unforeseen problems, Camp's nomination seems headed for Senate approval later this year.

Currently, Camp serves as a top aide to Nebraska Attorney General Don Stenberg, a stalwart Republican who has mounted Senate campaigns against both Nelson and Hagel.

On Thursday, Nebraska's senators praised Camp's professionalism and legal abilities. Nelson, who ran against Stenberg in his 2000 Senate race, noted that he worked extensively with Camp during his eight years as governor of Nebraska.

"I can attest to the quality of her work and the keenness of her intellect," Nelson said.

Camp's testimony before the committee was limited mostly to short answers to a few questions regarding privacy rights and congressional efforts to prevent terrorism.

Congress Back to Finger-Pointing Normal

By James Brosnan
The Commercial Appeal
Monday, October 8, 2001

EXCERPT

Congress is returning to normal. Partisan finger-pointing is back, at least on home-front issues.

That isn't always unproductive, but it slows the process. Commercial airplanes may be packed again before Congress passes the security measures that are supposed to reassure passengers. For a couple of weeks after the Sept. 11 terrorist attacks, President Bush and congressional leaders were remarkably adept at holding sniping to a minimum while they forged deals on a $40 billion emergency spending bill and a $15 billion airline rescue package.

But Atty. Gen. John Ashcroft signaled a return to the old ways last week when he joined Republican senators for their weekly lunch and afterwards complained about the "slow pace" of anti-terrorism legislation in the Senate Judiciary Committee.

Senate Minority Leader Trent Lott (R-Miss.) also was upset about what he called the committee's "slow walking" of judicial nominees, so he decided to block votes on appropriations bills.

Part of Lott's pique is personal. Democrats are holding up a final vote on the nomination of Mississippi Supreme Court Justice Mike Mills to the U.S. District Court in North Mississippi because of objections from abortion rights groups. And the Judiciary Committee hasn't even scheduled a hearing on the nomination of U.S. Dist. Judge Charles Pickering of Laurel to the Fifth Circuit Court of Appeals in New Orleans.

Republican leaders also objected to a bipartisan plan to make baggage screeners at airports federal employees, as well as Democratic attempts to add benefits for laid-off aviation employees and security upgrades for Amtrak to the airport security bill. So they prevented action on the measure in both the House and Senate.

Senate Majority Leader Tom Daschle (D-S.D.) escalated the partisan rhetoric.

"I'm disappointed, obviously, that our Republican colleagues have chosen what has been clearly an obstructionist approach," Daschle told reporters.

Daschle said he would hold off on moving Ashcroft's anti-terrorism package until Congress acts on the airport security bill.

Senate Republican Policy Committee Chairman Larry Craig (R-Idaho) responded: "The reason we are not debating this issue on the floor this afternoon is not a matter of obstruction; it is a matter of getting it right before it is brought to the floor."

Officials Propose Federal Judge, U.S. Marshals

The Associated Press
Friday, October 5 2001

President Bush plans to nominate 327th state district judge Philip Martinez to be a U.S. district judge for Texas' western district.

Martinez had been recommended to Bush for the seat by Texas Sens. Phil Gramm and Kay Bailey Hutchison in June. Martinez, 43, has served as the 327th district judge since 1991. He graduated from the University of Texas-El Paso in 1979 and received his law degree from Harvard Law School in 1982.

After he is formally nominated by the president, the Senate must approve his nomination.

Through the week before the Sept. 11 attacks on the World Trade Center and Pentagon, Republicans had been complaining that the Senate was not moving fast enough on Bush's nominations.

The federal bench vacancy opened after U.S. District Judge Harry Hudspeth decided to take senior status.

Also Friday, Gramm and Hutchison, both Republicans, recommended four men to become U.S. marshals for the four judicial districts of Texas.

Those recommended are Fort Worth Deputy Police Chief Randy Ely for the northern district; Assistant U.S. Attorney Greg Anderson, western district; deputy U.S. Marshal John Moore, eastern district; and former Drug Enforcement Special Agent Ruben Monzon, southern district.

The responsibilities of U.S. marshals include pursuing and capturing federal fugitives, protecting federal witnesses, transporting and holding in custody criminal defendants and convicts, providing courtroom security and seizures and sales of criminal assets.

Ely, 49, oversees about 400 personnel and is responsible for administering a $29 million budget. During his career in Fort Worth, Ely has served as a detective, sergeant, lieutenant and captain. Ely earned his bachelor's degree in criminal justice and masters in urban affairs from the University of Texas at Arlington.

Anderson, 48, of San Antonio, has been a prosecutor in the western district for 14 years. He also has worked as a special agent of the U.S. Bureau of Alcohol, Tobacco and Firearms, a criminal investigator for the Immigration and Naturalization Service and a highway trooper for the Texas Department of Public Safety. He earned a bachelor's degree from Texas Tech and his law degree from Texas Tech School of Law.

Moore, 50, of Tyler, has served in the marshal office in the eastern and northern districts for more than 18 years. A former Texas DPS trooper, he also was a patrol officer with the Amarillo, Plainview and Littlefield police departments and a deputy sheriff in Potter County (Amarillo). He also had a 15-year military career. He earned a bachelor's degree in occupational education and criminal justice from Wayland Baptist University.

Monzon, 58, of Houston, worked with the Drug Enforcement Administration for 26 years. He was a DEA chief inspector and agent in charge of the Houston office from 1990-95, when he retired. Recently, he had worked in private security. Monzon earned his bachelor of arts degree from Hardin-Simmons University in Abilene.

Bush Will Name Judge Gibbons to Appeals Bench

By James Brosnan
The Commercial Appeal
Saturday, October 6, 2001

President Bush said Friday he will nominate U.S. Dist. Judge Julia Gibbons of Memphis to the Sixth Circuit Court of Appeals in Cincinnati.

Her husband, Dist. Atty. Gen. Bill Gibbons, said the nomination would not affect his decision about whether to run for county mayor. The position does not require Judge Gibbons to move. The Sixth Circuit bench is one step below the Supreme Court and hears appeals from Tennessee,

Kentucky, Ohio and Michigan. Seven of its 16 judgeships are vacant.

Judge Gibbons said she was "honored to have been nominated" and then, as the White House requires of nominees, declined further comment until senators have a chance to question her at a confirmation hearing.

Bush only announced his "intention" to nominate Gibbons, so it could be days before her paperwork reaches the Senate and many weeks more until she gets a hearing and a vote.

This week, GOP senators began holding up action on appropriations bills to protest what they perceive as slow action by the Judiciary Committee on Bush's nominees.

Sen. Bill Frist (R-Tenn.) said he and the state's other Republican senator, Fred Thompson, will try to move her nomination quickly through the chamber.

"She's an outstanding person and jurist and I'm confident she will serve the court with dignity and distinction," said Thompson.

Gibbons, 50, was born in Pulaski, Tenn., and graduated from Vanderbilt University in 1972. She received her law degree from the University of Virginia.

In 1983, Gibbons was nominated by then-President Ronald Reagan for the district court seat vacated by Judge Harry Wellford after he went to the Sixth Circuit.

As a district judge, she ordered the violence-plagued Shelby County jail system to be put under court supervision in 1989 and in 1990 upheld a local ordinance restricting the locations of topless bars and adult bookstores. She rejected a new trial for convicted cop-killer Philip Workman and gave a life sentence to Auburn Calloway for trying to hijack a FedEx plane.

Her service has not been without controversy.

The federal Equal Employment Opportunity Commission has asked Gibbons to recuse herself from a case involving accusations of sex and race bias at AutoZone. The EEOC questions whether the judge can be fair because former AutoZone chairman J. R. 'Pitt' Hyde III was finance chairman of Bill Gibbons's campaign for district attorney general in 1998.

In Memphis, news of her pending nomination drew praise from legal circles.

"She has a keen mind and a good work ethic. I think she would be an excellent nominee," said Pat Arnoult, president of the Memphis Bar Association.

Leo Bearman Jr., a prominent Memphis trial lawyer, said Gibbons is a highly respected, experienced trial judge with a great temperament and ability.

The nomination comes as the normal complement of five federal judges in the Western District of Tennessee is down to three: Gibbons, Bernice Donald of Memphis and James D. Todd of Jackson. U.S. Dist. Judge Jon P. McCalla is in the second month of a six-month leave of absence, taken to avoid a hearing on judicial misconduct charges.

U.S. Dist. Judge Jerome Turner died on Feb. 12, 2000. Thompson and Frist recommended Memphis lawyer Hardy Mays for Turner's position, but Bush has yet to act.

LA. Court Nominee Quizzed on "Junkets"

By Joan McKinney
The Advocate
Monday, October 8, 2001

The question of "judicial junkets" was a tiny little ripple in the very calm waters at the U.S. Senate Judiciary Committee last week, when Louisianan Edith "Joy" Brown Clement was questioned about her nomination to the 5th U.S. Circuit Court of Appeals.

Nothing is going to capsize Clement's boat. She'll be approved by the committee and confirmed by the full Senate, probably within a few weeks.

However, some Judiciary Committee members are trying to force all judgeship nominees on record as regards travel financed by special interests with cases before the federal courts. The private-property movement, in particular, has been aggressive about inviting federal judges to retreats where people debate the nuances of the U.S. Constitution and its provisions on property ownership and government "compensation" when property is seized for public uses.

Clement is a federal district judge based in New Orleans. Democratic Sen. Herb Kohl of Wisconsin noted that, on her disclosure forms submitted to Judiciary Committee, Clement reported "attending a number of these seminars in recent years." The seminars "are one-sided" and are "funded by groups with a stake in the outcome of court cases," Kohl said. So, will Clement keep attending such seminars, he asked. And what does she think about pending legislation, sponsored by Massachusetts Democrat Ted Kennedy and others, "to ban these types of (travel) opportunities" for federal judges?

Clement didn't answer regarding the proposed ban, and essentially said that she may continue to accept the subsidized travel. In her experience, Clement said, the seminar speakers are "very diverse" and the discussions are "very broad-based." In the future, "I would evaluate the opportunity if presented with the invitation," she said.

U.S. Sen. Mitch McConnell, R-Ky., a leader of Congress' property-rights bloc, said, "I want to compliment you for attending the seminars. I also want to compliment you for not ruling them out in the future."

State District Judge to be Bush Nominee

The Fort Worth Star-Telegram
Saturday, October 6, 2001

State District Judge Philip Martinez of El Paso will be nominated by President Bush to a federal judgeship in the Western District of Texas, the White House announced Friday.

The U.S. Senate must confirm the nomination. Martinez was out of town on Friday and could not be reached to comment.

U.S. District Judge David Briones, currently the only federal judge in El Paso, has been using federal judges from districts in other states to help him chip away at a huge caseload, mostly of drug-smuggling and immigration defendants. Martinez, 44, has served as the state's 327th District judge in El Paso since 1991.

"With his experience, he will be able to start right away," Briones said. "We'll have a docket waiting for him."

Martinez was recommended for the position by Sens. Phil Gramm and Kay Bailey Hutchison, both Texas Republicans.

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, October 11, 2001 4:04 PM
To: Newstead, Jennifer; Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw'; 'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; 'Heather_Wingate@who.eop.gov'; 'James Carroll'; Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw'; 'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; 'Ziad_S._Ojakli@who.eop.gov%inetgw'
Subject: FW: Hearing, Thursday, October 18 @ 2:00 pm

-----Original Message-----
From: Joy, Sheila
Sent: Thursday, October 11, 2001 3:20 PM
To: Dinh, Viet; Newstead, Jennifer; Benedi, Lizette D; Suit, Neal; Scottfinan, Nancy
Subject: Hearing, Thursday, October 18 @ 2:00 pm

Charles Pickering, 5th Cir
Larry Hicks, NV
Christina Armijo, NM
Karon Bowdre, AL,N
Stephen Friot, OK,W

Don't know who will chair but they are apparently trying to get Schumer

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, October 18, 2001 7:33 PM
To: Schauder, Andrew; Newstead, Jennifer; Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw'; 'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; 'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw'; 'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; 'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 10-18-01.wpd

Please see attached review

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Thursday, October 18, 2001

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"NARAL Opposes Confirmation Of Charles Pickering and Tactic Of Blocking Appropriations Bills For Court- Packing Plan," *NARAL Press Release*, October 16, 2001 www.naral.com/mediaresources/press/2001/pr101601_pickering.html 26

"Potential Closed-Door Hearing on Judicial Nominees Today "Would be Undemocratic and Unacceptable," Says PFAW's Neas" *People for the American Way*, October 18, 2001 **Press Release Link:** www.pfaw.org/news/press//2001-10-18.331.phtml **Report Link:** www.pfaw.org/issues/democracy/judicial_10-17.pdf 26

General Judicial Articles

Clash Coming on GOP Showdown for Bush Judicial Nominees

CNN.com
Wednesday, October 17, 2001

A battle over President Bush's judicial nominations is intensifying in the Senate.

Republicans have been blocking legislation to call attention to the small number of judges

approved by the Senate this year.

Senate Majority Leader Tom Daschle, D-South Dakota, planned to force a vote on a foreign aid bill past the Republicans on Wednesday. He says Democrats are doing what they can to get as many judges through as possible.

Republicans disagree, and say they have enough votes to continue stalling the Senate until they get a guarantee that senators will accept more judges before leaving for the year.

The Senate Judiciary Committee has a hearing Thursday for an U.S. Appeals Court judge and four U.S. District Court judges, Daschle said.

"I think we're doing all that we can," he said. "The point is that, as much as our Republican colleagues have complained, their tactic is counterproductive."

The Democratic-led Senate has approved eight judges this year, with 52 nominees still pending. There are 110 vacancies in the federal judiciary system, including 39 positions that have been open so long the courts have classified them as "judicial emergencies."

"I don't think we're doing the job, and I think the American people are going to suffer because of it," said Sen. Orrin Hatch of Utah, the top Republican on the Senate Judiciary Committee.

To call attention to their point, Republicans have been holding up the Senate's consideration of the foreign aid bill. It is one of the 13 spending bills that were supposed to be finished by Oct. 1, the beginning of the government's fiscal year, but were not.

"Regretfully, this seems to be the only tool with which we are left to try to advance the president's judicial nominations," said Sen. Mitch McConnell, R-Kentucky.

The government is operating in the meantime under the same priorities established by former President Clinton and lawmakers a year ago.

Sen. Jon Kyl, R-Arizona, says Democrats claim that they've been too busy taking care of other Senate business to get more judges through. "For those who say we are just so busy doing other things, then I am forced to say, fine," Kyl said. "Then let's stop until we can get some of these nominations to the floor for a vote and acted on."

Democrats and Republicans are accusing each other of hurting America's war against terrorists because of the fight over judicial nominees.

Democrats say the war effort needs the money in the foreign aid spending bill.

"Because of the Republican filibuster, $42 million that would be available to help countries strengthen their borders is not being provided; $175 million to fight infectious diseases, as we fight the war in Afghanistan, is not being provided; $5 billion in direct military assistance to

those allies in the region is not being provided; and $255 million to assist Afghan refugees is not being provided," Daschle said.

Republicans say the anti-terrorist efforts in America need judges to work effectively. The House and Senate are working on an anti-terrorism bill to give law enforcement more power to track down and prosecute suspected terrorists.

But "law enforcement can't make cases to empty courtrooms," Hatch said.

Republicans, Leahy Continue to Clash

By Paul Kane
Roll Call
Thursday, October 18, 2001

Despite growing anxiety about the threat of anthrax, Senate and House leaders said yesterday that business will continue to proceed as normally as possible and that there will still be serious policy disputes over critical issues in the coming days and weeks.

"We will not let this stop the work of the Senate," Majority Leader Thomas Daschle (D-S.D.) said at a press conference in which he announced that 31 individuals, mostly members of his staff, had tested positive for anthrax exposure.

As if to prove the point, the Senate went ahead and overwhelmingly approved the Interior appropriations conference report late Wednesday afternoon and is expected to pass the military construction conference report today. And with serious prodding from the White House, House and Senate negotiators were very close to reaching bipartisan consensus on an anti-terrorism package that would reconcile the previously vast differences between the bills passed by the two chambers, aides
said.

But the Senate remained gridlocked over how to move the remaining appropriations bills it needs to move to House-Senate conferences, as Republicans maintained that they would continue blocking the spending bills because of the slow pace on judicial nominations.

If anything, that dispute has grown more bitter and partisan in recent days.

Colorado GOP Sens. Wayne Allard and Ben Nighthorse Campbell this week accused Judiciary Chairman Patrick Leahy (D-Vt.) of threatening the future prospects of their home-state judicial nominees.

According to Allard, he and Campbell approached Leahy during a cloture vote Monday night on the foreign operations spending bill and asked the Vermont Senator if he could quickly bump up three
judicial nominees from their state close to the top of the list of nominees being considered.

At that point Leahy, who also chairs the foreign operations subcommittee, wanted to know if the pair was supporting the GOP blockade on appropriations, according to Allard. "Well, he asked, 'How did you vote on that bill?,'" Allard said.

"If I go ahead and vote for cloture, you'd move my judges to the top?" Allard recalled asking Leahy. "He said, 'Yep.'"

Campbell stood by that account of events yesterday, adding, "It's just unfortunate that Senator Leahy is holding up these nominations."

Leahy did not specifically deny the conversation with Allard and Campbell, but his staff hinted that the Colorado Senators may have misinterpreted comments that were intended to be a joke.

"He's one of the senators from the old school who does not discuss conversations with other senators," said David Carle, Leahy's spokesman. "But it's probably fair to say that if Senator Allard approached Senator Leahy right then to talk about any newly received nominations, the opportunity for irony would have been especially high."

Leahy plans to hold an executive meeting today in one of the meeting rooms off the Senate floor, since the regular hearing room in the Dirksen building will be closed. He expects the committee to approve five judicial nominations as well as 13 U.S. attorneys and one post related to the Justice Department.

After the executive meeting, the Judiciary panel plans to hold a nomination hearing for another four judges. Of those judicial nominees who will be approved or have their hearing, most come from states with Senators who voted against cloture on the spending bill.

"That kind of says it all," Carle said.

Some GOP Senators, however, said they view Leahy's comments to Allard and Campbell as part of an overall effort to slow the nomination process. "This is too important a process to play that kind of political game," said Sen. Jeff Sessions (R-Ala.), ranking Member on Judiciary's subcommittee overseeing the federal bench.

Sen. Larry Craig (Idaho), chairman of the Republican Policy Committee, said Leahy so far had made a "meager effort" in approving judges, eight of whom have been confirmed by the full Senate with almost another 50 awaiting action. Craig said Daschle has "failed to instruct" Leahy to pass more judges out of his committee, noting that the Majority Leader has forced chairmen to pass key bills out of their panels or risk having them brought to the floor without committee approval.

"I see that as a disconnect of leadership or at least an inconsistency," Craig said.

At Tuesday's GOP luncheon, at least half a dozen Senators stood up to complain in highly

personal terms about Leahy's handling of the judicial process, according to a GOP aide who was present.

Democrats, however, are standing solidly behind the Vermont lawmaker.

Daschle said Tuesday he was "very appreciative" of Leahy's work in handling the nomination process, saying any delays were due to paperwork problems and the White House's decision to not first vet
nominees through the American Bar Association, a process that now takes place once a nomination arrives on Capitol Hill.

"We're doing the best we can," he added.

Daschle also said there was nothing to negotiate about with Republicans and Senate Minority Leader Trent Lott (R-Miss.) as far as the pace of judicial nominees is concerned, setting up a potentially lengthy standoff over judges and appropriations. "We talk about it a lot, but there are no negotiations," he said.

On the House side, Appropriations Chairman Bill Young (R-Fla.) said his committee would continue to move bills and conference reports on a "regular" basis. He said further delays caused by safety
precautions may force Congress to pass another continuing resolution at the end of this month to fund government operations, but said passing an "omnibus" bill with all remaining spending measures was not something he predicted would happen.

Daschle had planned to hold another cloture vote on foreign operations yesterday morning, but that was canceled after the revelations about the number of staffers who initially tested for anthrax exposure.

This prompted Senate leaders to hold a bipartisan conference in the Senate dining room, the third such extraordinary gathering of all Senators since the Sept. 11 attacks. The Senators received a briefing from top medical experts in the administration on the threats from the deadly chemical.

Exiting the meeting, Senators said there was a unanimous feeling of support for Daschle and for maximizing the safety of staffers and others in the Capitol complex.

"There's total unity here. There's total support for Daschle," Craig said.

"Everybody feels very together now. Whether that applies to other issues, I don't know," said Sen. Paul Wellstone (D-Minn.).

The second cloture vote on foreign operations is expected to come early next week. Because of all the distractions that Daschle has faced this week, Craig said it made sense to put off this contentious bill for now and allow less controversial legislation to move this week.

When the more divisive issues are revisited next week, the fighting is expected to resume. Sen. Jon Kyl (R-Ariz.), a senior Judiciary member, said he fully expects the Republicans to block the foreign operations bill.

"It'll be the same vote as before," he said. "Nothing has changed."

Report Documents Unprecedented Situation with Federal Judiciary, Calls for Unprecedented Bipartisan Solution

U.S. Newswire
Wednesday, October 17, 2001

People For the American Way Foundation President Ralph G. Neas today called on President Bush and members of the U.S. Senate to engage in an unprecedented bipartisan approach to judicial nominations in order to minimize the number of divisive nomination battles and to prevent a complete takeover of the federal judiciary by right-wing ideologues.

In a report released today, he also urged Senators to resist right-wing pressure to confirm nominees without sufficient opportunity to consider their qualifications and judicial philosophy.

"President Bush and members of the U.S. Senate must recognize that we face an unprecedented situation in the federal judiciary," said Neas, "one that calls for an unprecedented bipartisan solution."

The PFAWF report debunks accusations that Bush administration's nominees are being treated unfairly by the Senate, and documents the unprecedented blockade waged by some Senate Republicans, many of whom now clamor for immediate votes on Bush administration judicial nominees, against highly qualified Clinton administration nominees, especially to the critical federal appeals courts. That campaign set the stage for all thirteen of the federal appeals courts to be dominated by judges appointed by a single political party by the end of the Bush administration, an unprecedented situation. If President Bush follows the urging of right-wing advocates to appoint only far-right ideologues to those positions, the impact on Americans' rights and freedoms could be devastating for decades. People For the American Way Foundation researchers reviewed Congressional Research Service statistics, comparing the Senate record on judicial nominations during 1995-2000, when Republicans controlled the Senate and President Clinton submitted nominees, and 1987-1992, when Republican presidents submitted nominees to a Democratic-majority Senate. The results are stark and clear:

-- During the years Republicans controlled the Senate, 45.3 percent of President Clinton's nominations to the courts of appeals were returned to the White House, a rate 72 percent higher than the 26.3 percent return rate for Presidents Reagan and Bush when Democrats controlled the Senate. (None of the returned Clinton appellate court nominees were voted down -- not a single one of them was allowed to come up for a vote.)

-- During the final two years of Clinton's term, the blockade was even tighter, with less than half

of Clinton's appeals courts nominees being confirmed. More specifically, during the 106th Congress, 56 percent of President Clinton's nominations to the courts of appeals were blocked. This failure rate for President Clinton's appeals court nominees was 60 percent higher than for Presidents Reagan or George H.W. Bush, each of whom saw only 35 percent of his appeals court nominees go unconfirmed
in the 101st and 102nd Congresses, respectively.

If numbers are calculated so as to eliminate the effect of multiple nominations of individual nominees, serious discrepancies remain. Under this analysis, appeals court nominees were blocked during the six years Republicans controlled the Senate under President Clinton at a rate nearly 40 percent higher than during the six years Democrats controlled the Senate under Presidents Reagan and Bush -- 35 percent under Clinton vs. 25 percent under Reagan and Bush. See the full report for a further note on methodology.

Neas noted that Senate Minority Leader Trent Lott recently threatened to hold up the appropriations process if Bush judicial nominees were not given swift consideration, and yesterday Senate Republicans blocked action on a foreign aid bill. Neas said such calls for action by Lott and other right-wing leaders, including Attorney General John Ashcroft, showed "remarkable chutzpah, if not outright hypocrisy," given their involvement in the stalling campaign against Clinton administration nominees.

Neas also noted that, in the face of pressure from Lott and others, one judicial nominee was recently approved by the Senate Judiciary Committee in closed session and by the full Senate despite pending concerns about his record, and a controversial nominee was scheduled for a hearing with five working days' notice, making it impossible for senators to conduct a thorough review of his record. Neas called such actions "unfortunate and unacceptable."

The report calls on both President Bush and the Senate to act in accordance with their constitutional roles and with recognition of the unprecedented situation facing the federal judiciary. Among the report's recommendations:

-- President Bush should work closely with Senate Democrats in an attempt to repair the damage done by six years of Republican obstruction, restore the pre-nomination role of the ABA, and seek out nominees who are not right-wing ideologues and who demonstrate an understanding of and commitment to civil and constitutional rights.

-- Senate Judiciary Committee Chairman Patrick Leahy should move judicial nominations only when the committee has had time to give them sufficient consideration.

-- The Senate should carefully and thoroughly review the President's nominees, particularly for the courts of appeals and the Supreme Court. They should hold out a clear standard of commitment to civil and constitutional rights, as more than 200 law professors have recently suggested. Mainstream nominees that reflect genuine bipartisan consideration should receive priority in processing.

-- The Senate should not hesitate to fulfill its constitutional responsibility of rejecting and withholding its consent from nominees who do not demonstrate qualifications that include a firm commitment to broad principles of equality and individual rights and an abiding respect for the Constitution and for the constitutional authority of the Congress.

Lawyer Quits Country Club After Nomination

The Advocate
Wednesday, October 17, 2001

A Metairie lawyer, nominated by President Bush for a federal judgeship, has withdrawn his family's membership from a Jefferson Parish country club after questions were raised about whether it discriminates against black people.

In an Oct. 12 letter to the Metairie Country Club, Jay Zainey said he felt pressured to drop his membership because of media inquiries while he is being considered for U.S. Senate confirmation. He was nominated Oct. 10 for a vacancy on the U.S. District Court in New Orleans after being touted by Republican members of the state's congressional delegation.

"Although I know of no discriminatory practices at the club, a fact which reportedly has been confirmed by an FBI background investigation, I feel compelled to resign," Zainey wrote.

Officials at the country club say they don't discriminate. They declined to say whether there are any black people among the 1,270 families who belong. Potential members must be invited to join and must be approved by a committee.

The FBI recently checked the club as part of its background investigation of Zainey and concluded that the club does not discriminate, an FBI spokesman said.

U.S. Rep. Billy Tauzin, R-Chackbay, urged Zainey to drop his membership because of the potential political backlash at a time when the pace of Bush administration judicial nominees being approved by the Democrat-controlled Senate is already slow.

A spokesman for Tauzin said Monday that Zainey decided to drop out before Tauzin urged him to do so.

"It was a decision he made on his own after sounding out a few close friends," Ken Johnson said. "No one pressured him, absolutely no one."

Republican, Democratic Clash Coming on GOP Slowdown for Bush Judicial Nominees

By Jesse Holland
The Associated Press
Wednesday, October 17, 2001

A battle over President Bush's judicial nominations is intensifying in the Senate.

Republicans have been blocking legislation to call attention to the small number of judges approved by the Senate this year.

Senate Majority Leader Tom Daschle, D-S.D., planned to force a vote on a foreign aid bill past the Republicans on Wednesday. He says Democrats are doing what they can to get as many judges through as possible. Republicans disagree, and say they have enough votes to continue stalling the Senate until they get a guarantee that senators will accept more judges before leaving for the year.

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"I think we're doing all that we can," he said. "The point is that, as much as our Republican colleagues have complained, their tactic is counterproductive."

The Democratic-led Senate has approved eight judges this year, with 52 nominees still pending. There are 110 vacancies in the federal judiciary system, including 39 positions that have been open so long the courts have classified them as "judicial emergencies."

"I don't think we're doing the job, and I think the American people are going to suffer because of it," said Sen. Orrin Hatch of Utah, the top Republican on the Senate Judiciary Committee.

To call attention to their point, Republicans have been holding up the Senate's consideration of the foreign aid bill. It is one of the 13 spending bills that were supposed to be finished by Oct. 1, the beginning of the government's fiscal year, but were not.

"Regretfully, this seems to be the only tool with which we are left to try to advance the president's judicial nominations," said Sen. Mitch McConnell, R-Ky.

The government is operating in the meantime under the same priorities established by former President Clinton and lawmakers a year ago.

Sen. Jon Kyl, R-Ariz., says Democrats claim that they've been too busy taking care of other Senate business to get more judges through. "For those who say we are just so busy doing other things, then I am forced to say, fine," Kyl said. "Then let's stop until we can get some of these nominations to the floor for a vote and acted on."

Democrats and Republicans are accusing each other of hurting America's war against terrorists because of the fight over judicial nominees.

Democrats say the war effort needs the money in the foreign aid spending bill.

"Because of the Republican filibuster, $42 million that would be available to help countries

strengthen their borders is not being provided; $175 million to fight infectious diseases, as we fight the war in Afghanistan, is not being provided; $5 billion in direct military assistance to those allies in the region is not being provided; and $255 million to assist Afghan refugees is not being provided," Daschle said.

Republicans say the anti-terrorist efforts in America need judges to work effectively. The House and Senate are working on an anti-terrorism bill to give law enforcement more power to track down and prosecute suspected terrorists.

But "law enforcement can't make cases to empty courtrooms," Hatch said.

Senate Stalemate Growing More Personal

Congress Daily
Wednesday, October 17, 2001

The Senate remained at a standstill Tuesday, as the battle over judicial nominees took on an increasingly personal tone and threatened not only FY02 appropriations measures but other initiatives of congressional leaders and the Bush administration.

The dispute is expected to drag into today, as Majority Leader Daschle again tries to invoke cloture to move to the FY02 Foreign Operations appropriations bill.

Senate Republicans vowed to hang tough today and block movement of that bill until they are satisfied that the pace will quicken on processing President Bush's judicial nominations.

Several Republican senators have begun to focus their ire on Judiciary Chairman Leahy, whom they fault for holding up the president's nominees. A senior GOP leadership aide said that several senators had "blasted" Leahy at Tuesday's meeting of the GOP Conference. Sen. Wayne Allard, R-Colo., said he took particular offense at Leahy's conduct during a cloture vote Monday on the Foreign Operations bill. Republicans were able to defeat cloture in protest at what they consider a lack of
progress on nominations.

Allard said he and Sen. Ben Nighthorse Campbell, R-Colo., approached Leahy during the vote to tell him they would like to see three Colorado nominees move.

"He indicated that just because of the way both Ben and I voted, that it wasn't going to move," Allard said.

Allard, who had already voted against cloture, said he was not swayed.

"I'm going to vote my conscience," he said. "I'm not going to be blackmailed. I just think it's bad that we're to the point that people like the chairman of Judiciary aren't moving our nominees.... I'm disappointed that the chairman is being so partisan, at a time when bipartisanship is so

important."

Judiciary ranking member Orrin Hatch, R-Utah, said Leahy "made some threats" Monday, in particular to block nominations.

"He has to come off that high-horse approach," Hatch said. "There is a belief [within the GOP Conference] that there is a political lack of good faith here."

A spokesman for Leahy unequivocally denied that any threats had been made and said Leahy had personally assured Hatch that he would continue pushing nominations through the committee despite the hang-ups on the floor.

The spokesman said the Judiciary Committee would vote on "four or five" nominees Thursday and hold hearings on another four nominees the same day.

"Some of those are from states represented by a senator who voted against cloture [on the Foreign Operations bill]," the Leahy spokesman said. "The committee has kept up a brisk pace on nominations."

Hatch, the former Judiciary chairman, noted that the GOP- controlled Senate passed nearly as many Clinton administration judicial nominees as a Democratic Senate had passed Reagan nominees.

"I bent over backwards to take care of Leahy and every other Democrat on that committee," Hatch said. "It's a tough job and I commiserate with Sen. Leahy, but our Conference doesn't appreciate threats and bullying."

Aides and senators said no negotiations were taking place to try to settle the nominations issue and free appropriations.

"There's nothing to negotiate," said Daschle. "What we'll do is continue to do our work in the Judiciary Committee."

Daschle also said he was "frankly disappointed that the administration has not spoken out," pointing out that the administration shared his interest in moving spending bills.

Minority Leader Lott defended the GOP's approach. "This is not some new tactic that is being employed on our side.... When you're majority leader, you can huff and puff and talk about how you're not going to negotiate," he said, but "you are in charge of the agenda."

Lott said he and Daschle had tried to resolve the issue. But, Lott said, "The problem is not at the top. It's down the line a little bit, without blaming anybody."

"We're going to stick together," a GOP leadership aide said of Republicans going into today's cloture vote.

The source also discounted the idea that blocking action on the Foreign Operations bill could be a political liability for Republicans. "Our connection is to terrorism--we need to have as many judges in place as possible," the aide said.

On Tuesday, Daschle vowed to continue filing cloture motions to break the GOP's appropriations filibuster strategy, while holding up key GOP priorities like energy and trade.

Daschle blamed the logjam on "the intransigency of our colleagues on the other side." In addition to the $15.5 billion Foreign Operations bill, the Senate also has not yet considered the FY02 Agriculture, Labor-HHS and District of Columbia spending bills.

GOP Policy Committee Chairman Larry Craig of Idaho said Republicans were seeking action on "about 40" nominees whom the Judiciary Committee had been considering before the August break. Craig added that Republicans would be "very resolute" in opposing Democratic efforts to invoke cloture on other pending legislation.

But Daschle enumerated some of the items funded in the Foreign Operations bill as losses to the nation.

"Because of the Republicans' filibuster, $42 million that would have been available to help countries strengthen their borders is not being provided; $175 million to fight infectious diseases ... $5 billion in direct military assistance to allies in the region ... and $255 million to assist Afghan refugees is not being provided."

But Craig said the quagmire on the Senate floor would "drag on until there appears to be a systematic resolution" on moving judicial nominees through the process. And Judiciary member Jeff Sessions, R-Ala., defended GOP tactics from the Senatefloor. "What we're saying is that this is serious business. Moving judges is serious business."

Leahy, who as chairman of the Foreign Operations Appropriations Subcommittee is the author of the stalled spending bill, told CongressDaily: "I feel sorry for President Bush and Secretary [of State] Powell. Members of their own party are holding the foreign aid bill hostage," while the administration is trying to assemble a broad international coalition to fight terrorism.

"I hope they will talk to members of their party," Leahy said. "We could finish it this afternoon if Republicans would let us."

Appropriations Chairman Byrd and ranking member Ted Stevens, R-Alaska, both expressed frustration that so many FY02 spending bills are stalled as a result of the nominations impasse--but both endorsed their respective leaders' floor strategy.

While Byrd said he believed Daschle "is doing everything he can to move [appropriations bills], Stevens said that despite the delay, "As far as I'm concerned, [the appropriations bills] can wait until they meet us halfway."

Meanwhile, House and Senate appropriators finished work Tuesday on the second FY02 appropriations measure, approving a $10.5 billion request to improve the military's housing and medical facilities, National Journal News Service reported.

The legislation, which would provide $1.5 billion over FY01 amounts and about $529 million over the president's request, should be on the House floor this afternoon, with passage in the Senate to follow.

Conferees noted that money to rebuild the section of the Pentagon destroyed in the Sept. 11 terrorist attack would come from the previously enacted supplemental spending bill passed in the wake of the attack. Additional anti-terrorist measures for the Pentagon and other military installations also will be paid for with funds from that supplemental bill, according to conferees.

GOP 'Hardball' Ploy Aims to Fill Benches; Action Demanded on Bush Nominees

By Donald Lambro
The Washington Times
Wednesday, October 17, 2001

Senate Republican leaders said yesterday they will block action on the foreign aid bill and other legislation until Democrats agree to end their holdup of President Bush's long-stalled judicial nominations.

Their decision to "play hardball" came at yesterday's weekly policy luncheon meeting of Republican senators. Many of them attacked Senate Judiciary Committee Chairman Patrick J. Leahy as a "vindictive" partisan who is trying to slow down or block Republican appointments to the bench. A Senate Republican leadership official said the strategy had "the full backing" of the White House.

"They are concerned that the holdup of these nominees threatens the war on terrorism because these judicial vacancies need to be filled as soon as possible to act on law enforcement requests," the official said.

Sen. Orrin G. Hatch of Utah, the committee's ranking Republican, led the attack on Mr. Leahy, telling his colleagues that the Vermont Democrat is threatening to get even with Republican members if they follow through on their legislative blocking strategy.

"Last night he Leahy was pretty irritated and not in a mood to be helpful. If anything, he was threatening. I've heard payback talk," Mr. Hatch told reporters yesterday.

The backroom political struggle over judicial nominees has been simmering ever since the Democrats took control of the Senate in July. That was when Mr. Leahy took over the committee

and confirmation hearings on Mr. Bush's nominees ground to a halt. The backup now totals 52 nominees, 46 of whom have had no hearings.

But the struggle broke into open warfare when Mr. Hatch told his colleagues at yesterday's meeting that Mr. Leahy had told him that any Republican who voted not to take up the foreign operations bill today "would not get the federal judges from their state confirmed."

Mr. Leahy denied the charge.

"The senator said we will continue to move on judicial nominees as we have been, even though many come from states of obstructionist Republicans," his spokesman said.

Calling Mr. Leahy's tactics "purely partisan," Mr. Hatch said, "They're blaming Republicans for holding up the Senate when it seems to me the Democrats have their foot on the brake."

Yet the Republicans' pressure tactics may be working. Mr. Leahy's spokesman announced that his committee would be "voting on many more nominees on Thursday and that afternoon there will be a hearing on four more nominees."

That may not be enough to mollify Republicans who emerged from their luncheon "united that they will vote against taking up the foreign operations bill until we get an agreement from the Democratic leadership," a Republican official said.

Senate Majority Leader Tom Daschle, South Dakota Democrat, insisted that "we're doing all that we can. As much as our Republican colleagues have complained, their tactic is counterproductive."

The federal judiciary system has at least 108 vacancies, including 39 posts that have been vacant so long that the courts have classified them as "judicial emergencies." The Senate has approved only eight judges this year.

Some Republicans suggested yesterday that the White House should get more actively involved in the fray to break the political logjam. "It would be helpful if the president spoke up, but he shouldn't have to," said Sen. Jon Kyl, Arizona Republican, a member of the committee.

Lawyers' Panel Nixes Bunning

By Nancy Zuckerbrod
The Associated Press
Tuesday, October 16, 2001

An American Bar Association panel has told the Senate that the son of Sen. Jim Bunning, R-Ky., is not qualified for the federal bench, an assessment the elder Bunning disagreed with Tuesday.

Roscoe Trimmier, chairman of the ABA panel that advises the Senate on judicial nominees, said

that a majority of the 15-member panel found David Bunning to be unqualified.

Trimmier didn't say why, but it may come down to the federal prosecutor's experience. The bar association recommends that nominees have at least 12 years of experience, but Bunning, of Fort Thomas, Ky., has been a lawyer for 10 years.

In a letter Tuesday to Judiciary Committee Chairman Patrick Leahy, D-Vt., Sen. Bunning said he was surprised and disappointed to hear about the ABA finding. Sen. Mitch McConnell, R-Ky., also signed the letter.

"We strongly believe that a full and fair hearing is necessary for the Judiciary Committee and the full Senate to effectively exercise its constitutional role of 'advise and consent,"' the senators wrote.

Committee spokeswoman Mimi Devlin said a decision on a hearing had not been made. "We are considering the senators' request for a hearing at this point," she said.

Devlin said Bunning was the only judicial nominee under Senate consideration to receive an unqualified rating. She said it was one of several factors lawmakers would consider.

"Sen. Leahy has always said that each senator should weigh the ABA rating in his or her mind," she said.

Sen. Bunning said he thought his son still had a good shot at being confirmed. "People have become federal district judges even with unfavorable ratings from the ABA," he said.

David Bunning did not return a call seeking comment Tuesday.

While the bar association reviews judicial nominees for the Senate, the Bush administration has decided not to rely on the ABA to investigate lawyers before naming them. That ended a practice dating back to the Eisenhower administration.

Judge Nominee Pulls Out of Club; Questions Raised About Racial Bias

By Bill Walsh
The Times-Picayune
Tuesday, October 16, 2001

Jay Zainey, a Metairie lawyer nominated by President Bush for a federal judgeship, has withdrawn his
family's membership from a Jefferson Parish country club after questions were raised about whether it discriminates against
African-Americans.

In an Oct. 12 letter to the Metairie Country Club, Zainey said that he felt pressured to drop his

membership because of media inquiries at a time when he is being considered for the federal appointment. He was nominated Oct. 10 for a vacancy on the U.S. District Court in New Orleans after being touted by Republican members of the state's congressional delegation. "Although I know of no discriminatory practices at the club, a fact which reportedly has been confirmed by an FBI background
investigation, I feel compelled to resign," Zainey wrote.

He said in the letter, which he authorized be released to the press, that he was dropping out "with great regret."

Officials at the country club say they don't discriminate. They declined to say whether there are any African-Americans among the 1,270 families who belong. Potential members must be invited to join and be approved by a committee.

A decade ago, the former club president told The Times-Picayune that there were no black members. Three years ago, a group of civic and church leaders in New Orleans complained to the state Judiciary Commission that a local judge violated ethical standards by belonging to the club, which they called "an all-white institution that had repeatedly denied membership to African-Americans."

However, when the FBI recently checked the club as part of its background investigation of Zainey, the agency concluded that the club doesn't discriminate in "policy or in practice."

Still, Zainey was urged by Rep. Billy Tauzin, R-Chackbay, the dean of the Louisiana delegation, to drop his membership because of the potential political backlash at a time when the pace of Bush administration judicial nominees being approved by the Democratic-controlled Senate is already slow.

A spokesman for Tauzin said Monday that Zainey decided to drop out before Tauzin urged him to do so.

"It was a decision he made on his own after sounding out a few close friends," Ken Johnson said. "No one pressured him, absolutely no one."

A spokesman for Rep. William Jefferson, D-New Orleans, called Zainey "a fair-minded individual," but said "the membership issue needed to be resolved to remove any doubt."

Rep. David Vitter, R-Metairie, said Zainey "doesn't have a malicious or racist bone in his body" and said it was "a shame" that The Times-Picayune had raised questions about his membership in the country club.

Vitter said Zainey had little choice but to resign because "you would have written a story about it every other day."

The Senate Judiciary Committee, which considers all potential judges, has rejected nominees

because of membership in clubs with reputations for discriminating. Nominees generally have been cleared by the panel if they relinquish their memberships.

Judicial Fight Stymies Tense Capitol

By P. Mitchell Prothero
United Press International
Tuesday, October 16, 2001

Republican Senate leaders Tuesday continued their refusal to allow spending bills to be considered until they receive promises from the Democratic majority on the future of Bush administration judicial nominees.

Republicans claim that the Democrats have been slow to consider Bush administration nominees for federal judgeships.

The fight -- which had been brewing for several weeks -- exploded Monday evening when a Republican filibuster succeeded in stopping debate on a $15 billion foreign aid bill. The 50-to-46 vote, in which Democrats failed to get the 60 votes necessary to defeat a filibuster, set off a debate that strains the bipartisan mode that has characterized the Senate since Sept. 11. "We'll continue to file cloture motions and try to maintain the comity and keep the spirit we've had in place the last five weeks in place," Senate Majority Leader Tom Daschle, D-S.D., said of his party's strategy for dealing with the delays.

Besides the Foreign Operations spending bill, Republicans have vowed to block three other major spending bills, including the agriculture bill, a District of Columbia appropriations bill and the Labor-HHS-Education bill until Democrats agree to a hearing and vote schedule for the 108 unfilled federal judgeships that remain open.

"I don't remember a log-jam like this one before," said Republican Orrin Hatch of Utah, ranking Republican on the Judiciary Committee, of the vacancies.

Sen. Mitch McConnell, R-Ky., spoke from the Senate floor about the responsibilities of the upper chamber. "This is an essential part of our job here in the Senate, the confirming of these judges," he said.

"We must use all the time left until adjournment to remedy the vacancies that have been perpetrated on the courts to the detriment of the American people and the administration of justice. That should be a top priority for the Senate for the rest of the year."

Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., dismissed the claim that his party has mistreated Bush administration nominees, arguing that current events and the change-over of the majority party in the Senate earlier this year have slow the pace. He also claimed that Bush's nominees would receive fair consideration, particularly compared with the Clinton administration's judges.

"I think that when we're done ... they'll see that President Bush's nominees were treated more fairly that President Clinton's were. Having said that, I wonder what in heaven's name this masochistic attitude (is) that is holding up this bill so they can make political points on Sunday morning talk shows," Leahy said from the Senate floor.

"We had 34 months when they didn't even have hearings on judges," he added later. "We've been doing hearings every single month, whether we've been in recess or not."

Leahy and Democratic staff have also said that some nominees have been slow to return confirmation information to the committees and that standard background checks have also been delayed.

But although Republican senators continue to hold enough votes to maintain a filibuster -- at least for now -- Daschle said that some of their favorite legislation could lose a chance at consideration should the delays continue.

When asked by a reporter if he planned to schedule a debate on comprehensive energy legislation -- a topic dear to many prominent Republicans, including the president -- Daschle reminded his GOP colleagues about the power of the majority leader to control the floor.

"I am most amused about the question regarding the scheduling of energy legislation given the current tactics by our Republicans on appropriations bills," Daschle said. "As soon as they tell me when they'll stop this counter-productive effort to stop consideration of appropriations bills, I might be able to tell you when we will schedule an energy bill."

GOP Seeks Action on Bush Nominees

The Washington Post
Tuesday, October 16, 2001

Senate Republicans blocked a $ 15.5 billion foreign aid bill yesterday in an effort to force Democrats to step up the pace of confirmations for President Bush's judicial nominees.

On a 50 to 46 party-line vote, the Democrats fell 10 votes short of the 60 needed to break a GOP filibuster and force consideration of a relatively noncontroversial foreign aid measure.

Republicans said they would continue to block some necessary spending bills until Democrats agreed to hit the accelerator on Bush's pending judicial nominations. "We've got to speed up the process here," said Sen. Jon Kyl (R-Ariz.). "Let's call a timeout, let's go to nominations, and when there are a sufficient number of nominations completed, we'll go back to other priorities."

But Democrats questioned why Republicans would hold up a key foreign aid bill at a time Bush was trying to galvanize international support for the war on terrorism. The foreign aid bill includes funds for key Middle East allies the United States is relying on during its military

operations against Afghanistan.

"This is not the time to horse trade on judges," said Democratic Whip Harry M. Reid (Nev.), calling the move "wrong-headed."

The Senate has approved eight of Bush's 60 judicial nominations, a rate that Republicans say badly lags behind the first-year confirmation totals of the three previous administrations.

"We're way behind. We've got a lot of catching up to do," said Sen. Don Nickles (Okla.), the chamber's second-ranking Republican.

But Senate Democrats harshly disputed claims they were deliberately slowing the process, pointing out that Republicans controlled the Senate during the first four months of the administration and never held a confirmation hearing on a judge.

Democrats took a one-seat margin of power in the Senate in June when Vermont Republican James M. Jeffords became an independent.

"No one is saying we aren't going to confirm judges," said Reid. "Let us do our work here. This is a matter of common sense."

Sen. Patrick J. Leahy (D-Vt.), chairman of the Senate Appropriations foreign operations subcommittee, was even more harsh, likening Republicans to "petulant children in the schoolyard."

The dispute marked another step back into the partisan skirmishing prevalent in the Senate prior to the deadly Sept. 11 attacks on New York and Washington.

Kyl said Republicans would not hold up all House-Senate conference reports on completed spending bills. Five spending bills -- foreign aid, agriculture, labor and education, the District of Columbia and defense -- have not been taken up by the full Senate.

Senate Still Battling Over Bush's Judicial Nominees

By Jonathan Ringel
American Lawyer Media
Thursday, October 18, 2001

In between enduring anthrax exposure, passing anti-terrorism bills and considering measures to fund the
government, senators still have found time this week to bicker about judicial confirmations.

On Monday, Senate Republicans blocked a foreign aid appropriation bill in an effort to force the Democratic majority to confirm dozens of President George W. Bush's nominees.

Democrats say they are moving as fast as they can-and if the Senate stays in session through November, that as many as 25 to 30 Bush picks could be confirmed.

Bush so far has made 60 nominations to the lifetime posts on the federal bench, 25 for the circuit courts and 35 for the district courts. Since the Democrats took over the Senate in June, eight judges have been confirmed, four each for the appeals courts and the district courts.

Another five-one circuit nominee and four district nominees-have had hearings and are expected to move through the Judiciary Committee and on to confirmation soon.

Yet another circuit nominee and three district nominees were scheduled to have hearings today. Those hearings may be postponed, however, as authorities Wednesday were considering shutting the Capitol complex down to test for anthrax exposure.

A spokeswoman to Sen. Patrick Leahy, D-Vt., who chairs the Judiciary Committee, reported that two more hearings - in addition to the one scheduled for today - will occur if the Senate stays in session through November. If five nominees appear at each hearing, that would mean 27 nominees would have had hearings.

"The numbers show that the committee's record meets or exceeds the pace of previous years, despite the limited amount of time it has had to consider nominees," said Mimi Devlin, the spokeswoman.

Devlin reported that in 1989, the Democrat-controlled Senate confirmed 15 judicial nominees during the first year under President George Bush. In 1993, the Democrat-controlled Senate confirmed 27 of President Bill Clinton's judicial nominees.

But in a floor debate last week, Sen. Orrin Hatch, R-Utah, accused Leahy and the Democrats of moving too slowly on Bush's judges.

Hatch pointed out that most judges nominated by the time of the August recess in the first year of a presidency usually get confirmed. Bush made 44 nominations before the August recess - far more than any president in recent memory.

The confirmation rate of circuit court judges particularly vexed Hatch, who said that Clinton got three of his five circuit court nominees through in his first year.

"That is 60 percent," said Hatch, arguing that 60 percent of Bush's 25 circuit court nominees should get through by the end of the year.

The Democrats' claim that they're keeping up with recent confirmation paces, he said, "is an unfair comparison when you take into account the fact that President Bush has chosen to nominate 20 more circuit court nominees than President Clinton did in his first year."

During the last six years of the Clinton administration, Hatch drew fire from Democrats for allowing some Republicans to block nominees, particularly circuit court picks. In 1996, a spat between Hatch and the White House led to no circuit court nominees getting hearings. Nonetheless, Clinton ended up nearly tying Ronald Reagan's all-time record for placing the most judges on the federal bench.

During the brief floor debate, which occurred between the Senate's handling aviation security bills and anti-terrorism bills, Minority Leader Trent Lott, R-Miss., acknowledged that this is an old fight.

"It is amazing how history repeats itself," he said. "What you were saying last year, we are saying this year. I guess before that, we were saying it or you were saying it."

The circuit nominee scheduled for today's hearing is Charles Pickering Sr., a Mississippi federal district judge tapped for the Fifth Circuit.

Hispanic National Bar Association Endorses Appointment of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia

U.S. Newswire
Wednesday, October 17, 2001

The Hispanic National Bar Association, national voice of over 25,000 Hispanic lawyers in the United States, issues its endorsement of President George W. Bush's nominee, Mr. Miguel Estrada, to the U. S. Court of Appeals for the District of Columbia. Estrada would be the first Hispanic to sit in the D.C. Circuit, widely regarded as the second most important appellate court in the nation. Estrada, who emigrated from Honduras at seventeen, is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. A member of the firm's Appellate and Constitutional Law Practice Group and its Business Crimes and Investigations Practice Group, Estrada clerked for the Honorable Anthony M. Kennedy in the U.S. Supreme Court from 1988-1989, and has argued 15 cases before the U.S. Supreme Court.

A 1983 magna cum laude graduate of Columbia College in New York, Estrada received a J.D. degree magna cum laude in 1986 from Harvard Law School, where he was editor of the Harvard Law Review.

President Bush nominated Estrada in May of this year. "Mr. Estrada's distinguished and impressive career illustrates the promise and opportunity that America offers to all immigrants, specially Hispanic immigrants. It is encouraging that President Bush has started tapping in the substantial pool of Hispanic legal talent throughout the country. Mr. Estrada's confirmation will break new ground for Hispanics in the judiciary. The time has come to move on Mr. Estrada's nomination. I urge the Senate Committee on the Judiciary to schedule a hearing on Mr. Estrada's nomination and the U.S. Senate to bring this highly
qualified nominee to a vote." said Rafael A. Santiago, of Hartford, Connecticut, National President of the Hispanic National Bar Association.

Op/Eds

Leahy's War Cover

The Wall Street Journal
Thursday, October 18, 2001

Senate Republicans are a tower of babblers, so when nearly all of them agree on something it's news. This week they've been riled into a rare burst of unity by Democrat Pat Leahy's unprecedented stonewalling on judges.

Simply put, the Senate Judiciary Chairman is using the war on terrorism as cover to slow roll the confirmation of President Bush's judicial nominees. In normal times, the media might report his delaying tactics and Mr. Bush might make them an issue. But the White House, now in bipartisan war mode, doesn't want to make a fuss over anything outside its anti-terror campaign. Mr. Leahy is exploiting that good will for his own partisan ends.

There's really no other way to explain that 10 months into this Administration Mr. Leahy has confirmed a mere eight of the 60 judicial nominations Mr. Bush has made, including 44 by the August recess. With only weeks to go before Congress goes home for the year, only 14 have even had a hearing. This kind of delay typically occurs only in the final year of a Presidency, before an election. It's unheard of in first years, when Ronald Reagan had 41 judges confirmed, George H.W. Bush 15, and Bill Clinton 28.

Mr. Leahy knows this, or at least he did when Mr. Clinton was President. In 1999, when the federal courts had a mere 59 unfilled seats, he wailed about a "crisis." Yet now, thanks to his foot-dragging, there are 109 vacancies, nearly 13% of the entire federal bench. It is true enough that some Republicans abused their advise and consent power under Bill Clinton, but Pat Leahy makes Jesse Helms look like Little Lord Fauntleroy.

We might even credit Mr. Leahy's excuse that he's been busy with anti-terror legislation. But then what to make of the fact that, despite GOP objections, he is also changing the long-time questionnaire for judicial nominees? From now on nominees will have to disclose any previous drug charges and whether they have ever been "a party in any civil or administrative hearing." Senators can already see all of this information in confidential FBI files. But Mr. Leahy's revised questionnaire means that the stuff of bad divorces and teenage marijuana busts will be available to Judiciary staff. The chances of this stuff leaking to the press are 110%.

Mr. Leahy, a self-styled privacy advocate, is also demanding that nominees itemize "all political contributions." These are the same nominees that Mr. Leahy insists must be non-ideological and non-political. Imagine the uproar if former GOP Judiciary Chairman Orrin Hatch had pulled a stunt like this.

In an October 1 letter to Mr. Leahy, White House Counsel Alberto Gonzales wrote that this new

questionnaire "may have the likely effect of unnecessarily invading a candidate's personal privacy" without adding any more information for Senators. "If we go down this road, I fear that many qualified people will elect not to participate in this process," Mr. Gonzales added. Which may be exactly what Mr. Leahy intends. If anyone the least bit controversial -- i.e., conservative -- is nominated, Mr.
Leahy may want them to know they could face public embarrassment and a political torching. By any definition, this is an abuse of Senate power, rendering meaningless the debate over judges in a Presidential election.

Which is why fed-up Republicans are fighting back with their own Senate prerogatives. They're uniting to slow down spending bills until Mr. Leahy decides to move more judges. The strategy was invented by current Senate Majority Leader Tom Daschle in the final year of the Clinton Presidency. But Mr. Leahy's calm, adult response this week was to call Republicans "petulant children in the school yard." Well, he ought to know.

It's about time someone blew away Mr. Leahy's war-time political cover.

Interest Groups/Press Releases

End the Leahy Stall; 'Sen. Leahy Should Stop Playing Partisan Politics With the Federal Courts,' AR's Richard Lessner

PR Newswire
Tuesday, October 16, 2001

American Renewal today issued a statement of support for the effort by Republicans in the U.S. Senate to break the blockade on President Bush's judicial nominations.

"Sen. Patrick Leahy is stalling," American Renewal executive director Richard Lessner said, noting that vacancies on the federal bench have increased to 110 from 67 the day President Bush took office.
"The chairman of the Judiciary Committee is engaged in a sophisticated slowdown. The vacancy crisis in the federal courts continues to worsen, yet Sen. Leahy refuses to follow long established Senate procedures and move nominees through the confirmation process in an expeditious manner.

"When Bill Clinton occupied the White House, Sen. Leahy and other Democrats declared far fewer vacancies to be a national crisis," Lessner said. "But now that George W. Bush is president, Sen. Leahy seems to be in no hurry to confirm judges despite the growing backlog of nominees and increasing number of court vacancies."

On Monday, Senate Republicans blocked a vote on a foreign aid bill in an effort to force Majority Leader Tom Daschle to act to break the blockade in the Judiciary Committee.
"It is unfortunate that it had to come to this," Lessner said, "but the minority Republicans have

few other options under Senate rules to force Sen. Leahy's hand. The pace of confirmations is lagging far behind that in any of the three previous administrations. And it is clear that Sen. Leahy is cherry-picking for hearings those nominees he personally finds politically acceptable, while stalling superbly qualified nominees he opposes for ideological reasons.

"Sen. Leahy should stop playing partisan politics with the federal courts and start giving President Bush's judicial nominees the fair hearings they deserve."

NARAL Opposes Confirmation Of Charles Pickering and Tactic Of Blocking Appropriations Bills For Court- Packing Plan

NARAL
Tuesday, October 16, 2001

Lott Leads Anti-Choice Strategy

NARAL President Kate Michelman announced today that NARAL opposes the confirmation of Charles Pickering, Sr. to the U.S. Court of Appeals.

"Judge Pickering is a staunch opponent of Roe v. Wade and a woman's right to choose. He was a prime architect of the 1976 Republican Party platform plank that protested the Roe decision and called for a constitutional amendment banning abortion," said Michelman.

"Judge Pickering is the first demonstrably anti-choice judicial nominee to the Court of Appeals to get a hearing before the Senate Judiciary Committee. He has been nominated for a lifetime position on the bench. If confirmed, the decisions he makes could affect the reproductive rights of women for generations to come. "

Anti-choice Senate Minority Leader Trent Lott (R-MS) is holding up the entire congressional appropriations process until Charles Pickering, Sr., a judge from his home state, receives a hearing this
Thursday on his nomination to the appellate court.

"Even in these trying times, opponents of a woman's right to freedom of choice continue to press their goal of packing the court with anti-choice judges. They are willing to risk funding of our national government in order to short circuit the judicial confirmation process in the U.S. Senate. It is unconscionable that the Senate Republican Leadership would hold up the entire appropriations
process to impose their own ideological agenda upon the nation's courts," said Michelman.

Potential Closed-Door Hearing on Judicial Nominees Today "Would be Undemocratic and Unacceptable," Says PFAW's Neas

People for the American Way
Thursday, October 18, 2001

There are indications that the Senate Judiciary Committee plans to consider this afternoon several
judicial nominees, including a controversial nominee to the 5th Circuit Court of Appeals, Charles
Pickering, at a hearing that could be in effect closed to the public due to security measures on Capitol Hill. People For the American Way President Ralph G. Neas today urged Judiciary Committee Chairman Patrick Leahy not to hold closed-door hearings on any judicial nominees.

"De facto closed-door hearings on federal judicial nominees are undemocratic and unacceptable,"
said Neas. "People For the American Way urges Senator Leahy not to establish a precedent that undermines the principles of open and accountable government and shuts the public out of this critically important process."

Reportedly the hearing might be inaccessible to the public due to security precautions that have shut Senate office buildings temporarily and put restrictions on public access to the Capitol. Neas said the hearing on nominations to lifetime positions on the federal bench should be postponed if the public cannot be guaranteed access to the hearing. "Considering these judicial nominees is not a matter of national security, or of such great urgency that we must violate fundamental principles of democratic government," said Neas. "In particular, there are many reasons to postpone the hastily scheduled hearing on Judge Pickering so that the public can make sure that senators have time to thoroughly consider the nominee's record." Neas said that if the hearing goes forward, the Judiciary Committee must hold a second hearing, accessible to the public, after the transcript of the first hearing is made available.

"It is particularly important in this time of crisis that we affirm, rather than abandon, the principles
of democratic self-governance," said Neas.

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, October 25, 2001 6:15 PM
To: Schauder, Andrew; Newstead, Jennifer; Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw'; 'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; 'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw'; 'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; 'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 10-25-01.wpd

Please see attached review

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Thursday, October 25, 2001

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President to Pull out all the Stops"
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General Judicial Articles

Daschle Wins Struggle Over Judicial Nominations

Dave Boyer
The Washington Times
Wednesday, October 24, 2001

Senate Majority Leader Tom Daschle won a showdown with President Bush yesterday over judicial nominees as Congress returned to work amid major disruptions from anthrax.

Senate Republicans abandoned their strategy of holding up spending bills to force more judicial confirmations after Mr. Daschle told the president in a White House meeting he would not budge on the issue.

"There isn't leverage on appropriations bills," Mr. Daschle said later. "I told that again to the president."

As lawmakers went back to work yesterday, congressional leaders said some contaminated Capitol Hill office buildings may be closed for weeks and unopened mail may be burned to eradicate the bacteria. Leaders decided last night to reopen the Russell Senate Office Building at 9 a.m. today, but to keep all House buildings closed.

"We're dealing with a new threat here," said Senate Minority Leader Trent Lott, Mississippi Republican. "There's a steep learning curve."
The House, in its first day in session since leaders closed the chamber one week ago, moved toward passing long-awaited anti-terrorism legislation. A vote is scheduled for today. Under the revised bill, expanded wiretap and search powers for federal agents would expire in four years.

Mr. Bush hopes to sign it into law by the week's end.

And Senate Democrats promoted a one-year, $70 billion economic stimulus plan, half of which is devoted to spending on displaced workers. The House today will vote on a $100 billion Republican package heavily weighted toward tax relief or businesses.

Republicans had been blocking Senate action on appropriations for weeks, trying to force Democrats to confirm more judges. But Democrats have approved only 12 of the more than 40 candidates nominated by Mr. Bush.

In a meeting with congressional leaders yesterday, Mr. Bush asked Mr. Daschle pointedly about his view on judges. Senate sources said Mr. Daschle told the president that he would not link judges with spending bills, and that Mr. Bush needed the spending bills more than Senate Democrats did.

Said Mr. Lott, "Senator Daschle, frankly, did not offer a lot of encouragement. He basically said 'Mr. President, you want the appropriations bills, so good luck.'"

After the meeting, Mr. Lott conferred with Mr. Bush, Vice President Richard B. Cheney and White House Chief of Staff Andrew Card, essentially telling them, "Now you see what I'm dealing with."

"I think he was a little surprised," Mr. Lott said of the president.

Senate Republicans agreed later at their weekly luncheon to abandon their effort on judges. Several Republican sources said lawmakers did not want to be perceived as playing political games when the nation is in a crisis.

"It's time to move on and find another way around this problem," said Sen. Ted Stevens, Alaska Republican.

Mr. Daschle called Republicans' change of heart "a positive sign."

There are more than 100 vacancies on the federal bench, and Republican sources said they plan to renew their attack on the issue early next year.

"We're going to act in good faith," said Mr. Lott. "We're going to do what these times call for. We hope they will do the same when it comes to confirming federal judges."

Lawmakers had more-practical logistical problems with which to contend yesterday. With all Capitol office buildings closed for environmental testing, some House members set up temporary offices in a General Accounting Office building downtown and senators crammed in four to an office in the
Capitol itself.

Many had no staff. "There's no room for them," said Sen. Peter G. Fitzgerald, Illinois Republican.

House Majority Leader Dick Armey said work on an airline security bill might need to wait until the House Transportation and Infrastructure Committee could find a room large enough to accommodate all 75 panel members.

Many aides worked from home and others were given the day off. Several hearings were postponed or moved away from the Capitol.

Lawmakers worked almost exclusively via cellular phone. The results were frustrating to many.

"I was trying to reach a number of senators; I was having a hard time finding them because I couldn't get them at their offices," said Mr. Lott. "So I was scrambling around the Capitol building trying to find their offices here in the Capitol because I didn't have their private phone numbers.

"But I'm not going to complain," he said. "There are young men and women who are putting their lives in harm's way today to deal with these terrorists. There are Americans that are working under difficult circumstances, and postal employees under difficult circumstances here in this area and all over America. We don't have room to complain."

The lack of mail to Congress, which was halted with the discovery of an anthrax-laden envelope at Mr. Daschle's office on Oct. 15, presented one of the most troubling problems.

"Routine casework, constituent work, answering the mail: that's going to be weeks before that gets back to normal, maybe months," said Sen. Rick Santorum, Pennsylvania Republican. "I think the word should go out, 'Don't send any letters to Washington and to members of Congress.' Because we may be a while before we can answer them."

Senate GOP Ends Filibuster Over Judicial Nominations

By Helen Dewar
The Washington Post
Wednesday, October 24, 2001

Senate Republicans abandoned yesterday a two-week effort to force speedier confirmation of President Bush's judicial nominees, claiming they had made their point by stalling action on "must-pass" spending bills.

The decision, announced by Minority Leader Trent Lott (R-Miss.) after a discussion at the GOP's weekly luncheon, clears the way for passage of a $15.6 billion foreign aid spending bill, along with four other spending bills still pending before the Senate for the fiscal year that began Oct. 1.

Senate Republicans "decided that the responsible thing for us to do at this time is to focus on

those issues that need to be addressed as a result of the events of Sept. 11 and the anthrax attack here in our office buildings," Lott told reporters after the lunch.

But Lott and other Republicans vowed to continue pressing for faster action on Bush's judicial nominations. Majority Leader Thomas A. Daschle (D-S.D.) said he has instructed Democrats to act expeditiously on all nominations, although he insisted that this has nothing to do with GOP demands.

The Senate approved four more judicial nominations yesterday, bringing the total number of confirmation votes to 12 for the year. The Judiciary Committee is scheduled to act on Thursday on some or all of five others who received hearings last week. Another set of hearings is also scheduled for Thursday. More than 50 nominations were awaiting action in the Senate when the GOP began its stalling tactics earlier this month.

Republicans contend that Democrats have been dragging their heels on nominations since they took control of the Senate in early June. Democrats say they are moving as fast as they can and more speedily than Republicans did in processing President Bill Clinton's nominations for the bench.

In a procedural vote aimed at forcing action, the Senate began the day yesterday by voting to continue its filibuster against the foreign aid spending bill, with Democrats falling 10 votes short of the required 60 votes to end the filibuster. But Sen. Ted Stevens (Alaska), the ranking Republican on the Appropriations Committee, signaled that the effort was running out of steam by voting "present" instead of voting with his GOP colleagues to continue the delay.

"I thought it was time to get on and find a way to resolve this problem," Stevens explained after the vote.

A senior Republican aide said it became clear at the congressional leaders' weekly breakfast with Bush yesterday morning that Democrats were not being swayed by the stalling tactics. Bush asked if there was any progress on the judges, and Daschle showed no signs of backing down, the aide said.

The aide also said Republicans had concluded that they could do just as well, perhaps better, next year on the assumption that Bush is likely to gain in strength as the war progresses and that there would be a greater sense of urgency because more judicial vacancies would have occurred.

Judicial Nominee Arguments Continue in Senate Amidst Focus on Terrorism

By Jonathan Ringel
Legal Times
Thursday, October 18, 2001

In between enduring anthrax exposure, passing anti-terrorism bills, and considering measures to fund the government, senators still have found time this week to bicker about judicial

confirmations. On Monday, Senate Republicans blocked a foreign aid appropriation bill in an effort to force the Democratic majority to confirm dozens of President George W. Bush's nominees.

Democrats say they are moving as fast as they can -- and if the Senate stays in session through November, that as many as 25 to 30 Bush picks could be confirmed.

Bush so far has made 60 nominations to the lifetime posts on the federal bench, 25 for the circuit courts and 35 for the district courts. Since the Democrats took over the Senate in June, eight judges have been confirmed, four each for the appeals courts and the district courts. Another five -- one circuit nominee and four district nominees -- have had hearings and are expected to move through the Judiciary Committee and on to confirmation soon.

Yet another circuit nominee and three district nominees are scheduled to have hearings today. Those hearings may be postponed, however, as authorities Wednesday were considering shutting the Capitol complex down to test for anthrax exposure.

A spokeswoman to Sen. Patrick Leahy, D-Vt., who chairs the Judiciary Committee, reported that two more hearings -- in addition to the one scheduled for today -- will occur if the Senate stays in session
through November. If five nominees appear at each hearing, that would mean 27 nominees would have had hearings.

"The numbers show that the committee's record meets or exceeds the pace of previous years despite the limited amount of time it has had to consider nominees," said Mimi Devlin, the spokeswoman.

Devlin reported that in 1989, the Democrat-controlled Senate confirmed 15 judicial nominees during the first year under President George Bush. In 1993, the Democrat-controlled Senate confirmed 27 of President Bill Clinton's judicial nominees.

But in a floor debate last week, Sen. Orrin Hatch, R-Utah, accused Leahy and the Democrats of moving too slowly on Bush's judges. Hatch pointed out that most judges nominated by the time of the
August recess in the first year of a presidency usually get confirmed. Bush made 44 nominations before the August recess -- far more than any president in recent memory.

The confirmation rate of circuit court judges particularly vexed Hatch, who said that Clinton got three of his five circuit court nominees through in his first year.

"That is 60 percent," said Hatch, arguing that 60 percent of Bush's 25 circuit court nominees should get through by the end of the year. The Democrats' claim that they're keeping up with recent confirmation paces, he said, "is an unfair comparison when you take into account the fact that President Bush has chosen to nominate 20 more circuit court nominees than President Clinton did in his first year."

During the last six years of the Clinton administration, Hatch drew fire from Democrats for allowing some Republicans to block nominees, particularly circuit court picks. In 1996, a spat between Hatch and the White House led to no circuit court nominees getting hearings. Nonetheless, Clinton ended up nearly tying Ronald Reagan's all-time record for placing the most judges on the federal bench.

During the brief floor debate, which occurred between the Senate's handling aviation security bills and anti-terrorism bills, Minority Leader Trent Lott, R-Miss., acknowledged that this is an old fight.

"It is amazing how history repeats itself," he said. "What you were saying last year, we are saying this year. I guess before that, we were saying it or you were saying it."

The circuit nominee scheduled for today's hearing is Charles Pickering Sr., a Mississippi federal district judge tapped for the 5th Circuit.

Judicial Battle Not Over Yet

By Paul Kane
Roll Call
Thursday, October 25, 2001

Senate Republicans say they called a "cease-fire" on their appropriations blockade after realizing that President Bush would not be able to mount a campaign of public pressure on the Democratic majority over judicial nominations.

Vowing to revisit the issue after Christmas, Republicans say Bush's almost singular focus on the war on terrorism forced them to give up the nearly three-week filibuster of Democratic attempts to move appropriations bills without getting a single guarantee or assurance that more judges will be confirmed.

Easing the appropriations blockade increases the ability of the House and Senate to wrap up the "must-do" spending bills, but some leaders are still predicting that Congress will remain in session until at least early December.

Senate Minority Leader Trent Lott (R-Miss.) noted that Congress still has to complete an economic-stimulus package, the airline security bill and anti-terrorism legislation in addition to finishing the appropriations process. With Thanksgiving falling early this year, Nov. 22, Lott said Congress has little time left to meet the goal of a pre-Thanksgiving adjournment.

"You're talking about three weeks to do two or three [major] bills plus appropriations. It would be pretty hard with the agenda we must do. That's a load to get done before Thanksgiving."

Asked the same question, Senate Majority Leader Thomas Daschle (D-S.D.) was slightly more

optimistic but far from definitive about adjournment. "We are still, maybe optimistically and maybe too
optimistically, still hopeful that we can complete all of our work before Thanksgiving," he said.

House Republican leaders still believe both chambers can wrap up business before Nov. 22, but they are now acknowledging that they will not meet their goal of leaving by Nov. 9, something they believed possible as recently as last week.

With the House having passed 12 of the 13 spending bills, and the Senate still having four more to go, House leaders are placing the blame squarely on the upper chamber for not moving fast enough.

"We can only control what we can control," said House GOP Conference Chairman J.C. Watts (Okla.). "The November 9 date could be accomplished if it were left up to us."

In another sign that the Nov. 9 date was no longer operative, aides said the House was preparing to move a continuing resolution to fund the government through Nov. 16.

After a bicameral GOP leadership meeting on appropriations Wednesday, House Appropriations Chairman Bill Young (R-Fla.) privately told Speaker Dennis Hastert (R-Ill.) that the spending process couldn't be completed until the end of November, according to a senior GOP aide.

Both Appropriations panels also lost time this week because of the continued shutdown of most of the House and Senate office buildings, leaving staff unable to obtain documents to begin working on conference reports.

Previously, the main impediment to speeding along the appropriations process in the Senate had been the roadblock Republicans were using on the spending bills in an attempt to gain the confirmation of more judicial nominees. Since early October, Lott and other GOP leaders had insisted that was the only way they could force Democrats to consider more judicial nominees.

But Democrats never gave in, instead arguing that they were moving at a faster clip on judicial nominations than Republicans ever did in the previous six years when they had the majority under a Democratic administration.

"I'm not giving any assurances one way or the other," Judiciary Chairman Pat Leahy (D-Vt.) said Tuesday. "I don't make deals, I just do my job."

After defeating a second attempt to bring up the foreign operations appropriation bill Tuesday, Lott emerged from the GOP luncheon and announced that Republicans were giving up the strategy of blocking the spending bills. He said the "intractability of the Democrats" and a reworked sense of priorities left them with no choice but to go forward on appropriations.

"We're not seeking leverage now. What we're seeking is to get our work done," he said.

But other GOP leaders and aides acknowledged that Bush's focus on the war made it impossible for him to use the presidential bully pulpit to attack Democrats for blocking judicial nominations because of political ideology - a tactic former President Bill Clinton employed often in the relatively peaceful late 1990s.

"Right now he's engaged in other issues," said Minority Whip Don Nickles (R-Okla.). At a pre-Sept. 11 White House meeting, Nickles and GOP Policy Committee Chairman Larry Craig (Idaho) personally asked Bush to take a prominent role in going after Democrats on the judicial nominations issue, a request they believed he was ready to honor.

That hope fizzled, however, after Sept. 11. The only pressure Bush applied came during the now regular White House meetings with Lott, Daschle and their House counterparts, Speaker Dennis Hastert (R-Ill.) and Minority Leader Richard Gephardt (D-Mo.).

On Tuesday, Bush asked Daschle to speed up the judicial nomination process, but the Majority Leader, insisting there was "no connection" between appropriations and nominations, refused to yield.

Nickles said he expects Bush will get involved in the issue, probably sometime early next year if the war on terrorism begins to cool off a bit and Republicans still feel nominations are moving slowly.

"I think he can turn the heat up at some appropriate time in the future," Nickles said.

"It's a cease-fire for the time being based on priorities," said Craig, who added that the judicial battle would resume early next year. "Look for it on the other side of Christmas."

Still, the temporary cease-fire hasn't soothed the tempers riled by the judicial nomination process. The rhetoric continues to become less partisan and more personal, with Republican vitriol toward Leahy growing by the day.

Launching the appropriation blockade three weeks ago, Republicans chose to begin the effort by blocking foreign operations, which also happens to be the bill that Leahy oversees.

Sen. Orrin Hatch (R-Utah), ranking Member on Judiciary, told reporters that the Vermont lawmaker was acting as a one-man obstacle on the issue.

"It comes down to whether Leahy wants to do it or not. It comes down to one person," said Hatch, who used to boast of his across-the-aisle friendship with Leahy.

Hatch also accused Leahy of "slow-walking" the nomination of U.S. District Judge Charles Pickering Sr., a nominee to the Fifth Circuit Court of Appeals. He charged Leahy caved in to pressure from liberal groups who are now lining up against Pickering's nomination.

In the past week, a handful of liberal groups, from the Congressional Black Caucus to the

Alliance for Justice, have begun to attack Republicans for trying to speed nominees through the process, particularly Pickering.

In going after Pickering, the left-leaning organizations have chosen a target interesting both personally and politically: He's the father of Rep. Chip Pickering Jr. (R-Miss.) and a close friend of Lott's.

The CBC cited a paper Pickering Sr. wrote during law school that outlined constitutional ways to impose criminal penalties for interracial marriage.

Rep. Pickering said the groups' accusations against his father "raises stereotypical questions" about older Southern men who are religiously active.

Judiciary Democrats have asked Pickering Sr. to provide hundreds of unpublished opinions he has written for the District Court of the Southern District of Mississippi, and GOP aides said Democrats have hinted that they may want to hold another hearing on Pickering.

In the big picture, however, Democrats contend that they should be graded by the number of judges confirmed by year's end.

By the end of this week 12 nominees will have been confirmed, and 11 more will have had a hearing and be awaiting committee action. Of those 11, only Pickering and one or two other judges appear to
have any problems.

If adjournment doesn't come for another month, Judiciary is likely to hold another hearing or two, setting up the likelihood that at least 20 judicial nominees will be confirmed in what has been a very turbulent political year.

That would be about average for the first year of a presidency, according to Democrats.

Even Craig admitted that between 20 and 30 nominees confirmed would "come closer" to where Republicans wanted to be at the end of this year.

Foreign Aid Bill Held Up Over Judicial Assurances

CNN.com
Tuesday, October 23, 2001

Republicans have again blocked a major appropriations bill, looking for Democratic assurances that more of President Bush's judicial nominees will be confirmed before the end of the year.

Senate Majority Leader Thomas Daschle, D-South Dakota, tried to force GOP senators to move forward with the foreign aid appropriation bill Tuesday, but could not find the 60 votes. Democrats hold a 50-49-1 edge in the chamber.

Republicans say Democrats are deliberately holding up Bush's nominees this year, a charge that Democrats made against the GOP-controlled Senate last year under former President Clinton.

The Senate has approved eight judges this year, with more than 50 nominees still pending. There are 110 vacancies in the federal judiciary system, including 39 positions that have been open so long the courts have classified them as "judicial emergencies."

To pressure Democrats to approve more judges, Republicans have been holding up the Senate's consideration of the foreign aid bill. It is one of the 13 spending bills that were supposed to be finished by Oct. 1, the beginning of the government's fiscal year, but were not.

The government is operating in the meantime under the same priorities established by Clinton and lawmakers a year ago.

"We have to fulfill our responsibilities as the United States Senate and take action on these nominees," said Sen. Jon Kyl, R-Arizona, a leader of the Republican blockade. "And until we're able to do that, it is our view that we should call a time-out on other certain portions of the Senate business so that we have the ability to take those nominations up and bring them to the floor."

Democrats say they're moving as fast as they can. Four more U.S. District judge nominees were to be voted on Tuesday and two U.S. Appeals Court nominees are pending in the Senate Judiciary Committee.

Senior Democrats have criticized Republicans for linking the foreign aid bill to more judicial confirmations. "I don't see why appropriations should be held up because of nominations," said Sen. Robert C. Byrd, D-West Virginia, who chairs the Appropriations Committee. "What does the one have to do with the other?"

Democrats say holding up the foreign aid appropriations bill could hurt America's efforts to fight terrorism overseas.

The foreign aid bill has "hundreds of millions of dollars to reduce poverty for basic education, housing and other efforts in the poorest countries, which helps eradicate breeding grounds for terrorists," said Sen. Harry Reid, D-Nevada. "For them to tell us that we can do it later is pure poppycock."

Senate GOP to Withdraw Hold on Approps

By Alexander Bolton
The Hill
Wednesday, October 24, 2001

In a move that is expected to clear Congress' road to adjournment, Senate Republicans decided

Tuesday to allow the appropriations process to continue without further hindrance.

The move came after Republicans defeated a Democratic-led effort to force a vote on the foreign operations spending bill. The failed cloture vote marked the second time in the last two weeks that Senate Democratic leaders failed to garner enough votes to proceed on the bill.

Republicans had vowed to hold up the appropriations process until the Senate eliminated a backlog of unconfirmed judicial nominees.

"We made our point," said a Senate leadership aide who attended the GOP policy luncheon Tuesday. "We should [now] be focusing our priorities on where the country's priorities are and also combating terrorism."

Republicans cited a Congressional Research Service report that shows the Senate has confirmed only 13 percent of the president's nominees to U.S. district and circuit courts, a far lower percentage than were confirmed in the first year each of the last three presidents took office.

"We're now at a point where there are 110 vacancies on the court. We have a number of nominations the White House has sent over that Sen. [Orrin] Hatch [R-Utah, ranking member of the Senate Judiciary Committee] and the White House would like to see moved as soon as possible," said Chris Roche, spokesman for Hatch.

Both parties have claimed that the impasse over judicial nominees threatened the country's ability to carry on the war against terrorism.

But Senate Majority Leader Tom Daschle (D-S.D.) accused Republicans of undermining the war on terrorism by stalling key spending legislation.

Senate Democrats say they have not confirmed more judges because they've spent time crafting anti-terrorism legislation and passing executive branch nominees that the administration had given the highest priority.

"I've been trying to follow the president's priorities. They've followed, first and foremost, their partisan political priorities," said Sen. Patrick Leahy (D-Vt.), chairman of the Judiciary Committee.

However, the partisan logjam is not limited to judicial nominees. A range of other controversies ranging from regulations on Mexican trucks to stem cell research threaten to engulf those bills that the Republican leadership allows.

Sens. John McCain (R-Ariz.) and Phil Gramm (R-Texas) said they will resume their efforts to delay the Transportation appropriations bill because of controversial language restricting the number of Mexican trucks that can cross the border.

"They still need to appoint conferees [for the Transportation bill]," said Pia Pialorsi, McCain's

spokeswoman on the Commerce Committee. "Sen. McCain has said all along that he would do whatever he could to bring the other side to the table to engage in negotiations. That would include with the appointing of conferees holding votes on the process."

Gramm argues that the Mexican trucking language is a violation of the North American Free Trade Agreement.

"A deal is a deal," said Larry Neal, Gramm's spokesman, referring to the trade pact. "We've been trying to work out a compromise on this for months. The other side has never had an interest in compromising."

President Bush has also vowed to veto the bill if it contains the trucking provisions, setting up a battle with Democrats.

Last week, at the Senate Appropriations Committee's markup of the District of Columbia spending bill, Sen. Ted Stevens (R-Alaska), the committee's ranking member, vowed to halt the bill on the Senate floor because it allowed the city to use local funds pay benefits to same sex partners.

"The District of Columbia receives substantial federal funding, [those funds and local funds] are fungible," he told his colleagues.

Republican intransigence on judicial nominees, the Transportation bill, and the D.C. bill, could cause Democrats to force votes on partisan issues, a tactic they've avoided for the sake of unity.

Last year, Sen. Byron Dorgan (D-N.D.) attached controversial provisions to the Agriculture appropriations bill opening the Cuban market to American farmers and allowing for the reimportation of prescription drugs. Dorgan could be tempted to push those issues again this year if he feels Republicans are playing hardball.

Senators OK Judges for State; Two Appointments Pending for Court in City

Chris Casteel
The Daily Oklahoman
Wednesday, October 24, 2001

Prodded by Sen. Don Nickles, the Senate on Tuesday unanimously approved two federal judge nominees for Oklahoma districts.

Claire V. Eagan and James P. Payne, both of whom are U.S. magistrates in the northeastern part of the state, were confirmed without debate to lifetime appointments on the federal bench. They are the first judicial nominees from President Bush to be approved for Oklahoma.

Two more are pending for the western district, which is based in Oklahoma City.

Senate Republicans have been pushing the Democratic majority to move judicial nominations more quickly. Nickles, R-Ponca City, the Senate's second-ranking Republican, has been pushing the Oklahoma nominees that he and Sen. Jim Inhofe, R-Tulsa, recommended to Bush.

Eagan was confirmed to be a U.S. district judge in the northern district, based in Tulsa. She has been a U.S. magistrate three years in that district. Before that, she spent 20 years as a litigation attorney. During her time as magistrate, she has supervised the court's settlement program.

Payne was confirmed as a district judge to share time in the northern district and eastern district, based in Muskogee. Payne has been a U.S. magistrate in the eastern district for 12 years. He spent 15 years in private practice, handling civil matters, and also served three years as an assistant U.S. attorney.

Stephen Friot, an Oklahoma City attorney who has been nominated for a U.S. judgeship in the western district, appeared before the Senate Judiciary Committee last week but has not been confirmed by
the panel.

Another nominee for the western district, Joe Heaton, is awaiting a hearing before the committee.

Camp Gets Senate OK for Federal Bench Spot

By Matt Kelley
Omaha World-Herald
Wednesday, October 24, 2001

The U.S. Senate on Tuesday approved President Bush's nomination of Laurie Smith Camp to serve on the federal bench in Nebraska.

Camp, a senior aide to Nebraska Attorney General Don Stenberg, will serve as judge in the U.S. District Court in Omaha. She will be the first woman to serve as federal judge in the state.

Camp's nomination won Senate approval 100 to 0 after a round of sharply partisan sniping related more to Senate procedure than her qualifications.

Before Camp's confirmation, Senate Republicans used procedural maneuvers to block consideration of a spending bill for foreign operations in fiscal year 2002. GOP leaders complained that Democrats in control of the Senate aren't moving fast enough to send Bush's judicial nominees to an understaffed federal judiciary.

Camp had bipartisan backing from both U.S. Senators from Nebraska - Chuck Hagel, a Republican, and Ben Nelson, a Democrat.

Reached at Stenberg's office in Lincoln, Camp said she expects to leave her current job and

begin presiding over cases almost immediately. District Court officials in Omaha have been eager to fill the vacancy created by the retirement of Judge William Cambridge.

"They have been working very hard," Camp said of her soon-to-be colleagues. "And I want to help as much as I can."

After 11 years as general counsel for the Nebraska Department of Corrections, Camp joined Stenberg's staff in 1991, where she has worked on civil rights cases and criminal law.

She graduated from Stanford University and the University of Nebraska College of Law.

Partisan Bickering Lives on Over the Approval of Judges; GOP Blocking Bill to Protest Slow Pace

By Bill Walsh
The Times-Picayune
Wednesday, October 24, 2001

Since the terrorist attacks last month, federal lawmakers have kept partisan sniping to a minimum, except in one arena: approval of federal judges.

For the second time in two weeks, Republicans banded together Tuesday to block passage of a $15.6 billion foreign aid bill to protest to what they see as the Democrats' snail-like pace in approving Bush nominees to the federal bench. So far, only 12 of the 60 Bush nominees have been confirmed.

Both sides have used the current military hostilities to put a sharper point on their arguments. Republicans charge that the more than 100 vacancies on the federal bench, 39 of which have been vacant for so long they have been deemed "judicial emergencies," will hamper terrorism investigations as law enforcement agencies seek special authority to wiretap terrorist phones, seize money and detain suspects.

Democrats say the GOP-organized delay of the foreign operations spending bill is holding up military assistance for Middle East allies and humanitarian aide to Afghan refugees.

Republicans refused to go along with a Democratic request Tuesday to shut off debate on the spending bill and bring it up for a vote. Though Democrats have a 50-49-1 edge in the Senate, 60 votes are needed to move the appropriations bill forward.

Republican Sen. John Kyl, R-Ariz., who orchestrated the opposition, said it is time to "call a timeout" on Senate business until more Bush judicial nominees are approved.

Although the Senate signed off on four more judges Tuesday, raising the total to 12, Republicans complain the pace is still too slow. Bush has nominated 60 district and circuit court judges since taking office, 44 before the August recess.

Others waited longer

Democrats, who control the agenda in the Senate and therefore the pace of judicial confirmations, say former President Clinton's nominees waited three times longer for a hearing than Bush's have. They say it took, on average, more than 300 days for a judicial nominee to get a hearing, while Bush's nominees have been receiving a hearing after an average of 100 days.

But Sen. Orrin Hatch, R-Utah, the top-ranking Republican on the Senate Judiciary Committee, said the nominees sent to the Senate before the August break usually are approved in the first year of a presidential administration, and given the pace the Senate is moving, that's not likely to happen.

Hatch knows something about delay. In 1996, when he was chairman of the committee, he refused to schedule a single hearing on circuit court judges because of a spat he was having with the Clinton administration. By the time Clinton left office, however, Clinton had placed nearly as many judges on the federal bench as had President Reagan, who holds the record.

"The debate over judicial hearings has become entirely choreographed and predictable," said Jamin Raskin, a law professor at American University in Washington. "Different parties will speak different lines depending on who's in power."

Two Republican senators said committee Chairman Sen. Patrick Leahy, D-Vt., threatened to hold up appointments in their states because of the way they voted last week on the foreign aid bill. Leahy said he was only joking and added that the shutdown of Capitol Hill offices because of an anthrax attack last week has hampered progress.

Leahy also is chairman of the Appropriations subcommittee on foreign operations, giving Republicans an added incentive in sticking together to block the legislation.

Louisiana nominees

Neither of the two Bush nominees for vacancies on the U.S. District Court in New Orleans, Metairie lawyers Kurt Engelhardt and Jay Zainey, has been given a hearing before the Judiciary Committee. It's unclear when the hearings will be scheduled.

Edith Brown Clement, a New Orleans district court judge whom Bush wants to elevate to the 5th U.S. Circuit Court of Appeals, has been considered by the committee and is expected to be voted on this week, said Sen. John Breaux, D-La.

U.S. Attorney General John Ashcroft is allowing U.S. attorneys nominated by Bush to begin serving while they await Senate approval.

The administration has yet to nominate a U.S. attorney for the eastern district of Louisiana, based in New Orleans. The Justice Department and the FBI have reportedly completed their

background checks of Fred Heebe, the Louisiana delegation's choice for U.S. attorney in New Orleans.

"The nomination is now in the hands of the White House counsel's office," said Ken Johnson, spokesman for U.S. Rep. Billy Tauzin, R-Chackbay.

Tom Daschle's Stonewall; The Senate Majority Leader Tells the President to get Lost

By Byron York
The National Review
October 24 2001

On Capitol Hill today, a number of Senate Republicans are demoralized and pessimistic after the failure of their latest attempt to force the Democratic Senate leadership to speed up the confirmation of President Bush's judicial nominees.

For more than a week, Republicans held up consideration of a foreign-aid appropriations bill, trying to pressure Majority Leader Tom Daschle to abandon the Democrats' go-slow policy on judges. Daschle did not give in. Yesterday, with no success in sight, the GOP gave up. "The Republican caucus pretty much collapsed," says a senior aide.

But that wasn't the worst of it. Far more demoralizing was the hard line Daschle took with Bush Tuesday in a face-to-face White House meeting. The president was consulting with congressional leaders on a variety of topics, most of them related to terrorism, when he raised the issue of judges. The fact that Bush brought up the question at all is a measure of how important the issue is to the White House.

By all accounts, Daschle stonewalled.

"He said Democrats don't need appropriations bills and don't need judges as much as the White House does," says a GOP staffer and that was that. After the meeting, Daschle told reporters he told the president the Republicans' appropriations strategy simply would not work. "There is no connection [between the appropriations bills and judges]," he said. "I told that again to the president this morning....There isn't any leverage on appropriations bills."

So far, the Senate has confirmed 12 of Bush's judicial nominees. Now, after Daschle's statements, Republicans believe their best hope is to win about 20 confirmations by the end of the year. There remain about 110 vacancies on the federal bench, a significantly higher number than existed during the Clinton administration when Democrats accused Republicans of creating a "vacancy crisis."

If they ever had any hope that appeals to Democrats might succeed, Republicans on Capitol Hill and in the White House now realize that there simply is no bipartisanship when it comes to the issue of the federal courts and the president's responsibility to choose judges. There was no bipartisanship when Bush first arrived in Washington and tried to make friends with

congressional leaders of both parties. And there is no bipartisanship in the post-September 11 world in which Republicans and Democrats are working together more closely on a variety of other issues.

Indeed, some key Democratic constituencies are arguing that it is more important now than ever before not to compromise on judges, no matter what temporary spirit of comity might prevail in Congress. One example of the depth of liberal feeling is contained in a report, "President Bush, the Senate and the Federal Judiciary: Unprecedented Situation Calls for Unprecedented Solution," issued October 17 by the left-wing advocacy group People for the American Way. The report says that in his "response to the aftermath of the September 11 terrorist attacks," Bush must decide whether he will "provoke intense partisan conflict" by "pushing for votes on predominantly right-wing ideologues" to the federal judiciary.

"Right-wing advocates inside and outside of government are urging President Bush to use the bipartisan support he has been given in the wake of the terrorist attacks to complete the campaign for ideological dominance over the entire federal judiciary," the report continues. "Given how much is at stake, senators must...resist pressure from right-wing administration or Senate leaders to speed confirmation of nominees without serious consideration, and refuse to allow the critically important circuit courts of appeal from becoming dominated by right-wing ideologues."

Op/Eds

Operation Obstruct Justice; Democrats Continue to Stall Judicial Nominees

By Thomas L. Jipping
The Washington Times
Thursday, October 25, 2001

With just a few weeks remaining until the Senate adjourns for the year, Democrats are trying to deflect criticism from their confirmation obstruction campaign against President Bush's judicial nominees with a series of false, and sometimes bizarre, claims. Let's clear away a little of the smoke.

More than 100 judicial positions sit vacant across the country, the highest level in more than seven years. In July 1998, when he was in the partisan minority, Judiciary Committee Chairman Patrick Leahy set an important standard: "The Senate has not even kept up with normal attrition . . . let alone taken the type of concerted action needed to end the judicial vacancies crisis." As Don Lambro outlined Oct. 22 in The Washington Times, this situation takes on dangerous new significance since Sept. 11: "Dangerous backlogs and delays that prevent the swift and sure delivery of decisions needed to protect all of us from the threats that now loom over our country." The now-Democrat Senate has failed the Leahy standard; vacancies are more than 29 percent higher than when President Bush took office. Oh, by the way, vacancies are 56 percent

higher than when Mr. Leahy set that standard.

The Democratic Senate has also failed to meet another of Mr. Leahy's confirmation standards. In January 1998, with just 83 vacancies, he insisted that the Judiciary Committee should hold a nomination hearing at least every two weeks and the Senate should confirm at least three judges per week. Under his leadership, the Judiciary Committee has held hearings on just 19 of those 60 nominees, allowing fewer than half the nominees per hearing as when Republicans processed Bill Clinton's picks. The Senate has confirmed just 12 of 60 nominees this year, less than one-third its average annual rate over the past two decades.

To justify this obstruction campaign, or just to confuse everyone, Democrats are making some claims that don't even pass the laugh test.

Mr. Leahy claims, for example, that the Senate is "ahead of the pace of confirmations for judicial nominees in the first year of the Clinton administration." This is an outrageous distortion, even for a wad of political propaganda, and an honest evaluation shows just the opposite is true.

By the time President Clinton started making nominations in 1993 (Aug. 6), President Bush this year had sent 44 nominations to the Senate. Because of the lengthy evaluation process, nominations made later in the year are less likely to be confirmed. Thus it's no surprise that the Senate in 1993 confirmed two-thirds of its annual total in November. Don't forget that Democrats ran the Senate in 1993; they would gladly have confirmed as many Clinton nominees as possible. Since the Senate cannot confirm nominees who do not exist, they confirmed as fast as they could.

Exactly the opposite is true this year. Mr. Bush made more than two-thirds of his nominations before the Senate's August recess. The Senate in 1993 confirmed just nine nominees by Nov. 1 because it had few nominees to consider; the Senate this year has confirmed 12 nominees despite having dozens to choose from. Democrats in 1993 went as fast as they could; Democrats this year are going as slow as they can.

Still, the Senate in 1993 confirmed 88 percent of the nominations President Clinton made by November 1. Just to keep pace with 1993, the Senate must confirm at least 41 more nominees. At the Leahy three-per-week rate, this will take 14 weeks to accomplish, into next February.

Another way to evaluate the confirmation process goes beyond individual statistics about confirmations and vacancies and measures confirmation progress throughout the year. The Leahy standards, for example, dictate that a high vacancy level should result in a high confirmation rate. Dividing the number of judicial vacancies on a given date (say, Oct. 1) by the number of confirmations that year prior to that date indicates whether the Senate is following this standard. A higher score on this "Confirmation Obstruction Index" indicates few confirmations in the face of high vacancies.

Senate Democrats claim they are pure as the driven snow and that Republicans blocked every Clinton nominee in sight. Yet Democrats this year have a confirmation obstruction score more

than four times the highest score Republicans ever achieved under Mr. Clinton. No matter which way you cut it, the current confirmation obstruction campaign is real, deliberate, and beyond anything America has seen in many years.

Very real differences exist between Republicans and Democrats about the kind of judge America needs. Those differences, however, should be thoroughly and openly debated. Democrats once demanded this open process, demanded hearings and votes, arguing that a productive confirmation process was the Senate's constitutional duty. That was then, this is now - when they have the chance to gore some other ox. Rigging the rules and stalling the process perhaps reveal Democrats' fear that
they'll lose that debate.

Justice Denied; Given the Social Costs of Nomination Gridlock, it's Time for the President to Pull out all the Stops

By Victor Williams
New Jersey Law Journal
Monday, October 22, 2001

I have always been persuaded, that the stability and success of the national government, and consequently the happiness of the people of the United States, would depend in a considerable degree on the interpretation and execution of its laws. In my opinion, therefore, it is important, that the judicial system should not only be independent in its operations, but as perfect as possible in its formation.

- President George Washington.

In the closed chambers of overworked federal trial and appellate judges, it is too often freshly minted J.D.s and law students who actually author the opinions of the court. Chronic judicial vacancy rates, resulting from an ever-escalating game of judicial confirmation hardball, have created a "shadow judiciary" of clerks, law student externs and even undergraduate interns being given unprecedented authority to write the law of the land. Perhaps even more disturbing than reliance on one-year-termed
"elbow" clerks and interns is the increased use of "permanent" law clerks in the shadow judiciary. In addition to predetermining decisions for the judge and writing the court's opinion, some permanent clerks serve for years in one chamber, "presiding" over hearings and pretrial and settlement conferences.

Early reliance on these too-eager law clerks by a newly benched jurist retards the overworked judge's development of his own judicial voice and, in some cases, his very competence. The late, great Second U.S. Circuit Court of Appeals Judge Learned Hand often described his clerks as his cherished "puny" judges, but he was adamant that they would never be allowed to draft, much less author, even one of his opinions. In times of gridlock, there are few such actual authors on the bench - very few. Seventh Circuit Chief Judge Richard Posner has admitted that a "judge-written" opinion is now a rare occurrence in America.

The high rate of judicial vacancies and judicial default threatens judicial integrity and independence, as overworked federal judges continue to take shortcuts and institute various case-management coping mechanisms. As of mid-September, there were 107 vacancies on our combined federal trial and appellate bench of 852 active jurists. A score more have announced retirements. With 12 percent of the national judgeships vacant, 40 of the vacancies have been declared judicial emergencies by the U.S. Judicial Conference. Federal court caseloads continue to grow at a record pace, with more federal criminal prosecution filings than at any time since Prohibition.

Southwest border jurisdictions face an especially massive increase in cases. "The border courts are beyond their capacity to handle their caseloads," Judge Royal Furgeson of Texas testified to the House Judiciary subcommittee on crime earlier this year. He expressed the untold feeling of many federal judges across the nation: "We are desperately outmanned."

In addition to law clerk jurisprudence, federal appellate judges cope with case overload by substantially reducing the percentage of important cases in which oral argument is granted, and by limiting the number of written and published opinions. "Visiting" district court judges, who were not nominated by the president or confirmed by the Senate for appellate court power, frequent circuit court panels. Senior judges, some in their 80s, are literally being used as benchwarmers to make up panels of three. Too often, the appellate panel has only one active appellate judge. Worse still, circuit judges are
increasingly relying on unknown institutional "staff attorneys," who are given authority to assign weight to cases, recommend disposition through summary fashion and author dismissive orders.

At the trial level, vacancies and resulting case gridlock result in an overreliance on the "subjudiciary" of magistrates who now, tellingly, are formally referred to as "magistrate-judges." No longer relegated just to discovery, jury selection and warrant determinations, these nonappointed judicial employees preside over a significant percentage of both civil and criminal trials. In some jurisdictions, such as the Northern District of California, civil litigants have an affirmative obligation to say "no thanks" to the magistrate who is automatically assigned to conduct trials and who will, in any event, oversee discovery.

And all of this is on the verge of worsening - if an obstructionist Senate decides to step up its opposition to the president's judicial nominees. Putting aside the cost to judicial independence and integrity, the human cost of the coming confirmation fights will be borne by litigants who already must wait years for federal court time due to overloaded federal judicial dockets. Only the criminally accused are guaranteed a speedy trial and timely appeal in America. Civil litigants always go to the back of the courthouse queue. Individual Americans with important civil rights, employment, bankruptcy, Social Security and constitutional cases must wait for years for resolution. Some elderly Americans literally die while waiting for their day in court.

With 107 empty judgeships, fewer than 750 active federal judges must conduct the national justice business of 275 million residents. This past year, more than 320,194 cases were filed in

federal district courts, more than 54,600 in the courts of appeals and more than 1,300,000 in the bankruptcy courts. Does prolonged judicial docket gridlock similarly threaten our still struggling economy?

George W. Bush returned from Crawford, Texas, in August to face some serious opposition. As a result of late summer procedural maneuvers in the Senate, each of his administration's 164 nominees unconfirmed for executive and judicial positions were formally sent back to the White House. Each nomination made prior to the Labor Day recess was effectively canceled. Seven months into his presidency, Bush is almost back at square one, with only four judges having been confirmed. (And one of the four was the confirmation of a renominated, recess-appointed Clinton Democrat.) Like it or not,
Bush, the White House Counsel's Office and Justice Department operatives better go into training for a full fall schedule of appointment hardball.

For trial judge nominees, it will be a prolonged waiting game; for circuit benches it will be a closed-room trading game; and for the U.S. Supreme Court vacancies, it will be raw, unchecked blood sport.

Just hours after Vermont's Jim Jeffords announced his defection from the GOP, New Jersey Democrat Robert Torricelli boasted: "This isn't about a single Senate seat ... it's about the federal judiciary." Torricelli is right. For the partisan faithful on both sides of the aisle, the 2000 election debate continues. And, after Bush v. Gore, more than ever, it's about the judges. Evidence the call by Yale Law School's Bruce Ackerman (and others of the Clinton-Gore regular gang of 400 Democrat law profs) for a judicial appointment moratorium until "the American people vote again in 2004."

Some Democrats promise direct payback, not only for the Florida recount ruling but also for years of Republican confirmation delay tactics during the Clinton administration. Senate Republicans were responsible for prolonged delays of select nominees. Senate Judiciary chair Orrin Hatch focused intense concern on certain Utah-based and 10th Circuit nominees. Although only one Clinton judicial nominee was actually voted down by the Senate, many were subject to months of undue delay. Some literally waited years before receiving a hearing or full Senate vote.

In the end, Clinton benched 377 judges, compared to Ronald Reagan's 382. Clinton's two choices for the high court won easy confirmation with the help of an overwhelming number of Republican senators' votes. Even taking account of an increase in the number of benches to fill, Clinton still got his fair share of confirmations. In hindsight, considering the troubles faced by the Reno Justice Department and the rapid burn rate of his White House counsel, Bill Clinton was quite a successful judge-bencher. George W. should do as well.

Although Vermont Democrat Patrick Leahy, the new Senate Judiciary chairman, has promised quick action to fill vacancies, some evidence is contradictory. Only four judges out of 44 nominees had been commissioned before summer recess, and Leahy's late August confirmation hearings were conducted in an unusual fashion - just one nominee at a time. (Leahy may have

held the two hearings during the Senate recess to buffer against recess appointments coming from Bush.)

Perhaps the measure of "deliberate speed" still depends on whose ox is being gored. In 1998, when there were 83 empty judgeships and Clinton nominations at stake, Sen. Leahy asserted that, unless at least three judges were confirmed each week, "the Senate [would be] failing to address the vacancy crisis."

Now Democratic judiciary member Charles Schumer of New York openly proclaims an ideological litmus test for Bush nominees and demands full ABA evaluations. But who can hold the Senate accountable for a slow ABA process?

Bush countered with the so-called California plan, under which Democrat and Republican lawyer committees propose and evaluate trial court nominees. Under this plan, support is elicited from the diverse practicing bar, rather than from a more elite sector of the profession, as is the case with the ABA Standing Committee on Federal Judiciary.

For now, the Bush strategy appears to be to keep the pipeline full of judicial nominees, with special emphasis on specific federal appellate circuits. By targeting circuits for which two or three Republican appointments would be determinative of the en banc bench, the Bush administration can set up intercircuit conflicts for which the U.S. Supreme Court will be the last word. Any vacancy on the high court in the coming term, of course, will mobilize all interested parties to join the battle.

Perhaps George W. Bush can trade away a few lower court judges to the Democrats, but no David Souter need apply for the high court. Before repeating his father's mistake and losing the conservative re-election base with another Souter, Bush should consider the alternative, but controversial, recess appointment process that brought Earl Warren, William Brennan and Thurgood Marshall to the bench without Senate confirmation.

For years, both Republicans and Democrats have misrepresented not only established appointment practice, but also the U.S. Constitution itself regarding appointments. Legitimate "advice and consent" authority by the Senate as an institution has been distorted to demand individual senatorial "choice" of judicial nominees.

Senators expect the "courtesy" to choose the president's lower court judges for national court vacancies that occur in their states, while honoring each other's "blue-slip" holds on nominations. (Surprisingly, while Bush was in Texas, his White House counsel and judiciary chair, Leahy, extended the privilege of "senatorial courtesy" and blue-slipping to D.C. delegate Eleanor Holmes Norton.)

The text and history of Article II, Section 2, are at odds with such senatorial (or quasi-delegate) choice. The Constitution's Framers explicitly rejected congressional selection of judges. Delegate Edmund Randolph warned the 1787 Constitutional Convention that appointments made by legislative bodies result from "cabal, from personal regard, or some other consideration than

... proper qualifications."

Alexander Hamilton described the Senate's limited appointment function in "Federalist No. 66": "There will be no exertion of choice on the part of the Senate. They may defeat one choice of the executive, and oblige him to make another; but they cannot themselves choose -- they can only ratify or reject the choice of the President." In "Federalist No. 76," Hamilton further explained that although the president is given the "sole and undivided responsibility" to select appointees, "the Senate, in contrast, is given the limited power of either accepting or rejecting the President's choice."

Senate Democrats should honor the organizational agreement, hammered out midyear with the Republican minority, and guarantee swift hearings and certain full Senate votes on nominees. The legitimate textual charge of "advice and consent" ultimately must be understood as to "ratify or reject" the president's choices.

A break in the deadlock is being demanded by left and right. In a recent Washington Post op-ed, academic Sheldon Goldman warned of a genuine "judicial-confirmation crisis," stating that "obstruct and delay has replaced advise and consent." While sympathizing with the Democrats' fear of "stacking the bench with right-wing ideologues incapable of administering justice fairly and impartially and threatening fundamental individual rights," Goldman advocates immediate Senate confirmation reform.

Suggested reforms include elimination of "blue-slip" holds, scheduling of regular hearings and guaranteed speedy, full Senate votes. "When Republicans obstructed and delayed the confirmation of President Clinton's nominees, it clearly was wrong," wrote Goldman. "It would be equally wrong for Democrats to reciprocate no matter how justified it might seem." Regardless of reform preferences or ideological biases, however, the consequences of continued confirmation gridlock are unacceptable. It's no rush to judgment to ensure that federal justice is not delayed.

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Subject: judicial media review
Attachments: Judicial Media Review 11-13-01.wpd

Please see attached review

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Tuesday, November 13, 2001

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General Judicial Articles

Senate Judges Glance Numbers Used by Republicans and Democrats in Their Arguments Over Judicial Nominees

The Associated Press
Monday, November 12, 2001

There were 101 judicial vacancies in the U.S. District Court and the U.S. Appeals Court as of Friday, Nov. 9, which is a 12 percent vacancy rate. The Senate has confirmed 17 judges, four to the Appeals Court and 13 to the District Court.

Republicans say:

-Democrats this year have confirmed a smaller percentage of judges than the Senate did for the Reagan
administration, the first Bush administration or the Clinton administration. (By Oct. 31, 1981, 100 percent of President Reagan's judicial nominees had been confirmed; by Oct. 31, 1989, 89 percent of President George H.W. Bush's nominees had been confirmed; and by Oct. 31, 1993, 88 percent of President Clinton's nominees had been confirmed. On Nov. 9, 2001, 27 percent of the Bush administration's judges had been confirmed.) -President Clinton had 377 judges confirmed by the end of his eight-year term, which included former Judiciary Chairman Orrin Hatch's six-year chairmanship. That number is second to only Reagan, who had 382 judges confirmed during his two terms.

-In the first year of the Reagan and Bush administrations, the Senate confirmed 100 percent of the judicial nominees who were submitted before the August recess. Ninety-three percent of Clinton's nominations made before the August recess were approved. To meet the 100 percent goal this year, 28 more Bush judges would need to be confirmed by the end of the session.

- In Clinton's first year, he made five Appeals Court nominations and three were approved by the Senate Judiciary Committee for a nomination rate of 60 percent. Bush has made 29 Appeals

Court nominations with five approved by the committee, for a 17 percent approval rate.

-There are 21 nominees pending that are slated to fill positions that have been declared "judicial emergencies," meaning the position has been open too long or the workload in that court has become too much for the judges assigned there.

Democrats say:

-The number of confirmations this year are more than what there were at this time in either the first year of the first Bush administration or the first year of the Clinton administration. (In 1989, the Senate confirmed seven judges, with three going to the Appeals Court. In 1993, the Senate had confirmed eight judges, with two going to the Appeals Court.)

-From 1995-2001 when Republicans controlled the Judiciary Committee, they went 34 straight months
without holding a single judicial confirmation hearing, they held one in another 30 month period and in
another 12 month period they held two hearings involving judicial nominees.

-Under Republican control, some judicial nominees waited more than four years without ever being
included in a hearing and never got a vote.

-Fifty-six percent of President Clinton's Appeals Court nominees in 1999 and 2000 were not confirmed and more than one-fifth of his judicial nominees, 68, never got a committee hearing and committee vote.

-The average time between nomination and confirmation for Appeals Court judges this year has been
approximately 100 days. The average length of time between nomination and confirmation for Clinton's last Circuit Court nominees was 343 days.

Controversial Judicial Picks Wait

By Jesse Holland
The Associated Press
Monday, November 12, 2001

President Bush's most controversial judicial nominees may have to wait until 2002 before they get a
confirmation hearing, much less a vote, from the Democrat-controlled Senate.

While Democrats say they plan to get as many as 30 of Bush's judges confirmed before the end of the year - 17 of his 64 nominees have been approved so far - none of them will likely be the four nominees who could cause long, drawn out debates among senators.

That means Bush Appeals Court nominees Miguel Estrada, Jeff Sutton, Terrance Boyle and Michael McConnell will likely have to wait until next year before finding out whether the Democrats in control of their destinies will even allow a vote on their nominations.

"I'm trying to get the ones who are non-controversial" first, said Senate Judiciary Chairman Patrick Leahy, D-Vt. "We're trying to get through as many as we can." Republicans don't believe him. GOP senators have dropped their blockade of spending bills as a tactic for pressuring Democrats to allow more judges through. But Republicans still accuse those on the other side of the aisle of playing political games with Bush's
nominations.

"I don't think we're doing the job, and I think the American people are going to suffer because of it," said Sen. Orrin Hatch, R-Utah, the top Republican on the Senate Judiciary Committee and its former chairman.

"It's purely partisan politics," said Sen. Jon Kyl, R-Ariz., one of the leaders of the bill blockade. "Be truthful about it. They don't want conservative judges on the court."

Thirty-two of Bush's nominees are awaiting a hearing before the Senate Judiciary Committee. Hearings but no committee votes have been held on 10 other nominees and one other has received committee clearance but has yet to be voted on by the full Senate.

When President Clinton left office after eight years, 67 of his judicial nominees had never had a hearing in the Senate Judiciary Committee, Democrats say.

Sheldon Goldman, a University of Massachusetts professor and author of the book, "Picking Federal Judges: Lower Court Selection From Roosevelt Through Reagan," said Leahy has done well in getting 19 judges confirmed since June. Goldman, however, added that all judicial nominees, even the controversial ones, deserve a quick hearing.

"I would think a case would have to be made for having it within three months," Goldman said. "Now, of course, September 11 and all that's followed have completely interrupted the whole saga, and then the anthrax cases obviously, so under these circumstances you might want to talk six months, seven months. But within a reasonable time frame, hearings should be held and the Senate Judiciary Committee should vote."

Sutton, McConnell, Boyle and Estrada were among the first 11 nominations Bush made on May 9. Along with five other judicial nominees, they have been waiting six months for Senate action. They also still face a rocky road ahead in the Democrat-controlled Senate.

McConnell, nominated to the 10th Circuit Court of Appeals, is recognized in legal circles as especially
conservative on abortion rights and church-state separation.

Disability activists protest the selection of Sutton, a former Ohio state solicitor, for the 6th Circuit Appeals Court because he successfully argued to the Supreme Court that state employees can't use federal disability rights to collect damages for on-the-job discrimination.

Estrada, nominee to the District of Columbia Appeals Court, is a partner in the Washington firm that
represented Bush at the Supreme Court during his post-election legal fight with Al Gore.

Bush himself made a personal appeal to Democrats for Estrada. "Get him moving before it's too late," the president said.

And Boyle, nominated for the 4th Circuit Appeals Court, has been part of a decade-long political tug of war. Bush's father nominated the former aide to Sen. Jesse Helms to the federal bench in 1991. Democrats blocked Boyle then, and Helms, R-N.C., subsequently retaliated by blocking all of Clinton's nominees from North Carolina.

Now North Carolina Sen. John Edwards, a Democrat, has yet to complete the paperwork that would allow Boyle's nomination to go to a vote.

Leahy might be right to wait on nominees who might cause fights, Goldman said.

"You want to get the more confirmable people through," he said. "You don't want to gum up the works with the people who are more controversial. But they should all have hearings. Whether they have them before December or they have them early next year, they should all have hearings."

Specter Once A Long Shot Candidate for High Court Seat

By Claude Marx
The Associated Press
Monday, November 12, 2001

If history had turned out differently, Sen. Arlen Specter, a key player in two confirmation battles for U.S. Supreme Court nominees, might have been the one being debated.

Specter, R-Pa., was one of 36 people whose names came up during discussions about filling two vacancies that occurred in 1971. According to a new book by John W. Dean, White House counsel to President Nixon, picking Specter would have been an overture to Jews, who were not usually supportive of Nixon.

"There was a question of the Jewish seat on the court and Specter was considered and talked about but
never got to the final stages," Dean said in an interview about his book "The Rehnquist Choice." Though
Specter's name was mentioned in the press at the time, Dean's book and recently released White

House transcripts offer the first looks at the behind-the-scenes decision making.

Specter was serving his fifth year as Philadelphia district attorney at the time. He had become well known in national legal circles for his work as an assistant counsel to the Warren Commission, which investigated the assassination of President Kennedy.

In a Sept. 17, 1971 conversation with White House Chief of Staff H.R. Haldeman, Nixon said: "On the Jew side there is only one, Specter. He's strong on law enforcement, and the rest, and I might consider him if we want to play to the Jews."

However, three days later in a discussion with Attorney General John Mitchell, Nixon said he had no interest in nominating a Jew.

"When are you going to fill that Jewish seat on the Supreme Court?" Mitchell asked.

"Well, how about after I die?" Nixon replied.

The two vacancies, to succeed Justices Hugo Black and John Marshall Harlan, were eventually filled by Lewis Powell and William Rehnquist. Powell retired from the court in 1987 and died in 1998. In 1987, President Reagan appointed Rehnquist chief justice, a position he still holds.

From 1932 to 1968, one seat on the high court had been occupied by a series of Jewish justices: Benjamin Cardozo, Felix Frankfurter, Arthur Goldberg and Abe Fortas. Nixon's third choice to succeed Fortas, Harry Blackmun, was confirmed in 1970 after the first two nominees were rejected by the Senate.

Specter's name did not come up during discussions about filling the Fortas seat.

Dean, who served 127 days in jail for his involvement in the Watergate scandal and has become one of
Nixon's harshest critics, does not think Nixon's comments about Specter meant the late president was
anti-Semitic.

"He was viewing the choices through the prism of what the political pluses and minuses were," Dean said.

In Specter's memoir published last year, he wrote that he would have reluctantly accepted the appointment: "I did not want to be on the Supreme Court at 41 and out of the fray for the rest of my life. But I knew I couldn't turn it down."

Though Specter never made it to the high court, he has had a say over w ho did.

Since coming to the Senate in 1981, he has served on the Judiciary Committee, which holds confirmation hearings for all judicial nominees.

Eight of the high court's nine current members have been confirmed during Specter's tenure on the panel. His role was especially important in two fights.

In 1987, Specter provided a key Republican vote to defeat President Reagan's nominee, U.S. Court of
Appeals Judge Robert Bork. Specter thought Bork's views on civil rights issues to be too conservative.

In 1991, Specter won national attention for his aggressive questioning of Anita Hill during the confirmation hearings of U.S. Court of Appeals Judge Clarence Thomas, who had been nominated by the first President Bush.

Senate Pact on 'Holds' Seems to Be a Dead Letter

Helen Dewar
The Washington Post
Monday, November 12, 2001

Two years ago, after relentless prodding by several colleagues from both parties, Senate leaders agreed to end the secrecy with which individual senators could put "holds" on legislation or nominations, effectively blocking action until the holds were released.

But it wasn't long before senators began to ignore the agreement, and it now appears to be a dead letter, as Sen. Paul D. Wellstone (D-Minn.) discovered when he tried late last month to bring up a bill to expand programs for homeless veterans, only to run into a steady stream of anonymous objections from Republicans.

Day after day, Wellstone tried to bring up his bill, and, day after day, one Republican or another rose to
object on behalf of an unidentified colleague. Some, such as Sen. Larry E. Craig (R-Idaho), expressed
sympathy for the goal of the legislation and said he hoped it might pass "at some time in the future." But not now, they all said. Infuriated, Wellstone who has never been accused of being a shrinking violet -- has retaliated by vowing to put holds on all Republican-sponsored bills until he gets action on the veterans measure. They will not be secret, he said; they will be loud and clear.

"I have made every kind of appeal known to humankind: Why are you doing this, what's the matter, please let it go," Wellstone recalled in an interview.

When that didn't work, he simply told them, "If you keep holding up my bill, then none of your stuff is going to go through either." That argument has not had any impact, but Wellstone figures it will when Republicans as well as Democrats start seeking unanimous consent for their pet projects before Congress leaves for the year.

Some Democrats believe Republicans are taking aim at Wellstone's bills because they have made him a prime target in next year's elections and want to deny him bragging rights on a popular issue. Republicans said they had no idea who was doing what and why.

Holds started as a courtesy honored by Senate leaders, but over the years came to be a convenient
instrument of obstruction. Under the 1999 agreement between Republican leader Trent Lott (Miss.) and Democratic leader Thomas A. Daschle (S.D.), senators could still impose holds but would have to make their actions known to the bill's sponsor, the chairman of the committee of jurisdiction and their party leader. But there was no enforcement mechanism.

As it has turned out, the agreement is "not worth the paper it's written on," said a Democratic leadership
aide.

GOOD TIMING: Minutes before Senate Republican Conference Chairman Rick Santorum (Pa.) was to begin a news conference to suggest a link between national security and confirmation of President Bush's judicial nominations, Senate bells rang for a roll call vote. Democrats had fortuitously scheduled a vote on a judicial nomination, and Santorum had to leave his own news conference briefly to cast his vote.

Democrats credited serendipity rather than strategy for the timing of the vote by which Terry L. Wooten was unanimously confirmed for the U.S. District Court in South Carolina. Wooten was the 17th judicial nominee to be confirmed since Democrats took control of the Senate in June. Democrats say this is good progress, while Republicans note that 43 nominations are still pending.

Judicial Nominee Holdup Criticized

By George Edmonson
The Atlanta Journal and Constitution
Sunday, November 11, 2001

Washington Georgia Republican Rep. Mac Collins says Sen. Max Cleland (D-Ga.) and his colleagues in the Senate are engaging in "political cowardice" toward President Bush's judicial nominees.

"I am writing to make you aware of my growing concern over the political posturing in the Senate which is delaying the confirmation of pending judicial nominations," Collins began a recent letter to Cleland.

A subsequent press release from Collins' office said he "expressed concern that Cleland and other members of the Democratic-controlled Senate have been blocking President Bush's nominees in an act of political cowardice."

The letter and the press release mentioned appointments of both judges and U.S. attorneys. A spokeswoman for Cleland, Patricia Murphy, said the senator had not slowed the procedures for reviewing and making recommendations on appointments in Georgia.

"Sen. Cleland is using the same process under the Bush administration as was used under the Clinton
administration, namely reviewing the nominees' qualifications and professional experience," Murphy said in an e-mail.

Federal judges and U.S. attorneys are among the presidential appointments the Senate must confirm. The two senators from a nominee's state usually are accorded great influence in the process. Nominees are considered by the Judiciary Committee before going to the Senate; neither Georgia senator is a member of that committee.

The speed of consideration for Bush's judicial nominees has become one of the most heated issues
between Democrats and Republicans in recent weeks.

Late last week, for example, Sens. Jon Kyl (R-Ariz.) and Rick Santorum (R-Pa.) held a news conference to excoriate Democrats for what they said was an inexcusable delay in the process.

"While they all say it's not about retribution or payback, there is no other excuse," Kyl said. Santorum
referred to the "rotting underbelly" of Democrats' talk of bipartisanship.

Both parties have cited statistics, timelines and historical precedents to bolster their own arguments.
Disagreement over the pace of appointments, with the sides reversed, occurred when Republicans controlled the Senate during the Clinton presidency.

Then, Collins did not press his party to act with greater speed on Clinton's nominees, because "Those
appointments were not vital to national security, as is the case here," spokesman Dan Kidder said in an
e-mail. "These appointments for U.S. attorneys are critical to the successful prosecution of suspected
terrorists. The appointment of federal judges is vital to trying those charged with terrorist activities."

Sen. Orin Hatch (R-Utah) said last week that nominees were considered quickly when he chaired the
Judiciary Committee while Clinton was president.

"And I took a lot of abuse from some who felt that I was moving them too fast," Hatch said. "But

I just
believe that whoever is the president deserves support on his choices for the judiciary."

The current Judiciary chairman, Sen. Patrick Leahy (D-Vt.), noted that the committee has held nine hearings on judicial nominations since he took over the post July 10.

"We have already confirmed more District Court judges this year than were confirmed in the entire first year of the first Bush administration in 1989, and more Court of Appeals judges than were confirmed in the first year of the Clinton administration in 1993," Leahy said in a statement.

According to Judiciary Committee data, the two court levels had 99 vacancies and 47 pending nominations, among the 811 judgeships. Seventeen other nominees have received Senate confirmation.

For the 94 U.S. attorney positions, Bush had submitted 59 nominations, and 51 of them had been confirmed, the committee said.

Last week, two U.S. attorneys for Georgia districts --- William Duffey Jr. and Maxwell Wood --- were among 11 confirmed by the Senate.

Cleland and Sen. Zell Miller (D-Ga.) also attended a hearing to support the nomination of Clay Land, a former Republican state senator, as a District Court judge in Georgia.

Santorum Says Delay in Judicial Confirmation Hurts Anti-Terrorism Fight

By Claude Marx
The Associated Press
Friday, November 9, 2001

One judicial nominee from Pennsylvania is among 45 awaiting confirmation by a Senate committee and
Sen. Rick Santorum said Thursday the delay is hurting the fight against terrorism.

Judge D. Brooks Smith, who was nominated by President Bush to the U.S. Court of Appeals for the 3rd Circuit on Sept. 10, is awaiting a confirmation hearing by the Senate Judiciary Committee.

Santorum, R-Pa., said the delays are the result of "rank partisanship by (Senate Majority Leader) Tom
Daschle" that is hurting the judicial system. "These judges try the criminals and interpret what is the law and without getting them approved in a timely fashion you don't get the system working," Santorum said.

Daschle said that Democrats "are doing all that we can to see that the nominees are considered

and
confirmed. ... But we wish the Republicans had been as responsive when we made the same argument under President Clinton."

Smith, a U.S. District Judge who sits in Altoona and Pittsburgh, was first named to the federal bench in 1988 by President Reagan.

Judiciary Committee spokesman David Carle said no hearing has been scheduled for Smith and declined to say when one would take place.

There are 23 nominees for district judgeships and 21 nominees for appeals court judgeships awaiting
confirmation. The Judiciary Committee holds hearings on nominees, votes on them and then sends them to the Senate where they must be approved by a majority of the 100 members.

"There is a litmus test going on," Santorum said. "If you are not an activist judge, (Judiciary Committee
Chairman) Pat Leahy doesn't want to see you before his committee."

Carle said the committee has been ahead of the confirmation pace for judicial nominations for the first year of both the Clinton administration and the first Bush administration.

President Bush has not nominated anyone to fill the 10 district court vacancies and the other appeals court vacancy in Pennsylvania.

Santorum and Sen. Arlen Specter, R-Pa., have submitted recommendations for those vacancies. There have been delays in completing FBI background checks because of a backlog of federal appointees and because the agency has devoted extensive resources to investigating the Sept. 11 terrorist attacks, Santorum said.

Partisan Wrangling Delays Federal Bench Confirmation Hearings

By Jonathan Ringel
Legal Times
Monday, November 12, 2001

Despite a spate of recent confirmations, new developments in the struggle over the federal bench are showing just how dysfunctional the process can get.

On Thursday, President George W. Bush named three Michigan nominees to the 6th U.S. Circuit Court of Appeals. Michigan is among the states covered by the Cincinnati-based appeals court. Within
hours, Michigan's two Democratic senators had vowed their opposition, which makes it very unlikely the nominees will come up for confirmation hearings without more wrangling.

The Michigan problem resembles other circuit court fights that have slowed nominations and confirmations for years. The squabble has its origins in the Clinton administration, when two presidential
picks for the circuit waited years without getting hearings from the then-Republican-controlled Senate.

Similarly, Bush's nominee to a North Carolina seat on the Richmond, Va.-based 4th Circuit, federal trial judge Terrence Boyle, is stuck because of a feud that dates back to the first Bush administration, when the same nominee couldn't get through a Democrat-controlled Senate. "There's mounting frustration here," says one Bush administration source, who asked not to be named.

During the summer, White House Counsel Alberto Gonzales said he hoped the administration would have named nominees for nearly 100 open seats by the end of the year. But protracted negotiations with home-state senators have slowed the process, says the source, who predicts that it will take at least until January to achieve Gonzales' stated goal.

The terrorism investigation has added to the problems, as FBI turnaround time on background checks has increased from about 28 days to 45 days, says the source.

So far, Bush has named 64 nominees, 17 of whom have been confirmed by the Senate. At least 10 could be confirmed in the coming weeks, which would equal the number of judges confirmed by a friendly Democratic Senate in Clinton's first year. But aides to Senate Judiciary Chairman Patrick Leahy, D-Vt., acknowledge that the confirmed nominees rose to the top of the list because they were largely noncontroversial and supported by both home-state senators, often one Republican and one Democrat.

But the list of consensus nominees is running thin, especially for the influential appeals courts. The Michigan situation illustrates the problems that lie ahead.

During the Clinton administration, then-Michigan Sen. Spencer Abraham (now secretary of energy) blocked the 6th Circuit nominations of Michigan appeals judge Helene White and Detroit litigator
Kathleen McRee Lewis. Clinton officials, Abraham said, had not properly consulted with him. Although the senator released his hold in the spring of 2000, White spent more than four years waiting in vain for a hearing, breaking known Senate records for futility. Michigan Sens. Carl Levin and Debbie Stabenow, both Democrats, have since urged Bush to renominate White and Lewis.

Bush officials met with White and Lewis in March, but apparently to no avail. In August, Levin and Stabenow urged Leahy to stop action on all 6th Circuit nominees -- the circuit also includes Ohio, Kentucky and Tennessee -- until the White-Lewis matter was resolved.

Gonzales responded then that the Levin-Stabenow block "would distort the Senate's exercise of its advice and consent function by institutionalizing a practice whereby well-qualified nominees

may be held hostage to the non-germane demands of individual senators from other states."

Meanwhile, the 6th Circuit continued to lose judges -- and is now operating with barely half of its usual complement of 16. Four vacancies come from Michigan.

The matter simmered until Nov. 1, when Levin and Stabenow publicly asked Bush to appoint a bipartisan commission to choose nominees. The administration rejected that move and, on Thursday,
announced that Bush would nominate three jurists for the 6th Circuit seat: U.S. District Judge David McKeague, Michigan Circuit Judge Susan Neilson and Michigan Court of Appeals Judge Henry Saad.

Levin and Stabenow released a statement hours later saying they remained committed to addressing "the unfair treatment" of White and Lewis. "Until that resolution is achieved, we cannot in good
conscience consider new nominees," they said. A Leahy aide reasserts that the committee policy under both Democrat and Republican control has been that both home-state senators must support a
nominee before he or she may move forward.

Gonzales could not be reached for comment, but the administration source explains the thinking behind the hard stance. Agreeing to Levin and Stabenow's demands might solve that problem, the source said, but create others.

"Nobody's playing for the short term," says the source. Making a deal "will get you held up for circuit seats across the country. We're not in the business of giving away bits of the president's powers."

Since Democrats took over the Senate last summer, four court of appeals nominees and 13 district court nominees have won confirmation. Another 11 would-be judges have had hearings, and all but one -- 5th Circuit nominee Charles Pickering -- appear headed for easy confirmation before the Senate adjourns in the coming weeks.

But even those nominees are in limbo as Leahy and the White House wrangle over a new committee questionnaire that asks nominees to confess any adult use of illegal drugs and prior arrests and convictions. Some Bush nominees have answered the questions by simply directing senators to their FBI reports.

Leahy said at a Nov. 8 meeting that four nominees who had hearings Oct. 25 had not yet been scheduled for committee votes because aides were still waiting for full responses to their questionnaires. An administration official says that the new questions are covered in FBI background checks, and the senate's additional question is a likely source of leaks and attempts to embarrass nominees.

A Leahy aide argues the questions are reasonable and similar to what other committees ask

nominees under their review.

3 Nominated By Bush To Appeals Court

By David Ashenfelter
Detroit Free Press
Friday, November 9, 2001

President George W. Bush has nominated three Michigan judges to the U.S. 6th Circuit Court of Appeals in Cincinnati, including the first Arab American ever nominated to the court.

But all three nominees -- Wayne County Circuit Judge Susan Bieke Neilson, Michigan Court of Appeals Judge Henry Saad and U.S. District Judge David McKeague -- could face confirmation difficulties because of fallout from failed judicial confirmations during Bill Clinton's presidency.

Michigan Sens. Carl Levin and Debbie Stabenow, both Democrats, said they couldn't support the nominations, which require Senate approval, until the White House deals with how the Republican-controlled Senate foiled the nominations of two Michiganders to the same bench during Clinton's presidency. They want Bush to appoint a bipartisan commission to recommend federal judicial candidates in Michigan. The court handles appeals of federal district court cases from Michigan, Ohio, Kentucky and Tennessee.

Bush's nomination of Saad sends a strong message, especially since the Sept. 11 terrorist attacks, one
federal judge said.

"It conveys an important message to all the citizens and residents of this country that we embrace and
welcome diversity and that we are extending the American dream to anyone who is prepared to work hard," said U.S. District Judge George Steeh III of Detroit, who was the first Arab American nominated for any federal judgeship in Michigan in 1997. He took office in 1998.

Saad, 53, of Bloomfield Hills, received a business administration degree in 1971 from Wayne State University and graduated with honors from its law school in 1974. He worked at the Detroit law firm Dickinson Wright, representing corporate clients in employment cases. He worked there from 1974 until 1994, when Gov. John Engler appointed him to the Michigan Court of Appeals in December 1994. He was elected to a full term on the court in 1996.

Saad could not be reached for comment. Neilson, 45, graduated with honors with a political science degree from the University of Michigan in 1977. She also graduated with honors from Wayne State University Law School in 1980, and joined Dickinson Wright, where she specialized defending companies in product liability cases.

Engler appointed her to the Wayne County Circuit Court in 1991. She works in the court's civil division. In 1998, she ran unsuccessfully for the Michigan Court of Appeals.

"I am of course very honored by the president's confidence in my abilities," Neilson said Thursday from her home in Grosse Pointe Woods.

McKeague said he felt the same way.

"I am honored to be nominated by President George W. Bush," he said in a statement. McKeague, 55,
graduated in 1968 with a bachelor's degree in business administration and a law degree in 1971 from the University of Michigan. He worked from 1971-92 in a Lansing law firm.

McKeague was appointed to the federal bench in 1992 by the president's father, George Bush.

Wooten Confirmed As Federal Judge

By Lee Bandy
The State
Friday, November 9, 2001

Federal Magistrate Terry Wooten of Florence was confirmed Thursday to be the state's newest U.S. District Court judge.

The vote was 98-0, coming just moments after the Senate Judiciary Committee had unanimously recommended the South Carolinian for confirmation.

Wooten fills the new federal judgeship created by Congress last year in adopting an omnibus judicial bill. Wooten was recommended for the job by U.S. Sen. Strom Thurmond, senior Republican on the judiciary panel, and was nominated by President Bush earlier this year.

"Judge Wooten will be an excellent addition to the district court," Thurmond said in a prepared statement. "He is an individual of character and integrity, and is clearly well qualified for this seat on the district court. I am confident that he will do a fine job in this esteemed position."

His nomination was not without controversy.

Two days before his confirmation hearing, it was reported in a Los Angeles newspaper that Wooten had leaked confidential FBI documents 10 years ago for a book on the Clarence Thomas-Anita Hill hearings.

He testified under oath that the allegations were untrue.

Writer David Brock, who published "The Real Anita Hill," filed a sworn statement with the committee, saying Wooten gave him FBI documents in 1991. At the time, Wooten was the chief counsel for the Republicans on the committee.

In an interview Thursday, Wooten said, "It was unfortunate that it came up in the first place. It was shown to be the complete lie that I said it was. The unanimous vote by the committee and the Senate confirmed that."

Wooten, who once worked for Thurmond, said he looks forward to serving the state as a federal judge.

Wooten said he probably will have a private swearing-in so he can start work immediately. He later hopes to have a public ceremony for family and friends.

The nomination of U.S. District Court Judge Dennis Shedd of Columbia to be an appellate judge on the 4th November 13, 2001 U.S. Circuit Court of Appeals is still pending in committee.

Clement Confirmed as Appeals Judge

The Associated Press,
Monday, November 13, 2001

The Senate on Tuesday confirmed Edith ``Joy'' Brown Clement as a U.S. Appeals Court judge.

Clement, who was made a U.S. District Court judge in 1991 by former President George H.W. Bush, was confirmed by the Senate in a 99-0 vote.

President Bush nominated her for the U.S. Appeals Court's 5th circuit in New Orleans earlier this year. The 5th Circuit handles federal appeals from Texas, Louisiana and Mississippi.

Before becoming a judge, Clement was a partner in the Jones, Walker, Waechter, Poitevent, Carrere & Denegre law firm in New Orleans.

Clement graduated from the University of Alabama in 1969 and from the Tulane University Law School in 1973. She worked as a law clerk for U.S. District Judge Herbert W. Christenberry for two years before joining Jones November 13, 2001 Walker.

Strange Justice; The Senate Rejects David Brock's Latest Allegations

By Byron York
The National Review
Friday, November 9, 2001

After an investigation of charges leveled by former conservative writer David Brock, the Senate Judiciary Committee and later the full Senate yesterday unanimously approved the nomination of Terry Wooten to become a U.S. district-court judge in South Carolina. But the confirmation did not come without one last Democratic attempt to replay the decade-old controversy over Supreme Court Justice Clarence Thomas's nomination.

Wooten, a former top aide on the Judiciary Committee, was nominated in August. On August 24, shortly before Wooten's hearing before the committee, Brock sent chairman Patrick Leahy a letter claiming that in the early 1990s Wooten illegally gave out secret FBI files relating to the Thomas confirmation battle. At that time, Brock was writing a book that was highly critical of Anita Hill, the woman who accused Thomas of sexual harassment. Brock, who later disavowed his own work, said Wooten gave him secret FBI material on Angela Wright, a woman who has said she was harassed by Thomas but did not testify at Thomas's confirmation hearings.

At his own hearing in late August, Wooten denied Brock's charge. "There is not one scintilla or one iota of truth to that allegation," he told the committee. Leahy did not challenge Wooten's answers, but on September 17, Leahy sent a letter to the Justice Department requesting an FBI investigation of Brock's charges. "This is a serious allegation," Leahy wrote, asking that the FBI interview Brock and Wooten, along with "any other individuals as the Bureau deems necessary." In the course of the investigation, agents interviewed at least two other people, both of them associated with The American Spectator magazine, which published Brock's original story on the Thomas nomination.

The extent of the FBI investigation is not clear, but yesterday, with little comment, Leahy joined Republicans in supporting Wooten's nomination, which passed the committee on a 19 to 0 vote. A few hours later, the Senate approved Wooten 98 to 0.

But Wooten's confirmation did not come without one final attempt to reargue the Thomas nomination and, in the process, delay the proceedings. Wednesday, on the eve of the committee's scheduled vote, Illinois Democrat Richard Durbin sent Wooten a list of 17 questions concerning the Thomas confirmation. None of the questions related to David Brock's charges in fact, Brock's name was not mentioned at all). Instead, Durbin's questions were based on the writings of Jane Mayer and Jill Abramson, authors of Strange Justice, an account of the Thomas confirmation that is overwhelmingly
hostile to Thomas.

Among other things, Durbin asked Wooten whether Wooten discussed the specifics of Anita Hill's allegations with Senator Strom Thurmond, Wooten's boss at the time. Durbin asked Wooten whether other Republicans on the Senate Judiciary Committee knew about Hill's allegations at an early point in
the confirmation process. And Durbin asked about a passage in Strange Justice in which Wooten was quoted as saying of the Hill allegation, "Washington is the rumor mill of the world. It didn't look like it was going to develop into a big deal. There was an effort to control the damage." "Why did you
think Anita Hill's allegations were not going to develop into a 'big deal'?" Durbin asked Wooten. "Did you believe then and do you believe now that her allegations, if true, call into question Justice Thomas's suitability to serve on the Supreme Court?"

Not only did Durbin's questions have nothing to do with Brock's accusations they also involved some issues which had not come up at all in Wooten's confirmation hearing. And they seemed to suggest that a nominee's opinion of Clarence

Thomas is a litmus test for being confirmed to the federal judiciary. Finally, they meant that Wooten would have to spend more time answering questions. "It's a common tactic," says one GOP aide. "You zap them with some questions right before the hearing and then say, 'Whoops! We still have
some questions outstanding.'" All of which can lead to further delay.

But Wooten sent back his answers on the same day he received the questions. The next morning, Durbin voted to confirm Wooten.

Op/Eds

Court Seats; Compromise Would Give Nominees Fair Hearings

Detroit Free Press
Saturday, November 10, 2001

Yet another proposal has been offered to end the stalemate between the White House and Michigan's U.S. senators over longstanding vacancies on the federal 6th Circuit Court of Appeals. This one holds promise if the parties to it stay mindful of their obligations -- to the Constitution, to the nominees and to the people, who are entitled to more expedient justice than the shorthanded court has been able to provide.

The court has seven vacancies and was declared a judicial emergency more than a year ago. The deal
would enable President George W. Bush to advance nominees to fill three of the four Michigan vacancies on the court; Sens. Carl Levin and Debbie Stabenow could advance a nominee for the fourth and for a seat on the U.S. District Court in Detroit.

The compromise would assure only Senate confirmation hearings for the Republican Bush nominees -- Wayne County Circuit Judge Susan Bieke Neilson, Michigan Court of Appeals Judge Henry Saad, and U.S. District Judge David McKeague. It would also provide a hearing on Michigan Court of Appeals Judge Helene White, a Democrat who has been waiting for one more than four years -- longer than any nominee in Senate history. The senators' choice for the district court would be Detroit attorney Kathleen McCree Lewis.

This plan should not mean automatic confirmation for any nominee, just an opportunity to get the process in gear. Senators have a constitutional duty to examine carefully the fitness of the nominees and whether their views are within the mainstream of jurisprudence.

The 6th Circuit Court of Appeals has always maintained a close balance between its moderate and
conservative judges. The Bush nominees would make it more conservative -- a prospect that should worry civil liberty and civil rights advocates.

But like White, the Bush nominees ought to have an opportunity to make a case for themselves.

Schauder, Andrew

From: Schauder, Andrew
Sent: Thursday, November 15, 2001 5:39 PM
To: Schauder, Andrew; Newstead, Jennifer; Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw'; 'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; 'Heather_Wingate@who.eop.gov'; Ullman, Kristen A; Long, Linda E; Benedi, Lizette D; Rabjohns, Lori; Day, Lori Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Tucker, Mindy; Suit, Neal; 'Patrick O'Brien'; Coniglio, Peter J; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw'; 'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; 'Ziad_S._Ojakli@who.eop.gov%inetgw'; Carroll, James W (OLP)
Subject: judicial media review
Attachments: Judicial Media Review 11-15-01.wpd

Please see attached review

Media Review - Judicial Nominations
Thursday, November 15, 2001

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General Judicial Articles

Bush Nominees Balk at Arrest Query

By Audrey Hudson
The Washington Times
Thursday, November 15, 2001

President Bush's judicial nominees are refusing to answer an additional background question that Democrats tacked onto a Senate panel's standard questionnaire.

Republicans say the question covering criminal arrest or conviction is already covered in the

FBI's
background check and could bog down the nominees in paperwork and stall the process.

"I'm concerned it could result in delaying nominees. And whenever you have a disagreement, then it's an
excuse to stop," said Sen. Jeff Sessions, Alabama Republican and Judiciary Committee member. Sen. Patrick J. Leahy, Vermont Democrat and committee chairman, added the question last month to streamline the background-check process, his spokeswoman said.

"What is causing the controversy, so to speak, is a question about prior arrests and is in the public part of the questionnaire," said Mimi Devlin, Judiciary Committee spokeswoman.

Miss Devlin said the question is not as "intrusive" as similar questions asked of nominees in other committees, and that the panel is moving the nomination process forward despite the refusals to answer.

"It's public information anyway. It just makes the process much more simple. It's much ado about nothing," Miss Devlin said.

The 14 nominees were each asked to "please state whether you have ever been arrested for, charged with or convicted of a crime, within 20 years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public. If your answer is 'yes,' please provide the relevant dates of arrest, charge and disposition and then describe the particulars of the offense."

Charles W. Pickering Sr., a nominee to the 5th Circuit Court of Appeals, was the first to give the standard answer Democrats say was issued from the White House.

"I am informed that the background investigation reports on nominees prepared by the Federal Bureau of Investigation routinely address the type of information called for by this question. Without waiving the
confidentiality of the FBI background investigation report prepared on me, I respectfully direct your
attention to that report for response to this question," Mr. Pickering said.

Mr. Sessions said the standard response is a "perfectly good answer" and that senators already can review the FBI report, but staff cannot.

Sen. Orrin G. Hatch of Utah, ranking Republican on the Judiciary Committee, said the issue is privacy.

Added Mr. Sessions: "This is a dangerous policy. Right now, these things are confidential. They've always been confidential. And if somebody leaks an FBI report, it can be a criminal offense. To put it out to all staff, it has every opportunity to leak, will leak, and we don't know why they want to change it," he said.

Previously, if a background check turned up an arrest, the nominee could quietly step down and his privacy would be protected.

Sen. Jon Kyl, Arizona Republican, said the decision to include an additional question is normally agreed upon by both sides and not "simply a unilateral decision."

"There is a sense this is meant to embarrass rather than to enlighten, because we have the information
November 15, 2001otherwise," Mr. Kyl said.

Federal Judge in N.O. to Take Appeals Seat; She is Among First of Bush Nominees

By Bill Walsh
The Times-Picayune
Wednesday, November 14, 2001

The U.S. Senate unanimously voted Tuesday to elevate New Orleans U.S. District Judge Edith Brown Clement to the 5th U.S. Circuit Court of Appeals.

Clement, 53, was nominated by President Bush in May and is among the first batch of federal judicial
nominees of his term. Clement will take a seat on the appeals court, which is based in New Orleans and has jurisdiction over cases in Louisiana, Mississippi and Texas. The court has operated since 1999 in a state of "judicial emergency" because of vacancies. Clement's nomination was one of dozens that Republicans have complained had become bogged down in the Democratic-controlled Senate.

Sen. Patrick Leahy, D-Vt., chairman of the Judiciary Committee, said in a floor speech Tuesday that the vote on Clement shows that the Senate is moving faster to approve judges than it did when Republicans were in control.

Leahy said that President Clinton had tried repeatedly to fill vacancies in the 5th Circuit, but Republicans refused to schedule the necessary hearings.

"Judge Clement is the fifth nominee to the Court of Appeals confirmed by the Senate since July 20," Leahy said. "We have now confirmed as many Court of Appeals nominees as were confirmed during the first year of the first Bush administration and two more than were confirmed during the first year of the Clinton administration."

Clement presided last year over the insurance fraud trial of former Gov. Edwin Edwards and Insurance
Commissioner Jim Brown. Edwards was acquitted, but Brown was sentenced to six months for lying to an FBI agent during the course of the investigation.

During the trial, Clement fined Edwards $100 per word for making a 17-word statement to the media in violation of a gag order and vowed a second infraction cost of $1,000 per word.

She also ruled that Brown could not review notes written by FBI agent Harry Burton after their face-to-face interview, a decision that is part of the former insurance commissioner's appeal.

Clement is a member of the conservative Federalist Society, whose members have had a hand in shaping Bush's judicial choices. She has a reputation for meting out tough sentences.

A native of Alabama, Clement graduated from Tulane University Law School. She was a partner at the New Orleans law firm of Jones Walker Waechter Poitevant Carrere & Denegre before being appointed by President George H.W. Bush in 1991 to the U.S. district bench.

Her nomination to the 5th Circuit was pushed by New Orleans lawyer Donald Ensenat, a former Yale
University fraternity brother of President George W. Bush. It was also supported by the state's two
Democratic senators.

She is married to Rutledge C. Clement, a lawyer and past president of the Louisiana Bar Association, and has a 19-year-old son and a 12-year-old daughter.

Op/Eds

Confirm Judicial Nominees

The Hartford Courant
Wednesday, November 14, 2001

Strong whiffs of hypocrisy and demagogy are wafting from Republican demands that Democrats on the
Senate Judiciary Committee quit stalling and hasten the process of confirming President Bush's nominations to the federal bench.

Timeliness certainly wasn't on Republican minds when they controlled the Senate and conducted a two-year slowdown on President Bill Clinton's judicial appointments. Republican Sen. Orrin G. Hatch's assertion that support for Mr. Bush's nominees will help the president "in the war on terrorism" is preposterous. There has been no problem in getting federal judges to process warrants and subpoenas aimed at terrorists. Mr. Hatch is exploiting a national emergency for partisan gain.

That said, Democrats on the Judiciary Committee should move faster on the president's nominees.
Committee Chairman Patrick Leahy of Vermont began conducting new hearings on Bush appointees last month. He should quicken the pace. Appointments are a presidential prerogative.

It was wrong when the Republicans dragged their feet on Clinton appointments because they didn't like a nominee's ideological bent.

It is wrong for Democrats to do the same. If a presidential nominee is qualified in all other ways and is not an extremist, he or she should be confirmed. There are more than 100 vacancies on the federal bench -- about 12 percent of the total. They should be filled.

Interest Groups/Press Releases

Fairness for Miguel Estrada; Judicial Nominee Would be First Hispanic on D.C. Court of Appeals

Concerned Women For America
Thursday, November 15, 2001

Washington, D.C. Concerned Women for America is calling on Senate Democrats to put aside their prejudices, end partisan power politics, and appoint Miguel Estrada to the United States Court of Appeals for the District of Columbia Circuit. Qualified and respected, with experience in the
public and private sector, Mr. Estrada has proven he is capable through his experience, education and commitment to the rule of law.

It appears Senate Democrats are holding his nomination hostage merely because of who nominated him. President George W. Bush stated on May 9, 2001, when he nominated Mr. Estrada, "Every judge I appoint will be a person who clearly understands the role of a judge is to interpret the law, not to legislate from the bench. To paraphrase … James Madison, the courts exist to exercise not the will of men, but the judgment of law. My judicial nominees will know the difference."

Ignoring the constitutionally mandated role of the Senate to "advise and consent" on the qualifications of judicial nominees, Senate Democrats have instead treated nominees as pawns to carry out their agenda and barter for more power. The courts are key among the three branches of government for far-left liberals to impose radical social policies that lack popular support, or to overturn policies that were voted in by Americans.

"At last a Hispanic judge of the highest caliber, the first such nominee for this court, and how is he dealt with?" asked Sandy Rios, President of Concerned Women for America. "With utter disrespect for him and the president who appointed him. Would the Senate Democrats care to provide their lofty motives for this obstruction? Miguel Estrada is respected and qualified. Democrats should be celebrating, not sabotaging this appointment. CWA and the American people must insist that the games end and
responsible governance begin."

Mr. Estrada was Assistant to the Solicitor General (1992-97), Assistant U.S. Attorney for the Southern District of New York (1990-92), and Law clerk to U.S. Supreme Court Justice Anthony Kennedy (1988-89). He graduated magna cum laude from Columbia College and magna cum laude from Harvard Law School.

Alliance for Justice Strongly Criticizes Republican Leadership for Attempting to Take Advantage of National Crisis

Alliance for Justice
Thursday, November 8, 2001

The Alliance for Justice strongly criticized Republican Senate leadership today for attempting to use the events of September 11 and afterwards to justify rushing through judicial nominees.

"If Republicans continue to take the position articulated in news reports on Monday," said Alliance for Justice President Nan Aron, "they would be doing nothing less than attempting to take advantage of a national crisis to rush through judicial nominees who haven't been properly vetted and whose records
haven't been thoroughly reviewed."

Aron was responding to Republican statements linking the recently passed anti-terrorism bill to judicial confirmations: "At a time when it is especially important for Congress to come together and put the interests of our nation first, it is the height of cynicism for the Republican leadership to use the terrorism
crisis to serve their own political interests."

Noticeably absent from reported complaints by Republicans about judicial nominations is any evidence that a single subpoena has been delayed or that the response to the September 11 attacks has been hindered in any way by the pace of judicial confirmations. Republicans may be hard-pressed to come up with such examples, since magistrate judges-who are not appointed by the president and subject to Senate confirmation-handle most initial criminal matters such as granting search warrants and presiding over an arrestee's initial court hearing. Furthermore, the Senate Judiciary Committee has been particularly diligent in holding hearings on district court nominees, the federal trial judges who would preside over the trials of alleged terrorists. By November 7, the Democrat-led Senate Judiciary Committee will have held hearings on 18 of the 22 district court nominees sent to the Senate before Labor Day.

Aron noted that the same Republican senators who are now sounding the alarm on judicial vacancies played a critical role in obstructing President Clinton's nominees, helping to ensure that many did not even get hearings, much less committee or floor consideration. At the end of the Clinton Administration, the Republican-led Senate adjourned with 39 nominees pending.

"Republicans were completely unconcerned about filling vacancies during the Clinton Administration, even vacancies that were deemed judicial emergencies," added Aron. "Now, they are trying to justify rushing through nominees to address a situation made much worse by

their own previous actions. The Senate must ensure that Republicans are not permitted to do this- by taking its co-equal Constitutional role seriously and thoroughly scrutinizing every nominee to the federal bench."

Schauder, Andrew

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Subject: judicial media review
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Edwards Now Holding Up Judicial Nominations

The Associated Press
Sunday, November 18, 2001

John Edwards is taking over the mantle as North Carolina's "Senator No."

During the Clinton administration, Republican U.S. Sen. Jesse Helms blocked the appointments of Democrats nominated to the federal bench. For the past six months, Edwards has followed suit, holding up the appointment of Republicans nominated by President Bush. Bush nominated Judge Terrence Boyle for the U.S. 4th Circuit Court of Appeals in May. Edwards, a Democrat, has been standing in the way ever since.

With Edwards using the same privilege as the Helms and with Congress looking to adjourn next month, it is increasingly likely that North Carolina will remain without representation on the panel at least well into next year.

The 15-seat court hears federal appeals from five southeastern states and has been without a member from North Carolina since the death of Judge Sam Ervin III in September 1999.

The Senate Judiciary Committee, which holds confirmation hearings on the president's nominees, says it
won't bring in Boyle or other Bush nominees who lack the support of both home state senators.

"Generally speaking, the committee is choosing to act where there is consensus between the two home-state senators," said David Carle, a spokesman for U.S. Sen. Patrick Leahy of Vermont, the
Democratic-led panel's chairman.

That certainly isn't the case with North Carolina. Edwards and Helms haven't spoken directly about judicial nominations for months.

Edwards, who sits on the committee, said he isn't acting as Helms did.

"When you block people for eight years and then try to fill positions all at once, it's harder to get the right balance on the court," Edwards said. "I think those openings need to be filled in a way that properly represents the people of North Carolina."

In recent months, Edwards has been negotiating with the White House counsel's office in hopes that Bush will nominate a North Carolina judge more to his liking. Edwards said names of possible candidates were exchanged as recently as this week, though he declined to say who's on the list.

Jimmy Broughton, Helms' chief of staff, said Helms "absolutely" continues to support Boyle, the chief judge of the U.S. District Court for Eastern North Carolina.

The controversy around Boyle has lasted more than 10 years. Bush's father also nominated Boyle for the 4th Circuit in 1990. Senate Democrats controlled the Judiciary Committee at the time and decided against even holding a hearing on Boyle's nomination.

Helms went on to block every Clinton nominee to the 4th Circuit, including several who are black. Clinton pointedly accused Helms last year of thwarting his efforts to integrate the all-white panel.

Critics of Edwards say his strategy is worse.

"Trying to block a nomination happens," said Thomas Jipping of the Free Congress Foundation in Washington, a conservative group that has been critical of the Senate's pace in confirming judges. "But it's almost unprecedented to do so to force another nomination. If John Edwards wants to appoint judges, he ought to get elected president."

Long Road to 4th Circuit

By John Wagner
The News and Observer
Sunday, November 18, 2001

Over the course of the Clinton administration, Republican Sen. Jesse Helms steadfastly blocked a parade of the Democratic president's judicial nominees from North Carolina.

But for the past six months, the shoe has been firmly planted on the other foot.

President Bush, a Republican, nominated Judge Terrence Boyle for the U.S. 4th Circuit Court of Appeals back in May -- and Democratic Sen. John Edwards has been standing in the way ever since.

"The president believes Judge Boyle should be confirmed promptly," White House spokeswoman Jeannie Mamo said. But now, with Congress looking to adjourn next month, it seems increasingly likely that North Carolina will remain without representation on the panel at least well into next year. The
15-seat court, which hears federal appeals from five southeastern states, has been without a single Tar Heel member since the death of Judge Sam Ervin III in September 1999.

The Senate Judiciary Committee, which holds confirmation hearings on the president's nominees, has no plans to bring in Boyle or several other controversial Bush nominees who lack the support of both home state senators.

"Generally speaking, the committee is choosing to act where there is consensus between the two home-state senators," said David Carle, a spokesman for U.S. Sen. Patrick Leahy of Vermont, the Democratic-led panel's chairman.

That certainly isn't the case with North Carolina. Edwards and Helms haven't spoken directly about judicial nominations for months.

Edwards, who sits on the committee, maintains that his posture has been different than Helms'

was during the Clinton years.

In recent months, Edwards has been negotiating off and on with the White House counsel's office in hopes that Bush will nominate a North Carolina judge more to his liking. Edwards said names of possible candidates were exchanged as recently as this week, though he declined to say who's on the list.

"When you block people for eight years and then try to fill positions all at once, it's harder to get the right balance on the court," Edwards said. "I think those openings need to be filled in a way that properly represents the people of North Carolina."

Edwards said the issue isn't Boyle, a onetime Helms aide who is currently chief judge of the U.S. District Court for Eastern North Carolina. "I think he has the experience and training to serve on the court," he said.

In fact, several prominent Democrats have praised Boyle's qualifications, including Raleigh lawyer Wade Smith, a former chairman of the North Carolina Democratic Party.

Everett Thompson, an Elizabeth City lawyer who has appeared before Boyle, said this week that Boyle would be "an excellent addition" to the 4th Circuit. "I'm sure this is aggravating for him," said Thompson, a Democrat.

But Thompson was quick to add that he has a lot of respect for Edwards, and said he has no opinions about the politics surrounding Boyle's nomination.

Boyle, in a brief interview, said it would be inappropriate to speak about his situation.

Under Senate tradition, judicial nominations generally don't move forward unless both home-state senators return a "blue slip" to the Senate Judiciary Committee indicating their support.

During the Clinton years, Helms argued that the 4th Circuit didn't need any more judges -- from North Carolina or any other state -- despite as many as four vacancies on the panel. Generally, the qualifications of Clinton's nominees weren't the issue.

But Helms, who declined to be interviewed for this report, returned Boyle's blue slip just days after receiving it in late May. Edwards continues to hold onto his.

Jimmy Broughton, Helms' chief of staff, said Helms "absolutely" continues to support Boyle's nomination. In previous interviews, Helms has said his view on "judicial economy" hasn't changed, but that he is willing to defer to a Republican president whom he trusts on this issue.

The controversy surrounding Boyle is more than a decade old.

Acting on Helms' recommendation, the elder President Bush nominated Boyle for the 4th Circuit in 1990. But Senate Democrats, who controlled the Judiciary Committee at the time, decided

against even holding a hearing on Boyle's nomination.

The move incensed Helms, who proceeded when necessary to block every Clinton nominee to the 4th Circuit -- including several who are black. That prompted Clinton to pointedly accuse Helms last
year of thwarting his efforts to integrate the all-white panel.

Critics of Edwards say his strategy is worse.

"Trying to block a nomination happens," said Thomas Jipping of the Free Congress Foundation in Washington, a conservative group that has been critical of the Senate's pace in confirming judges.
"But it's almost unprecedented to do so to force another nomination. ... If John Edwards wants to appoint judges, he ought to get elected president."

Boyle was among the first 11 federal judicial nominees that Bush unveiled after assuming office. Of those, only three have yet to be confirmed by the Senate.

Another four, however, have received the support of both of their home-state senators -- and are far more likely to get a confirmation hearing than Boyle.

All told, Bush has now forwarded 68 federal judicial nominees to the Senate. Only 18 of those have been confirmed. Leahy said recently that he hopes to move another dozen before the end of the year.

Republicans have accused the judiciary panel of foot-dragging, but Leahy maintains that his committee will approve as many nominees as Senate panels did during the first year of the Clinton and former Bush administrations.

Edwards and the White House are both mum on what kind of deal could be in the works.

Last May, in an effort to accommodate Edwards, the White House went so far as to interview two of the candidates he preferred: N.C. Court of Appeals Judge James Wynn and Rich Leonard, a
federal bankruptcy judge from Raleigh.

Those familiar with the process say Wynn's nomination now appears highly unlikely, however, and that Leonard is more likely to get nominated to a lower court than the 4th Circuit.

Jipping said he's skeptical that any deal will be worked out anytime soon.

Of those involved, Edwards sounds the most optimistic these days. Asked if North Carolina will get a judge on the 4th Circuit before Congress goes home for the year, he said, "I don't know the answer to that question. ... There's a possibility."

Cheney Critical of Judicial Delays

By Scott Lindlaw
The Associated Press
Thursday, November 15, 2001

Vice President Dick Cheney sharply criticized the Democratic-controlled Senate for delaying confirmation of President Bush's judicial nominees and said the national interest requires that seats on the courts be filled soon.

"The deliberate slowing of the confirmation process is unworthy of the United States Senate and an injustice to the men and women whose names have been presented," Cheney told hundreds of lawyers Thursday at a convention of the Federalist Society, a conservative legal group.

Seventeen of Bush's 64 nominees have been confirmed by the Senate so far. According to Cheney, more than 100 vacancies exist on the federal bench, more than when Bush took office. The number of openings is growing faster than the confirmations, he said.

"This should be unacceptable to anyone concerned about the administration of justice in our country,"
Cheney said. "In the interest of the nation, I appeal to the Senate Judiciary Committee to proceed without further delay in filling the vacancies on our federal bench."

David Carle, spokesman for Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., said the panel is moving as quickly as it can.

"The committee is outpacing Republicans in the time they controlled the Judiciary Committee, and the
numbers speak for themselves," he said.

The panel has held nine hearings since midsummer for dozens of nominees, Carle said. "Some Republicans are terrified that Democrats will treat this administration's nominees as poorly as they treated President Clinton's nominees, and the record shows otherwise," he said.

Cheney also offered the legal group a forceful defense of President Bush's approval this week of a military tribunal that could try foreign terrorism suspects. Some critics fear such a tribunal would be conducted in secret with looser rules on evidence than civilian courts and limited or nonexistent rights to appeal.

"The mass murder of Americans by terrorists, or the planning thereof, is not just another item on the criminal docket," Cheney said. "This is a war against terrorism. Where military justice is called for, military justice will be dispensed."

Asked in a BBC interview about civilian deaths during the U.S. military campaign in Afghanistan, Cheney said, "Any loss of life - innocent life - is to be regretted, and certainly we're

sorry if that happened."

But he asked listeners to remember that the conflict began "with nearly 5,000 innocent people ... being
murdered."

And he defended the northern alliance, which has been accused of executing Taliban soldiers. "As a general proposition, we believe the northern alliance has conducted themselves in a responsible fashion under the extraordinary circumstances that do exist," he said.

The Bush administration once eschewed "nation-building" abroad, but Cheney renewed his pledge that the United States will help assemble a new government in Afghanistan. He used the word "representative" five times to describe it. He didn't explain whether he hoped it will be democratically elected or representative of Afghanistan's many ethnic groups.

The normally dry vice president used humor Thursday night to warm up his Federalist Society audience,
many of them conservative lawyers.

"Looking around the room, I'd guess that a year ago, about half of you were down in Florida" helping Bush during the election recount, he said.

Cheney poked fun at his periodic disappearance to an undisclosed "secure location."

"It's good to see anybody in person these days," he said. He and his wife, Lynne, "don't get many visitors at the cave."

Gillette Judge Waits for Congress to Act

The Associated Press
Thursday, November 15, 2001

Inaction by the U.S. Senate on President Bush's judicial nominees has held up the nomination of Terrence O'Brien of Gillette.

O'Brien was nominated Aug. 2 to the 10th U.S. Circuit Court of Appeals. O'Brien said he has received little information from the Senate Judiciary Committee and said the schedule somewhat depends on how long Congress remains in session.

"The process is what it is, and I just sit quietly and wait," he said.

O'Brien is one of four 10th Circuit nominees. Only one, Harris Hartz of New Mexico, has had a hearing.

"I'm trying to get the ones who are non-controversial" first, said Senate Judiciary Chairman

Patrick Leahy, D-Vt. "We're trying to get through as many as we can."

But Republicans accuse Democrats of playing political games with Bush's nominations with the intention of keeping conservative justices off courts.

O'Brien, a district judge in the 6th Judicial District Court of Wyoming from 1980 to 2000, is working now as a legal consultant to Kennecott Energy.

He said he has received no indication of a possible hearing date.

If confirmed, he hopes to assume his judgeship within a month of his confirmation.

Former Gillette resident Thomas L. Sansonetti was nominated to be the Assistant Attorney General for the Environment and Natural Resources Division. He underwent a Nov. 6 hearing and is awaiting confirmation.

Republicans, Hispanic Groups Begin Push to Get Hearings for Estrada

By Jesse Holland
The Associated Press
Thursday, November 15, 2001

Republican senators and Hispanic groups began lobbying on Thursday to get a confirmation hearing for
Miguel Estrada, nominated by President Bush for the federal bench.

They accuse Democrats, who control the Senate, of stalling the nomination of a lawyer who would be the first Hispanic on the federal appeals court in Washington, D.C. One of President Bush's first picks for the bench, Estrada has not had a Senate hearing.

"We have always been told, especially by the other party, that we ought to be concerned about Hispanics," said Sen. Pete Domenici, R-N.M., one of 49 senators who signed a letter urging Estrada's confirmation. "Now we're saying to Democrats that it's time for you to come up to the bar and indicate that you are not going to discriminate against a Hispanic who is absolutely qualified to become a circuit judge."

Sen. Patrick Leahy, chairman of the Senate Judiciary Committee, which handles court nominations, has
said nominees with bipartisan support would advance first. "Mr. Estrada does not fit into that category
because of his rigid ideological background," said David Carle, spokesman for Leahy, D-Vt.

Vice President Dick Cheney told a Washington convention of lawyers Thursday night the Bush administration faces a general problem obtaining confirmation of judges.

"The deliberate slowing of the confirmation process is unworthy of the United States Senate and an
injustice to the men and women whose names have been presented," Cheney said in a speech to the
Federalist Society, a conservative legal group.

"This should be unacceptable to anyone concerned about the administration of justice in our country," he said.

Bush has made 28 nominations to federal appeals courts this year, and the Senate has confirmed five of
those selections.

Estrada came to the United States from Honduras when he was a teen-ager. He taught himself English,
graduated from Harvard Law School, and argued cases before the Supreme Court as a deputy in the solicitor general's office.

He is a partner in the Washington law firm that represented Bush at the Supreme Court during his election fight with Democrat Al Gore.

Bush, too, has urged the Senate to move on Estrada's nomination. "Get him moving before it's too late."
Bush said.

Harsh feelings from previous judicial battles linger, although accusations of discrimination are "absurd," Carle said.

When Democrat Bill Clinton tried to nominate judges to the U.S. Court of Appeals for the District of Columbia Circuit, Republicans said the court had enough judges, Carle said.

The last disputed Hispanic nominee, Richard A. Paez, waited four years - longer than any other nominee in history - before being confirmed for the 9th U.S. Circuit Appeals Court by the Republican-controlled Senate. Conservatives complained that Paez, a Mexican-American, was too liberal and activist.

Estrada has the support of several Hispanic groups, at least one of which will put public pressure on the
Senate to confirm him.

"We're saying do it, or we will begin an advertising campaign very quickly on this issue focusing on Senator Daschle and the other senators on the Senate Judiciary Committee," said Roberto De Posada, president of the Latino Coalition. Democrat Tom Daschle of South Dakota is the majority leader.

Op/Eds

Senatorial Cherry Picking

By Kenneth Connor
The Washington Times
Sunday, November 18, 2001

If Sen. Patrick Leahy, Vermont Democrat, is really so enamored with cherry picking, then he should retire from the Senate, return to the Green Mountain state, go into the fruit orchard business full-time and turn over the Judiciary Committee to someone who will run it with some semblance of non-partisanship.

The climate in Vermont should be very conducive to growing cherries and Mr. Leahy, judging by his present performance, could make a real horticultural success.

Mr. Leahy, however, prefers to do his plucking in Washington, where for purely partisan political reasons he is moving some of President Bush's judicial nominees, but not others. It is obvious that a bitterly partisan Mr. Leahy is intent on cherry-picking for confirmation hearings only those judicial nominees that pass a Democrat litmus test. Six months is too long to keep judicial nominees on ice waiting for hearings in the Judiciary Committee, which Mr. Leahy chairs. While Mr. Leahy and his majority leader, Tom Daschle, South Dakota Democrat, have taken to boasting of the recently increased pace of judicial confirmations - the total confirmed still lags far behind the confirmation rate for Bill Clinton's first year in office - the game they are playing is clear. Mr. Leahy is simply refusing to hold hearings on President Bush's "controversial" nominees.

By "controversial," of course, Mr. Leahy means conservative. Conservative judges do not make law. They leave that up to legislators. Neither do they find imaginary rights emanating from the "penumbras" of the Constitution. Rather they construct the laws and Constitution in accordance with the intent of the Founders and Framers, resisting the temptation to graft their own philosophy into the law. The cherry-picker is, therefore, moving only those nominees the various Democratic interest groups object to the least, while stalling the president's more conservative judges opposed by the Left. Four of the 11 original nominees the president announced May 9 have yet to been granted committee hearings because of the left's vocal objections. Miguel Estrada, Jeff Sutton, Terry Boyle and Michael McConnell all have been kept cooling their heels for no other reason than the claque of usual liberal suspects - the National Organization for Women, the National Abortion Rights Action League, People for the American Way, and such - venomously oppose their confirmations.

Once upon a time, when Bill Clinton was still pursuing sexual high jinks in the Oval Office, Sen. Leahy
pompously objected to rank partisanship over judges. On March 3, 1998, the senator told the Boston Globe that "Partisan and narrow ideological efforts to impose political litmus tests on judicial nominees and to shut down the judiciary must stop." Mr. Leahy uttered these words, by

the way, when there were but 82 vacancies on the federal bench; today there are 102.

The celebrated orchardman went on to attack the vast right-wing conspiracy. "The nominations backlog," Mr. Leahy fumed, "is a function of the targeting of the judicial branch . . . Pressure groups within the right wing of the Republican Party have been formed and money is being raised for the goal of 'killing' Clinton judicial nominations."

If this were true, then the vast right-wing conspiracy was a pretty feeble force indeed, as it succeeded in
"killing" exactly one of President Clinton's 374 judicial appointments. But the senator's puffery is nevertheless instructive and conservatives at least will welcome his rhetorical rejection of political litmus tests and ideological inquisitions. Unfortunately, this represents not the senator's principled position, but mere political clap-trap.

"It's purely partisan politics," Sen. Jon Kyl, Arizona Republican, said recently of the Leahy cherry-picking. "Be truthful about it. They don't want conservative judges on the court."

All of Mr. Leahy's previous vapors about rejecting political and ideological litmus tests were hypocritical humbuggery. As Mr. Kyl rightly suggested, with Patrick Leahy it's always about partisan politics. The senator only frowns on litmus tests from the right; when it's Sen. Leahy's political cronies on the left imposing ideological requirements on judicial nominees, well, that's OK with the Vermont's ol' cherry-picker.

A cursory survey of the left's Internet websites is enough to convince anyone what's really going on here. Everything about the vast conspiracy that Sen. Leahy thundered against in the Clinton era is true today of the left. The partisan and narrowly ideological imposition of political litmus tests is in high gear, as the left demands that any nominee to the federal bench genuflect to Roe vs. Wade, judicial activism, affirmative action, the feminist and radical homosexual agendas, while opposing capital punishment, school vouchers and school prayer - in other words, the whole miasma that issues from the fever swamps of liberaldom.

Mr. Leahy might be shocked - yes, shocked - to learn that pressure groups within the left wing of the
Democratic Party have been formed and money is being raised for the goal of "killing" Bush judicial nominees. But from Mr. Leahy's perspective, partisanship is what the other guy does; it's never what you or your political friends are doing. Oh no, the Vermont cherry-picker is only serving the best interests of the country, and not doing the bidding of the rabid left. Sen. Leahy's motives are always pure and untainted by partisanship, while the other side is driven by ideology.

"We must remove these important matters judicial confirmations from partisan and ideological politics," Sen. Leahy huffed three years ago. But this is just the sort of gaseous rhetoric that some politicians like Mr. Leahy spout when it serves their political purposes. Such a declaration is not meant to be a statement of high principle that guides their legislative actions. If the latter were true, then the senator would not be cherry-picking Bush nominees, but would be moving all of

them through the confirmation process fairly and expeditiously. Instead, he is playing politics with the federal courts.

Yes, President Bush has nominated to the federal courts some conservatives who espouse the philosophy of judicial restraint, as he promised during the 2000 campaign. This should not come as a surprise to Sen. Leahy. Instead of cherry-picking only nominees that pass his liberal litmus test, Sen. Leahy should heed his own advice and treat all of President Bush's appointments with fairness and impartiality.

Benchmarks of Judicial Choices

By Armstrong Williams
The Washington Times
Saturday, November 17, 2001

Lurking beneath all of the post-September 11 rhetoric about bipartisan handholding, there resides one single resounding fact: President Bush has nearly 110 federal judgeships to fill.

These positions are key because they could play a crucial role in pushing test cases through the federal
courts that would impact issues such as abortion rights, civil rights, consumer protection, hate crimes and environmental policies. In an even broader sense, these test cases could help shift the balance of
constitutional power from the federal to the state government. In short, these federal judges will be
deliberating on the doctrines that most clearly separate Republicans from Democrats.

Pre-September 11, the nomination process promised to turn red of tooth and claw. Democrats were
preparing to dig in their heels and block many of the nominations. The Republicans were prepared to savage their opponents for stalemating the process.

If, at the time, the infighting seemed particularly sloppy, it should be noted that this is exactly what the
Founding Fathers had intended. Plainly, the maintenance of our representative democracy was not supposed to be easy. Neat, plausible solutions were the work of highly centralized dictatorships, and inertia. Rather, our Founding Fathers bravely trusted that the friction of a diverse group of legislators would be the better part of this nation's progress.

Of course, post September 11, the nomination of some federal judges seemed suddenly inconsequential to a country grappling with the worst terrorist attack ever on American soil.

Accordingly, our leaders showed unity.

"We're a family, we're Americans," Rep. Edolphus Towns, New York Democrat, told me over

breakfast shortly following the attack. "Families fall out. But when someone attacks us, we need to stand together."

That's sweet. It's also code for: No legislator wanted to provoke the ugly face of partisanship while the
nation was still searching for a sense of order. Plainly, a centralized response would signal to the public that the United States would stand strong against a common enemy. Indeed, one would have to be pretty egocentric not to realize this was what the public needed.

Over the past couple weeks, though, the mood has again shifted. One hears rumors of partisan bickering. The battle over the judicial nominations has begun to stir again. Both sides of Congress have begun to snipe over the economic stimulus package and airport security. Then: full flown public accusations by both parties that the other side's resistance is hampering the war effort.

This brought me joy.

Plainly, the partisan infighting is the clearest sign that our representatives are back to doing what they were elected to do - fighting like hell over core beliefs.

This is not bad. Rather it is the clearest indication of the nation's well-being. I vote yes to intellectual
friction and representative democracy.

After all, the friction of diverse viewpoints has always been the defining characteristic of our representative democracy.

Schauder, Andrew

From: Schauder, Andrew
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Tom Teepen, *Dayton Daily News*, January 4, 2002

"Bush Nominations Delayed," 16
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General Judicial Articles

Rehnquist Decries Low Pay, Shrinking Pool of Judge Candidates

By Tony Mauro
Legal Times
Monday, January 7, 2002

The New Year's Day lament from Chief Justice William Rehnquist was familiar: Federal judges are not paid enough, and Congress needs to do something about it.

But in describing the negative impact of low judicial salaries, Rehnquist made a fresh and even surprising new argument. He claimed that the pay situation was shifting the pool of potential judges away from private practitioners and more toward bankruptcy judges, magistrates, state court judges and even prosecutors and public defenders -- for whom a district or appellate judgeship would represent a raise in pay.

And that, Rehnquist bemoaned, could turn the U.S. judiciary into a less-respected European-style civil bureaucracy, in which lawyers become lifelong judges at the start of their careers, unleavened by private law practice.

"We must not drastically shrink the number of judicial nominees who have had substantial experience in private practice," Rehnquist said in his annual year-end report on the judiciary. "We have never had, and should not want, a judiciary composed only of those who are already in the public service."

The argument turned heads, especially coming from a man who was himself an assistant attorney general in the Nixon administration before joining the federal bench as an associate justice in 1971. It also raised the question -- a question Rehnquist himself often asks a lawyer who makes a novel argument at the Supreme Court -- namely, what support is there for his proposition?

Rehnquist offered only nostalgia as evidence. He waxed poetic about judges and justices through history who had spent most or all of their professional lives in private practice. Rehnquist

invoked the names of Louis Brandeis, known as the "people's attorney" before joining the high court in 1916, and Thurgood Marshall, who was a private lawyer and then top lawyer for the NAACP before John F. Kennedy named him to the federal appeals bench. Learned Hand and Byron White were cited as well.

Even more powerfully, Rehnquist also said that John Brown, Richard Rives, Elbert Tuttle, and John Minor Wisdom, "well-known for their courage in enforcing this court's civil rights decisions as judges on the Court of Appeals for the 5th Circuit, all served almost exclusively in private practice before their appointments to the bench."

DOES MONEY MATTER?

Beyond Rehnquist's cavalcade of judicial titans who once hung out a shingle, there does appear to be some statistical evidence backing up his claim. But some judges and academics contacted after Rehnquist's report suggested that the trend is not as strong, lamentable, or salary-driven, as Rehnquist made it out to be.

"The observation may be true, but what difference does it make if we have a judiciary full of lower court judges?" says Washington University political science professor Lee Epstein, a longtime student of the federal judicial system. "I'd want to know more before saying it's a bad thing."

A. Thomas Small, a bankruptcy judge in North Carolina and former president of the Conference of Bankruptcy Judges, has no doubt on that question. "Experience as a bankruptcy judge is a good thing, and I am sure the chief justice appreciates that. But I would agree with him that you don't want to limit the field of nominees just to bankruptcy or magistrate judges."

Sam Joyner, an Oklahoma magistrate judge who also edits the Federal Courts Law Review, adds: "The chief justice is right that the best way to go is for those in private practice to join the judiciary. But a lot of magistrate judges have that experience, plus they have a track record [as judges] that's pretty helpful." Joyner himself was in private practice for 30 years before becoming a magistrate judge in 1995.

The salary of magistrate and bankruptcy judges is set at 92 percent of district judges' salary, which was recently boosted to $150,000. Thanks to a 3.4 percent cost-of-living adjustment for all Article III judges, an increase that Rehnquist expressed appreciation for in his report, appeals court judges are now paid $159,100, associate Supreme Court justices get $184,400, and the chief justice is paid $192,600.

Joyner, who sits in Tulsa, just lost two fellow magistrate judges -- Claire Eagan and James Payne -- to the district court bench in Oklahoma, so he has seen firsthand the trend that Rehnquist spotlighted.

Eagan and Payne are among the 64 people nominated to district or circuit judgeships so far by President George W. Bush. Of those 64, nearly half -- 31, to be exact -- were sitting state or

federal judges or magistrate judges when nominated. Six more were in state or federal legal jobs, and five were academics or self-employed. Only 22 were partners in private law firms when nominated.

The Bush record is in line with a trend that Sheldon Goldman has seen over many decades.

Goldman, a political science professor at the University of Massachusetts, is the author of "Picking Federal Judges" and is generally regarded as the most reliable keeper of statistics about federal court nominees.

Sixty years ago, Goldman says, about one-third of district court appointees were drawn from the ranks of lower court and state court judges. In recent years, that number has grown to nearly one-half.

"There has been a long-term trend toward a professionalization of the judiciary," says Goldman. But he suggests that the trend has been driven as much by other factors as by salary.

For one thing, incumbent judges and government lawyers have a track record on issues that might be important to the appointing president. For another, they may have already been through the confirmation process -- though, as Goldman notes, that did not help Robert Bork or Clarence Thomas much when they were nominated to the Supreme Court.

The statistics about the jobs that judges held when nominated also obscure the fact that most judges, magistrates, and government attorneys had considerable private practice experience earlier in their careers. Rehnquist, for example, practiced law for 16 years in Phoenix before joining the Justice Department. Bankruptcy and magistrate judges, appointed by district or circuit judges, are required to have practiced law before seeking the jobs.

EUROPE'S WAY

The European experience that Rehnquist offered as an unenviable contrast is far different. Judges are more like lifelong bureaucrats in many European nations, says American University law professor Herman Schwartz, who has studied several judicial systems abroad.

"They cover their asses, they are tightly controlled by appeals courts, and they are low-status and low-income," says Schwartz. "Here, people snap to attention when a federal judge walks into the room."

So how much of a factor is low salary in the judicial selection process? Bush administration officials would not comment publicly on that question or on Rehnquist's thesis. But one top official, when asked how often prospective nominees drop out because of money, says, "It has happened on occasion, but is not frequent."

The American Bar Association and the Federal Bar Association last year issued a report supporting the chief justice's plea for higher judicial pay, asserting that salary was "the single

most important factor discouraging potential candidates from seeking appointment," although it offered only anecdotal evidence.

Goldman says one piece of tangible evidence that salary is an issue is that those nominated to the federal bench tend to be wealthier than in decades past -- and presumably better able to handle a dip in pay. Roughly 40 percent of Clinton appointees to the federal bench reported net worth of $1 million or more, Goldman calculates. In his 2000 year-end report issued last January, Rehnquist said, "We cannot afford a judiciary made up primarily of the wealthy."

A. Raymond Randolph, a judge on the U.S. Court of Appeals for the D.C. Circuit, says a related tax issue also works as a disincentive for potential nominees.

"Congress needs to look into the problems caused by the transition that some people face when going from private practice to a judgeship," Randolph says. "Often, in order to avoid frequent recusals, a new judge has to convert his or her investments from stocks into mutual funds. They have to take this big hit in capital gains taxes when they do this. Congress should look into granting an exemption in this circumstance."

Those who minimize the salary issue say the honor of a presidential appointment and the prestige of the federal bench -- complete with life tenure, law clerks, and other perks -- still lure top candidates from the private bar.

The story is often told of the lighthearted but revealing exchange of letters nearly two years ago between 4th Circuit Judge J. Michael Luttig and John Roberts Jr., partner at Washington, D.C.'s Hogan & Hartson. Hearing that first-year associate salaries were approaching those of federal judges, Luttig "applied" for a first-year position at Hogan.

Roberts, who is now a Bush appointee to the appeals bench, whimsically turned Luttig down. "First, our associates are expected to work more than one week each month, and we do not give them the entire summer off," Roberts wrote. "Second, while it is always a possibility, we do not guarantee our associates life tenure. Third, while we offer a wide range of support, few of our associates are assigned three full-time law clerks to assist them. And finally, although we have adopted a 'casual Friday' policy, black robes do not qualify as appropriate attire."

Hispanic Nominee No Shoo-In; Estrada's Critics Say He's and Ideologue Unfit for Powerful Bench

By Frank Davies
The Charlotte Observer
Sunday, January 6, 2002

To the Bush administration, Miguel Estrada's nomination for a top federal judgeship is a brilliant opportunity. It combines impressive legal credentials, an immigrant success story and a chance to woo Hispanic voters.

Critics, however, view Estrada, a Honduran American who lacks judicial experience, as a Justice Clarence Thomas in the making - a young lawyer thrust toward the Supreme Court as a conservative ideologue, no more representative of Hispanics than Thomas was of blacks. It means the Estrada nomination to the D.C. Circuit Court of Appeals - the nation's second most powerful court - looms as one of this year's most politically charged nomination struggles in the Senate.

Estrada left Honduras at 17, joined his mother in New York, learned English in two years, graduated with honors from Harvard Law School, clerked for Supreme Court Justice Anthony Kennedy, served as a prosecutor, and worked in the Justice Department for both the Clinton and first Bush administrations.

Now in private practice in Washington, Estrada, 40, is a favorite of conservatives.

He worked for GOP legal strategist Theodore Olson, now solicitor general, and has been a member of the Federalist Society, a right-of-center legal network influential in the current Bush administration.

Leaders of several Hispanic advocacy groups support him.

But a Clinton administration appointee who supervised some of Estrada's work in the Justice Department voiced reservations about him.

"Miguel is too much of an ideologue to be an appellate judge - you could not count on him to be fair or neutral," said Paul Bender, former deputy solicitor general.

With Congress returning Jan. 23, Republicans and conservative groups are pressing the Senate to act. Democrats who remember how the GOP held up one Hispanic judicial nominee, Richard Paez of California, for four years are in no hurry.

"This is a fight where Bush will see a real upside to push for Estrada, but Democratic senators are in no rush - they have long memories," said Michael Gerhardt, author of a recent book on presidential appointments.

Collins Accuses Democrats of Stall Tactics

By George Edmonson
The Atlanta Journal and Constitution
Sunday, January 6, 2002

Rep. Mac Collins (R-Ga.) last week renewed his accusation that Senate Democratic leaders are intentionally delaying President Bush's judicial nominations for political reasons.

Collins said that Majority Leader Tom Daschle (D-S.D.) and Judiciary Committee Chairman Patrick Leahy (D-Vt.) have been using the process to give Democrats an issue in this year's

midterm congressional elections and in the 2004 presidential race.

"Daschle and Leahy are trying to obstruct the president's appointments so that they can show, in some warped twist of logic, that the president has not been an effective leader," Collins said in a statement.

"Daschle has one aim in the process, to lay the groundwork for his 2004 presidential bid and to show ineffective leadership by the Republican Party to increase the Democrats' margin of control in the Senate and to take control of the House," Collins said. "This is unconscionable and endangers our nation." Last year, the congressman accused Sen. Max Cleland (D-Ga.) of helping to delay nominations for political reasons. Cleland said he was only following the procedure the GOP under President Clinton.

But in his latest press release, Collins said Cleland had been responsive in helping to get two vacancies filled in the Middle Georgia district

Collins' statement said, in part, "I appreciate Senator Cleland's responsiveness to my request that he go to bat for the citizens of Georgia."

The Democrats, of course, deny any political skullduggery and, at the same time, say that the Republicans delayed or tried to delay judicial appointments during the Clinton administration.

Defense Lawyers Oppose Cassell Nomination

By Stephen Hunt
The Salt Lake Tribune
Saturday, January 5, 2002

Utah defense attorneys are publicly opposing Paul Cassell's nomination by President Bush to become the state's newest federal judge -- claiming he lacks the proper temperament to sit on the bench.

Cassell, a University of Utah law professor, is an outspoken champion of crime-victim rights, a death-penalty proponent and recently tried to abolish the long-standing rule that forces police to give crime suspects a so-called "Miranda warning" prior to interrogation. Susanne Gustin, president of the Utah Association of Criminal Defense Lawyers, claims Cassell's "habit of inserting himself into high-profile cases" makes him unfit to be a judge.

"We question his ability to provide a fair hearing," Gustin said Friday, the same day her Letter to the Editor about Cassell was published in The Tribune. "He's too much of an advocate and a judge has to be totally in the middle."

Gustin said she also planned to write the Senate Judiciary Committee, which must approve Cassell's nomination.

Most recently, Cassell was involved in the Robert Weitzel homicide case, representing the victims' families in their desire to have 2nd District Judge Thomas Kay removed from Weitzel's second trial. Family members and prosecutors accused Kay of bias against them.

Kay was removed for "apparent bias." But the judge who ordered Kay's recusal said he had "serious questions concerning the good faith" of Cassell and state prosecutors.

Despite similar objections by others, Sen. Orrin Hatch, R-Utah, remains supportive of Cassell, said Hatch's press secretary, Heather Barney.

Parties Locked in Battle Over Hispanic's Bid for Court Seat

By Frank Davies
The Miami Herald
Monday, January 7, 2002

For the Bush administration, the nomination of Miguel Estrada to a top federal judgeship seemed like a sure winner. He possesses impressive legal credentials, his life story offers a dramatic example of success by an immigrant, and Hispanic voters would be favorably impressed by the GOP's selection.

But his nomination has languished in the Senate for months, and as more and more critics voice doubts, the fight to put Estrada on the Court of Appeals for the District of Columbia -- the nation's second most powerful court -- is shaping up as one of this year's most contentious, politically charged struggles in the Senate.

The controversy reflects the importance of the Hispanic vote and the politics of payback, not to mention an ideological battle to define the middle ground of jurisprudence.

Opponents portray Estrada, a Honduran American who lacks judicial experience, as a Clarence Thomas in the making, a young lawyer thrust toward the Supreme Court as a conservative ideologue no more representative of Hispanics than Thomas was of blacks.

A former colleague who supervised some of Estrada's work in the Justice Department said he was ``shocked'' by Estrada's nomination.

``Miguel is too much of an ideologue to be an appellate judge -- you could not count on him to be fair or neutral," said Paul Bender, who was deputy solicitor general. ``He is a terrific oral advocate, but I could not rely on his written work as a neutral statement of the law."

Estrada, like other judicial nominees, declined to discuss his career until a hearing on his nomination is held.

PRESSURE FOR ACTION

With Congress returning Jan. 23, Republicans in Congress and conservative groups are pushing for the Senate to act. Democrats who remember how the GOP held up one Hispanic nominee for a judgeship, Richard Paez of California, for four years are in no hurry.

``This is a fight where Bush will see a real upside to push for Estrada, but Democratic senators are in no rush -- they have long memories of how Republicans blocked Clinton's nominees,'' said law professor Michael Gerhardt.

``This nomination shows that ideology does matter, and Estrada's Hispanic background adds an important element and will make a big difference,'' said Gerhardt at The College of William & Mary.

But even those who don't like Estrada's politics or his fitness for the job concede that his life story is compelling.

He left Honduras at 17, joined his mother in New York, learned English in two years, achieved magna cum laude honors at Harvard Law School, clerked for Supreme Court Justice Anthony Kennedy, served as a prosecutor, and worked in the Justice Department during the Clinton administration and the first Bush administration.

RIGHT OF CENTER

Now in private practice in Washington, Estrada, 40, is a favorite of conservatives. He worked for GOP legal strategist Theodore Olson, now solicitor general, and has been a member of the Federalist Society, a right-of-center legal network influential in the current Bush administration.

``His life story makes liberals swoon, but his politics make them shudder,'' wrote New Republic editor Peter Beinart, who said President Bush is using ``diversity games'' to disguise a far-right nominee.

Estrada, who opposes abortion and has criticized some affirmative action measures, was hailed as a ``star of the conservative legal movement'' by William Buckley's National Review. Columnist Robert Novak described Estrada as part of ``an all-star conservative team of lawyers.''

MINORITY HIRING

Estrada was one of the few minority group members to be hired as a law clerk by a Supreme Court justice, an issue that has prompted protests by several legal groups. When USA Today in 1998 reported on the very low percentage of minority clerks, Estrada dismissed the statistics.

``If there was some reason for under-representation, it would be something to look into,'' Estrada told USA Today. ``But I don't have any reason to think it's anything other than a reflection of trends in society.''

Bush nominated Estrada in May to the District of Columbia court, often a springboard to the

U.S. Supreme Court. Last month, all 49 Republican senators signed a letter urging hearings for Estrada and Washington lawyer John Roberts, another nominee for the same court.

Estrada would be the first Hispanic judge on the D.C. court, and friends and foes say he has a chance to be the first Hispanic on the Supreme Court. White House counsel Alberto Gonzales is also seen as a possible nominee to the high court.

``Estrada is young and smart without a long paper trail, so the Bush administration might think his confirmation will be easier,'' said Nan Aron, president of the Alliance for Justice, a coalition of largely liberal advocates opposed to Estrada.

Democrats controlling the Senate have moved on other Bush judgeships, with 28 confirmed since they took control in June -- better than the pace of the GOP Senate during the Clinton years. But they haven't scheduled hearings on Estrada or several other nominees.

`NO CONSENSUS'

``The Judiciary Committee tried to move as many nominations as possible, and not go to the most difficult ones, where there is no consensus,'' said David Carle, a spokesman for Judiciary Chairman Patrick Leahy, D-Vt.

Republicans see foot-dragging and have responded sharply.

``Democrats don't want a Hispanic appointed to this significant court because they understand he could be one of the president's first nominees on the Supreme Court,'' said Sen. Jon Kyl, R-Ariz., last month. ``They are literally racially profiling this nomination.''

Hispanic groups are generally supportive, but not completely.

The Latino Coalition and the Hispanic Business Roundtable are backing the nomination.

The Mexican American Legal Defense and Education Fund is studying Estrada's record and has not taken a position, said regional counsel Marisa Demeo.

``So often, you hear there are not enough qualified Latinos for these positions, but he is remarkably qualified,'' said Gabriela Lemus, spokeswoman for the League of United Latin American Citizens (LULAC). ``The Senate should give him a chance.''

APPROACH DESCRIBED

Estrada has written that he is a strict constructionist who would not ``make law'' as a judge. His backers note that as a lawyer in the solicitor general's office, Estrada strictly followed the provisions of racketeering law in one case, arguing against abortion protesters.

And the American Bar Association has given Estrada a rating of ``well-qualified.''

But Bender, a Clinton appointee who supervised appellate litigation in several discrimination cases, said he ``could not trust Estrada's judgment'' in following the law.

``He was very, very conservative and outspoken about it -- he felt the law on defendants' right had gone way too far,'' Bender said.

Bender, a civil rights advocate, said he sometimes disagreed with Roberts -- Bush's other nominee for the D.C. court -- but would support Roberts ``because he is well-qualified.''

Michael Gerhardt, who has studied confirmation battles over the years, said the Estrada fight is another episode in the ongoing battle to define the ideological middle ground.

Each side tries to depict the other as outside the mainstream in such fights, Gerhardt said.

``Defining who is really a moderate, who is too ideological, is at the core of the debate,'' he said.

Op/Eds

The Chief Justice Speaks

The Washington Post
Friday, January 4, 2002

CHIEF JUSTICE William Rehnquist is one of the few prominent Republicans with standing to complain about the way the Democratic-controlled Senate is processing judicial nominations. Back in 1997 Mr. Rehnquist courageously chided Senate Republicans in his year-end report on the judiciary for delays in confirming President Clinton's nominees. "Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote," he wrote. "The Senate should act within a reasonable time to confirm or reject them." His principled call then for a fair and expeditious process makes his insistence in this year's report that the Senate "ought to act on each nominee and to do so within a reasonable time" a rarity in the general hypocrisy of the confirmation mess: a consistent position.

Unfortunately, Mr. Rehnquist did not content himself with using his unusual moral authority on the question of judicial nominations to give the process a push. Instead, he began his discussion of the vacancy problem by positing a dubious link between the issue and the war on terrorism. He noted that "the federal courts have functioned through wars, natural disasters, and terrorist attacks" but said that for them "to continue to function effectively and efficiently . . . judicial vacancies must be timely filled with well-qualified candidates." This adoption of what has become standard Republican rhetoric on judges is unnecessary, and the argument itself is unconvincing. No matter how short-staffed a court, any judge is going to drop his other work when the FBI comes in with an emergency search warrant request. The highest-priority matters don't tend to be the work that suffers.

The reason the Senate should consider judges quickly is exactly the same now as it was before

Sept. 11. The institutional needs of the judiciary should not be held hostage to politics. And while the Senate's constitutional duty to advise on and consent to the president's nominees may legitimately involve rejecting his nominations, it is an abdication of that duty simply to refuse to consider them. Lengthy, irrational delays are also unfair to the nominees in question and, along with low judicial pay, are among the serious obstacles to recruiting good judges. Mr. Rehnquist is right to speak up on this issue -- irrespective of which party controls the White House and which party controls the Senate. It is no less important for having nothing to do with terrorism.

Senate Holdup; Our Position: The U.S. Senate Should Stop Playing Politics With Judicial Nominations

The Orlando Sentinel
Sunday, January 6, 2001

The U.S. Senate needs to step up the pace to confirm or reject the people nominated to federal judgeships by President George W. Bush.

Prompt action is required because 11 percent -- 94 of the authorized 853 district, trade and appeals-court judgeships -- are vacant. That's the largest number of vacancies since early 1994, when there were 118 empty seats on federal benches. There's one judicial vacancy in Florida's middle district, which includes Orlando. Vacancies increase the back-breaking workload of cases that judges preside over. That workload can contribute to delays throughout the court system. It's not uncommon for individual judges to preside over hundreds of complicated cases during the course of a year.

The situation has become so critical that U.S. Chief Justice William Rehnquist issued a Mayday call for help last week in his annual report on the federal judiciary. He noted that the delays and arduous confirmation process is discouraging some qualified people from accepting a nomination to the federal bench.

The solution rests in the hands of the Senate, which is charged with confirming judicial nominees. Those nominations sometimes become political soccer balls. When the Republicans held the majority during the Democratic administration of President Bill Clinton, his nominations had a difficult time making it through the confirmation process.

Now that the Democrats hold the upper hand in the Senate, nominations made by Mr. Bush, a Republican, are crawling. When the Senate adjourned for the Christmas break, 37 nominees were awaiting action by the Senate.

The prompt and smooth administration of justice in the federal system is much more important than partisan muscle-flexing.

All presidents are entitled to nominate judges with whom they are politically comfortable. That discretion generally should be respected by senators.

The way to avoid logjams in the nomination process is for senators to avoid getting hung up on political differences they may have with individual nominees.

The candidates' fitness to serve in the lifetime judicial positions should be evaluated on the basis of the nominee's integrity, personal background, professional experience, legal knowledge and temperament.

Presidents also have an obligation to avoid nominating people who have weak qualifications for the post. Such nominations are needlessly provocative. They are certain to draw political attacks and cause delays in the confirmation process.

The ongoing international war against terrorism and increasingly complex issues in technology and the business world are sure to create cases that will make the federal courts more important than ever.

Filling the vacancies on the federal bench must be a top priority for senators.

Order for the Courts

The News and Observer
Saturday, January 5, 2002

Anyone watching the bitter nomination and appointment process for federal judgeships has to come away perplexed. Democrats like to point out that President Bush has gotten a higher percentage of his judicial nominees through the Senate grinder at this time than former President Clinton.

But that partisan point, legitimate though it may be, doesn't erase the fact that the federal court system is understaffed on the bench. Chief Justice William H. Rehnquist, in his annual report on the courts at the end of 2001, noted that of 853 federal judgeships, 94 are vacant, about 11 percent. That's not as bad as the Clinton years -- when Republicans also dragged their feet on appointments thanks to their ongoing contentious relationship with Clinton -- but it's too many -- the most at the start of a year since 1994.

Sen. Patrick Leahy of Vermont, chairman of the Judiciary Committee that opens the approval process, blames the tumult in the nation and the Senate, with some justification.

Besides Sept. 11, senators suffered through the emptying of Senate offices due to anthrax and political upheaval with a change in leadership after Sen. James Jeffords of Vermont became an independent and gave the majority to Democrats at mid year.

President Bush, of course, should expect opposition if he goes to the fringes of conservatism to find nominees. Judgeships, after all, are lifetime appointments. Democrats wouldn't be doing their job if they didn't subject nominees to rigorous debate, a logic that holds when Republicans are the Senate bosses. Federal judges have tremendous power, and those who are granted it must

be men and women of sound judgment and reason, qualities than need not have a partisan litmus test.

Bush does have every right to fill judgeships with candidates who share his conservative philosophy.

A well-functioning judiciary is always important. But the war against terrorism has raised a host of basic constitutional issues that the courts likely will have to untangle in the months and years to come.

Now more than ever, Rehnquist seems to say, we need a strong, complete federal judiciary. Seeing to that and making sure the process doesn't get skewed by partisanship is a duty shared equally by the president and Congress.

Reluctant Jurists; Problems with Pay and Confirmation Dampen Top Lawyers' Aspirations to be Federal Judges

Newsday
Saturday, January 5, 2002

Relatively low pay and lengthy confirmation processes have soured many lawyers in private practice on seeking appointment to the federal bench, says the nation's top judge. The Senate and the president should heed the warning of Chief Justice William Rehnquist.

If the pool of potential judicial nominees continues to shrink, the current high quality of the federal bench will eventually be eroded. In the interest of justice, Washington should deliver timely confirmation hearings and votes, and a formula for regular judicial pay raises. Highly qualified nominees who are comfortably in the mainstream of political ideology usually win easy confirmation. It is when a president from one party asks a Senate controlled by the other party to confirm nominees with controversial views that the process runs aground.

A Democratic Senate, its plate full after the Sept. 11 terrorist attacks, confirmed 28 of Republican President George W. Bush's judicial nominees in 2001. But at year's end there were still 94 vacancies. Between 1998 and 2000, with Democrat Bill Clinton in the White House and a Republican Senate, 32 nominees got no confirmation hearings at all.

Presidents impede the process when they try to stack the courts with ideologues. But the acceptable political mainstream must be broad. The courts benefit from ideological diversity and from the presence of judges who follow a variety of career paths to the bench.

Nominees in private practice are the ones most affected by delayed confirmation and lower pay. They lose business while awaiting confirmation because they cannot assure prospective clients that they'll be available to complete their work. And for top lawyers, judicial salaries - $150,000 for district court judges, $192,000 for the chief justice - are a pay cut. Lawyers in the nation's top firms earn that much just a few years out of school. Government can't compete with private-

sector compensation. But judges should get raises at regular intervals that exceed the rate of inflation.

Judges perform a demanding, critical public service. Those who do it shouldn't be expected to sacrifice unnecessarily.

Approval Process, Pay for Jurists Need Reform; Highly Political Vetting Process, Low Salaries Could Cripple Federal Judiciary

By Tom Teepen
Dayton Daily News
Friday, January 4, 2002

William H. Rehnquist has a point. Two, actually.

The Chief Justice of the United States, in his annual year-end report, warned that unless pay is boosted sharply and the political vetting of nominees is streamlined, the nation could wind up with a federal judiciary that is substantially bureaucratized and, virtually by definition then, dehumanized. With a scheduled 3.4 percent cost-of-living increase this year, district judges will make $150,000, courts of appeal judges $159,100 and Supreme Court associate justices $184,400. (Rehnquist will pull in $192,600.)

That's big money to most of us, and it would be easy to dismiss Rehnquist's pitch as the bellyaching of the well-to-do.

But, in fact, big law firms in major cities are paying salaries close to those of district judges to first-year lawyers, youths with law-review ink still on their fingers.

The public can expect federal judges to count the prestige of a judgeship and the opportunity to make an important civic contribution as at least some compensation for lower wages than they could make in private practice. It is unreasonable, however, to expect many of the most able candidates to accept what amounts to financial devastation.

As a result of the lagging pay, Rehnquist notes, an increasing number of federal jurists are coming from public rather than private practice - from prosecuting shops, public-defender programs and such - where the pay is so low $150,000 offers a lifestyle change.

Attorneys from private practice bring - not universally but typically - a greater real-world understanding of law to the judge's job than do public attorneys who have been practicing stickler's law at the second decimal place. The same can be said, by the way, of many political appointees. In any event, a mix on the federal bench is best.

Rehnquist is right, too, in saying the Senate approval process has become a political torture putting off potential nominees.

As he did in scolding GOP Congresses for sidelining President Bill Clinton's judicial nominees, the chief justice now chides the current Democratic Senate for holding up President George W. Bush's picks, but the larger blame has to go to Rehnquist's own party.

The Senate isn't breaking any speed records with Bush's choices, but neither is it as balky as recent Republican Congresses were. And where Clinton put forward essentially moderate nominees who should have been speedily approved, Bush has proposed a cohort that is one of the most ideologically vivid - lurid? - ever advanced. Careful, indeed skeptical, hearings are called for.

The GOP's right, in an avowed campaign to capture the federal bench, has extended its sly naming game to the judiciary - casting, and dismissing, as 'left-wing' or 'liberal' everyone who is not doctrinally conservative. (And the watchdog media, who bark their fool heads off when some second-tier pol empties the petty-cash drawer, lets the right get away with murdering whole political identities.)

The pay matter can be fixed quickly and cheaply with simple legislation, and should be. The confirmation mess won't end until both parties go back to making moderate appointments and the GOP stops being a willing partner in its right's scheming.

Bush Nominations Delayed

The Herald
Friday, January 4, 2002

The nation is ill served by senatorial foot-dragging in approving presidential nominations for various posts. But the delay is nothing new, and the GOP's self-righteous hand-wringing is more than a little hypocritical. Of the more than 500 executive branch positions that require Senate confirmation, about 350 were filled in 2001. But 70 nominees were left unconfirmed when Congress adjourned in late December.

Nominees were being rubber-stamped by the Republican-controlled Senate early in Bush's first year. But that came to a screeching halt when Vermont Sen. James Jeffords defected from the GOP, declaring himself an independent, thereby handing control of that body to the Democrats.

Some Republicans have advised Bush to use recess appointments while Congress is not in session, which would allow appointees to serve until January 2003 without Senate confirmation. But that tends to cast the nomination in a poor light, indicating the Senate has no confidence in the nominee. It also practically ensures the nominee never will be officially confirmed.

Senate Republicans have, predictably, complained about the delay. Sen. Orrin Hatch of Utah, senior Republican on the Judiciary Committee, said Democrats have made a "systematic and calculated effort to confirm the absolute minimum number of President Bush's judicial nominees that they believe will be acceptable to the American public."

Hatch also asserted that his party "did not play such games when Bill Clinton was president." Oh, really? The record indicates otherwise. The Senate confirmed 28 judicial nominees last year. In 1996, when Hatch was chairman of the Judiciary Committee, the Senate confirmed only 17.

In 1999, Hatch froze consideration of all nominees for several months to put pressure on Clinton to nominate an attorney Hatch wanted for a district judgeship in Utah. Under the past six years of Republican control of the Senate, confirmations, judicial nominations in particular, slowed to a crawl. Some nominees languished for years. In fact, some slots are open now because nominees weren't confirmed during the Clinton years. So, to some degree, the Democrats are demonstrating that both parties can play that game. Unfortunately, political games impede smoothly functioning government.

The Senate has a responsibility to advise and consent on presidential nominations. And, in some cases, delays may be justified. There are legitimate reasons to be wary of controversial nominations such as Otto Reich, Bush's nominee to be assistant secretary of state for Western Hemisphere affairs, and Eugene Scalia, son of Supreme Court Justice Antonin Scalia and Bush's pick to be the Labor Department's top lawyer.

Clearly, however, the process is flawed. Political spite is not a legitimate reason to hold up presidential nominations. Leaders in both parties need to seek common ground. Nonetheless, it's worth noting that Democrats didn't create this mess, and Republican complaints to the contrary are an attempt to rewrite recent history.

Senate Politics Damage Federal Courts

By Wes Haden
The Chattanooga Times
Friday, January 4, 2001

In the best tradition of blind justice -- that is a court system that does not take sides -- Chief Justice William Rehnquist once again has appealed to the U.S. Senate to put aside its seemingly endless bickering and attend to the business of approving new federal judges.

Though Justice Rehnquist's latest plea is pointedly directed to the sitting Democratic-controlled Senate, it is not a partisan request at all. The chief justice made the same request during the latter part of Bill Clinton's tenure when Republicans controlled the Senate and judicial appointments were, as they are now, caught up in endless political machinations. Justice Rehnquist has sound reason to push recalcitrant legislators. There are nearly 100 vacant federal judgeships around the country, slightly above 10 percent of the total. If federal courts are to provide prompt trials and efficient justice, as they are mandated to do, they must have a full complement of judges. Given the roadblocks put up in the fractious Senate over the past few years, that's unlikely to happen anytime soon.

Warning that the large number of vacancies "were undermining the administration of justice," the chief justice called on the Senate to "act with reasonable promptness" on the president's judicial nominees. The Senate, he correctly implied in his annual report on the federal judiciary, should put the nation's needs ahead of political chicanery.

In the past, pleas for assistance in matters of this kind from the judicial branch to the legislative branch have gone pretty much unheeded. The Senate did as it pleased -- and approved nominees only when it saw fit. That is no longer an acceptable way to conduct business.

Federal court dockets in many places are clogged because of past intransigence on the part of senators. Their persistent refusal to vote on judicial appointees who ideologies differ with their party's orientation has created a problem that is fast becoming a national scandal.

To make matters worse, the new anti-terrorist laws enacted after Sept. 11 are already spawning litigation that will further tax the federal judicial system. Without the swift action sought by the chief justice, the situation is likely to worsen.

In recent years, the Senate, regardless of the majority party, has preferred to play partisan politics with judicial nominations rather than responsibly fill its role in approving judges for the trial and appellate courts.
It's time for those games to end. America and Americans are living in difficult times and it is more important than ever that the rule of law be paramount. The Senate can assure that it is by voting yea or nay on the judicial nominations when it returns to business on Jan. 23.

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Subject: judicial media review
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Please see attached review

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General Judicial Articles

Judicial Nominations Battle Resume

By Jesse Holland
Associated Press
Thursday, January 24, 2002

Judicial nomination politics are back in full swing just two days into a new congressional year.

Liberal groups are preparing attacks on one of President Bush's appellate court nominees, U.S. District Judge Charles Pickering of Mississippi, just as Republicans renew pressure on Democratic senators to move the president's nominees into the 101 vacancies in the federal judiciary system.

Bush on Wednesday added 24 more U.S. District Court nominees to the 66 U.S. Appeals and District Court nominations that the Senate has not yet decided on. Republicans have complained that Democrats stalled Bush's judicial nominees after taking over the Senate in June, confirming just 28 of the president's first 94 nominations. Democrats say they moved as fast as they could, and that Republicans delayed former President Clinton's judicial nominees during his two terms in office.

Republicans say Pickering is a prime example of how Democrats have treated Bush's nominees.

"He's a classic case of how the committee has kicked the can down the road: 'Oh well, yes, we've had one hearing; we may need another one. Oh well, he got all his opinions; how about his unpublished opinions? Oh, by the way, how about his secretaries' notes?'" said Senate Republican Leader Trent Lott, R-Miss. "This is unnecessary and ridiculous harassment."

Bush nominated Pickering to the Fifth U.S. Circuit Court of Appeals in New Orleans in May. But Democratic senators have been lobbied for months to block or stop the nomination.

The nominee, the father of Rep. Chip Pickering, R-Miss., already had one nomination hearing in October, but Democrats have insisted on a second hearing to study his unpublished opinions on civil, reproductive and prisoner rights.

L.A. Warren of the Mississippi branch of the National Association for the Advancement of Colored People said his group believes Pickering gave false testimony during his 1990 confirmation hearing to become a U.S. district judge.

According to Senate records reviewed by The Associated Press, Pickering testified he "never had any contact with the Sovereignty Commission," Mississippi's now-defunct segregation watchdog agency. However, a 1972 letter in the commission's files said Pickering, while a state senator, had "requested to be advised" by the commission about a group organizing pulpwood workers.

Pickering said it would inappropriate for him to comment until his next hearing before the Senate Judiciary Committee.

People for the American Way, the Leadership Conference on Civil Rights, the Alliance for Justice and the National Abortion Rights Action League are among the groups planning to speak out against Pickering in Washington Thursday.

John Nowacki, deputy director for the conservative Free Congress Foundation's Center for Law and Democracy, said Pickering is a good choice.

"They're trying to find something to latch onto to oppose nominees and they think they can pull this off," he said. "With Pickering, they think that they have something to hang their hats on, but when you look at it and look at it closely, there's really nothing there."

Bush's Picks for Courts Under Attack

By Tom Brune
Newsday
Thursday, January 24, 2002

The fight over President George W. Bush's choices for federal judgeships, waged behind the scenes since the Sept. 11 attacks, will resurface today as liberal groups declare their first open war on a Bush judicial nomination.

The liberals' target is Charles Pickering, a conservative Mississippi federal judge nominated to fill a vacancy on the Fifth Circuit Court of Appeals who also is a friend and political ally of Senate Minority Leader Trent Lott (R-Miss.). "This is likely to be the opening round in the judicial nomination battle," said Elliot Mincberg of People for the American Way, one of the liberal groups that will hold a news conference today to urge the Senate to reject Pickering's nomination.

Pickering is just one of many of Bush's judicial nominees criticized as too conservative by People for the American Way and its allies; he became the first target because Lott is pushing hard for a hearing and confirmation vote, Mincberg said.

Lott yesterday called for Pickering's confirmation by Presidents Day, Feb. 18. "He's eminently qualified, supported by a broad group of individuals in our state, including minorities and women and plaintiff's attorneys and defense attorneys, and Republicans and Democrats," Lott said.

Even though the nation's attention was riveted on the Sept. 11 terrorist attacks and the government's frantic follow-up last fall, the ideological battle over Bush's judicial nominations quietly but heatedly continued in the background in the Senate.

Bush has proved to be particularly eager to put his stamp on the federal court, which has more than 100 vacancies, or about 12 percent of the total judgeships.

Yesterday, Bush announced 24 new judicial nominations, bringing his total to 90 during his first year in office. That is much faster than most of his recent predecessors.

Twenty-eight of the nominees have been confirmed by the Senate, all but four of them since Sept. 11, after passing through the Senate Judiciary Committee controlled by Sen. Patrick Leahy (D-Vt.), according to a tally kept by the Justice Department.

The nominations, hearings and confirmations have been fraught with political infighting and dramatic gestures.

Last fall, as the U.S. war on terrorism hit high gear, Senate Republicans led by Lott took a break to make speeches condemning Democrats for not moving fast enough on Bush's choices for judges. Republicans even temporarily blocked the foreign appropriations bill sponsored by Leahy to force Democrats to move more quickly.

Meanwhile, Leahy attempted to demonstrate his willingness to move ahead by holding a hearing on Pickering even though the Senate office buildings closed that day because of the anthrax scare. The hearing was held in the Capitol.

Committee Democrats forced Pickering to provide more information and go through a second hearing because he has published only 95 opinions in 11 years on the bench. That's too few to determine his qualifications, said Sen. Charles Schumer (D-N.Y.).

Republicans charged that Democrats were influenced by liberal groups.

Pickering should be blocked because he "has a troubling record on civil rights and reproductive choice" that is "emblematic" of Bush nominees, according to Alliance for Justice.

Leahy's committee is expected to hold a second hearing on Pickering the first week of February.

President Picks Local Jurist for New Federal Judgeship

By Jon Burstein and Rafael Lorente
Sun-Sentinel
Thursday, January 24, 2002

A Palm Beach County Circuit judge is one step closer to taking a seat on the federal bench.

Circuit Judge Kenneth Marra was one of 24 judicial nominees for slots nationwide whose names were forwarded Wednesday by President Bush to Capitol Hill. The president has picked Marra to fill a newly created judgeship for the U.S. District Court for the Southern District of Florida. "I am humbled and honored by President Bush's nomination of me to a position on the United States District Court," Marra said in a statement. "I look forward to completing the nomination process before the United States Senate and to the many challenges that await me as a United States District Judge."

Bush also nominated Miami lawyer Jose Martinez to replace Senior U.S. District Judge Edward Davis in Miami.

Both nominees went through the 22-member Southern District Judicial Nominating Commission chaired by former Gov. Bob Martinez. They also have been interviewed and approved by Florida's Democratic U.S. Sens. Bob Graham and Bill Nelson.

Support from home-state senators is crucial for nominees to successfully navigate the confirmation process.

"Given their qualifications and with the support of those two home-state senators, I'm confident they will be confirmed quickly," said Alberto Gonzalez, White House legal counsel.

Gonzalez said there is one more empty seat in the southern district that the White House hopes to fill soon.

The lifetime appointments pay $150,000 a year.

Marra, 50, has been a circuit judge since 1996, serving in the civil, family and criminal divisions. Before that, he spent 12 years practicing commercial litigation with the law firm of Nason, Gildan, Yeager, Gerson & White.

The New York City native got an undergraduate degree from State University of New York, Stony Brook in 1973. He graduated first in his class at Stetson University College of Law in St. Petersburg in 1977.

Liberals Challenge Judicial Nominee; Argue Bush Would 'Pack' Courts With Foes of Civil Rights

By Audrey Hudson
The Washington Times
Thursday, January 24, 2002

Liberal groups today will highlight the record of a conservative judge as part of their campaign to tarnish President Bush's judicial nominees as right-wingers who will "seriously threaten the

rights of all Americans."

Such organizations as People for the American Way, the National Abortion and Reproductive Rights Action League, the Alliance for Justice and the Leadership Conference on Civil Rights plan a press conference on the "problematic record" of Mississippi District Judge Charles W. Pickering.

"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," the groups said in press statement.

The report is expected to include criticism of the pro-life stance of Judge Pickering, who has been nominated to the 5th U.S. Circuit Court of Appeals. Judge Pickering was chairman of the first national Republican platform committee that called for a constitutional amendment to ban abortion. "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," the groups said. "More moderate, mainstream nominees who reflect genuine bipartisan consultation should receive priority in processing."

The criticisms were dismissed by key Senate Republicans who said Judge Pickering had been approved by the American Bar Association.

"He's eminently qualified, supported by a broad group of individuals in our state, including minorities and women and plaintiff's attorneys and defense attorneys, and Republicans and Democrats. He's an outstanding individual," said Senate Minority Leader Trent Lott, Mississippi Republican.

Judge Pickering was nominated in June, and one hearing was held late last year. Another hearing is expected in the coming weeks, and Republicans are pushing for a vote before the Presidents Day recess next month.

Democrats have stalled the vote by asking for additional information and notes, a tactic Mr. Lott describes as "a classic case of how the committee has kicked the can down the road."

"This is unnecessary and ridiculous harassment, and I believe that he will get a hearing and he will be confirmed," Mr. Lott said.

Mr. Bush nominated 64 judges last year, and 28 were confirmed. Yesterday, Mr. Bush nominated an additional 24 judges, bringing the total number now before the Senate to 60.

The groups also are opposing the nominations of Carolyn Kuhl, a California state trial court judge, to the 9th U.S. Circuit Court of Appeals; Jeffrey Sutton to the 6th U.S. Circuit Court of Appeals; and Priscilla Owen, a justice on the Texas Supreme Court, to the 5th U.S. Circuit Court of Appeals.

The chief criticism of these nominees is that all are members of the Federalist Society for Law and Public Policy, a group of conservatives and libertarians.

According to the Federalist Web site (www.fed-soc.org), the group's mission "is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be."

Sen. Larry E. Craig, Idaho Republican and chairman of the Republican Policy Committee, said Mr. Bush "will appoint exactly who he wants to appoint."

"That is the responsibility of the president; that is what happens when you win the presidency," Mr. Craig said.

Mr. Craig said the organizations had the right to speak out but cautioned them to stick to the facts.

"It's a tragic day in America when you can make political hay by failing to tell the truth," Mr. Craig said.

Since December, the liberal groups and other feminist organizations have been plotting a "nasty and contentious fight" against Mr. Bush's judicial nominees who do not support abortion, according to a memo of the groups' meeting obtained by The Washington Times.

The other organizations include the Ms. Foundation and the National Organization for Women.

Senators Protest Bush Judicial Pick; Murray, Cantwell Miffed at Selection Process, Say They Won't Back Leighton

By Charles Pope
The Seattle Post-Intelligencer
Thursday, January 24, 2002

President Bush yesterday nominated Tacoma attorney Ronald Leighton to be a federal district judge for Western Washington, ignoring strenuous objections by the state's two senators who complained they weren't adequately consulted.

Leighton was selected by an all-Republican selection committee formed with the White House's support by Rep. Jennifer Dunn, R-Wash. That angered Democratic Sens. Patty Murray and Maria Cantwell who said the nominee should be the product of a bipartisan panel. In a letter last month to White House counsel Alberto Gonzales, Murray and Cantwell said "we will not support any nominee for a Washington state federal bench vacancy who has not come through a bipartisan commission process."

That threat could stop Leighton in his tracks in the Senate, where a single objection is all that's required to derail a nomination. "I'm confident the Senate will not confirm a judicial nominee that does not have the support of the state's senators," Murray said.

"This is not about Mr. Leighton. He may well be a good, qualified candidate for judge. I'm sorry he got caught up in the White House's inability to understand that the Senate has a role in confirming judges," Murray said.

Murray added that the bipartisan system she used when Republican Slade Gorton served in the Senate would be a good model. That effort produced nominees that were supported by both parties and who enjoyed quick confirmation.

That is not likely to happen this time.

The nomination intensified a war of wills pitting Murray and Cantwell against Dunn and the White House. Murray insisted that the all-Republican committee broke a well-established practice of using a bipartisan panel to solicit potential nominees.

But Dunn said Cantwell and Murray weren't excluded and were given an opportunity to be "equal partners" in the process. Leighton was one of four candidates selected by Dunn's committee. Aides to Dunn said that a complete resume of each candidate was provided to Murray and Cantwell along with an offer to comment. Dunn said neither senator offered any comment.

Dunn praised the 50-year-old Leighton as a strong nominee whose ability and accomplishments shouldn't be overshadowed by a dispute over the process used to select him. "Sometimes senators make it sound like there is one system that has to be used," she said. "For the senators to use process as an excuse not to give the president his nominee is unfortunate."

If confirmed, Leighton wold would replace Judge Robert Bryan at the federal court in Tacoma. Bryan announced last year he would take "senior status," meaning he no longer would hear a full docket of cases.

A senior White House official, who spoke only on the condition he not be named, said the administration rejected a bipartisan commission because it would take too long. "There is a judicial vacancy crisis and the president wants to move rapidly," the official said. "This one has been vacant too long."

Murray disputed that claim, saying she, Cantwell and Dunn have been in discussions for a year in an effort to reach agreement on a method for picking judicial nominees.

The White House official added that Leighton is "superbly qualified" and urged that the Senate consider his qualifications rather than how he was selected. "We're confident he is of such high quality that no matter what the process, Ron Leighton would have been at the top of the list."

This latest dustup is not entirely new for Leighton. In 1992 President George Bush nominated him to be a federal judge. That nomination was delayed and ultimately dropped after Bill Clinton was elected president.

Bush Nominates Tacoma Lawyer to Federal Bench

By Katherine Pfleger
The Associated Press
Thursday, January 24, 2002

President Bush has nominated Tacoma, Wash., lawyer Ronald Leighton to be a federal district judge in Western Washington, over the protests of the state's U.S. senators who say they were excluded from the selection process.

Democratic Sens. Patty Murray and Maria Cantwell have promised to block the nomination with procedural moves unless the White House uses a bipartisan commission to find a replacement for Judge Robert J. Bryan at the U.S. District Court in Tacoma. For instance, Murray has said she will put a "hold" on Leighton's nomination - a maneuver that would prevent the Senate from voting on a judge.

Her spokesman Todd Webster said Murray has been "crystal clear" that any nominee must come from a commission made up of Republicans and Democrats.

"This is a tradition that has served the people of Washington state in getting even-tempered, qualified, balanced judges for lifetime appointments," Webster said Wednesday.

Though the nomination appeared headed for a deadlock, a senior White House official, speaking on condition of anonymity, said the administration is hopeful Leighton will be approved.

"We think, in the end, the Senate's job ... is to focus on the qualifications," the official said. "Mr. Leighton is just an absolute A-plus nominee."

Murray and Cantwell have been sparring with the White House for nearly a year about how the opening would be filled. At the White House's direction, Rep. Jennifer Dunn, R-Wash., formed a Republican selection committee, even though the senators considered the negotiations ongoing.

Dunn said Leighton is a strong candidate who has been vetted twice for federal judicial openings but never approved. She said the senators were invited to appoint people to an evenly divided bipartisan selection commission but the senators didn't want to be bound by the commission's final four candidates.

Murray and Cantwell "have chosen to use a process excuse," Dunn said. "Going backward (with a new commission) would not solve the problem."

Cantwell is a member of the Judiciary Committee, responsible for screening federal judicial

nominees. Her spokesman Jed Lewison said she is "in sync" with Murray on the need for a bipartisan commission.

Cantwell "will take the necessary actions to make sure that a bipartisan process is the one that is used," Lewison said.

Presidents historically have listened to the wishes of home-state senators when filling judicial vacancies. However, three states - Washington, California and Wisconsin - have instead used commissions made up of Republicans and Democrats to fill openings.

White House Counsel Alberto Gonzales has called the states "isolated exceptions." He has said Bush is not generally supportive of the commissions, though he would be willing to use them - under conditions that Murray and Cantwell found objectionable.

Leighton's nomination comes as Bush is working to fill 101 federal judicial openings, including 70 in U.S. district courts.

The opening in Tacoma was created a year ago when Bryan took "senior status," a type of semiretirement that allowed him to significantly limit his cases, though he is carrying a full load until a successor is named.

In a phone interview, Leighton said he asked to be considered because he would love the job, but was cautious about how his nomination would work out.

"The process is a difficult one and fraught with issues that don't involve me," he said.

Leighton is a partner with the Seattle-area law firm of Gordon Thomas Honeywell Malanca Peterson & Danheim.

Bush Names 3 to U.S. District Court

By Torsten Ove
The Pittsburgh Post-Gazette
Thursday, January 24, 2002

President Bush yesterday nominated three local lawyers to judgeships in U.S. District Court.

Bush named Joy Flowers Conti and Art Schwab, both lawyers at the Downtown firm of Buchanan Ingersoll, and Allegheny County Solicitor Terry McVerry to fill long-standing vacancies on the federal bench.

The three must be confirmed by the U.S. Senate, a lengthy process that could be dragged out because of a backlog of nearly 70 other nominees for federal judgeships.

"I'm expecting it could be months," said Conti, who said she was honored to have been chosen

and promised to do her best as a federal judge.

Schwab said he is eager to serve, too.

"My family and I are very joyful," he said. "I'm looking forward to being of service in Western Pennsylvania."

McVerry couldn't be reached yesterday.

The Western District of Pennsylvania has been short of its full complement of 10 judges for years.

Currently there are four vacancies. When U.S. District Judge William Standish takes senior status in March, it will be five. And when U.S. District Judge D. Brooks Smith is confirmed by the Senate for a position on the 3rd U.S. Circuit Court of Appeals, it will be six.

The filling of judicial vacancies nationwide has been hindered repeatedly by partisan bickering. The delay in getting local judgeships filled was rooted in a political dispute between former President Clinton and Pennsylvania's Republican senators, Rick Santorum and Arlen Specter. But now the process seems to be moving forward.

"It's a real breakthrough," said Schwab.

Schwab is chief counsel for complex litigation at Buchanan Ingersoll. A 1968 graduate of Grove City College, he received his law degree from the University of Virginia in 1972.

Conti, a 1973 graduate of Duquesne University law school, is a former tenured professor of law at Duquesne and taught courses on corporations, corporate finance, corporate reorganizations and bankruptcy.

McVerry, a former state legislator, worked as an assistant district attorney and is a former Allegheny County Common Pleas judge.

Pickering Nomination for Federal Court Under Fire

By Jason Straziuso
The Commercial Appeal
Thursday, January 24, 2002

Some advocacy groups are challenging a Bush nominee for a federal appeals court job, claiming the Mississippi judge gave false testimony when he became a district judge a decade ago.

Charles Pickering, a former state senator and the father of Rep. Chip Pickering (R-Miss.), also has come under fire for some of his rulings and his votes in the Legislature during the 1970s.

Senate Minority Leader Trent Lott says Pickering has the support of key Senate Democrats and will have a second hearing before the Senate Judiciary Committee in the next two weeks, following an initial hearing in October. Pickering has been nominated for a seat on the Fifth U.S. Circuit Court of Appeals in New Orleans.

L. A. Warren of the Mississippi NAACP legal division said his group believes Pickering gave false testimony to the Senate during his 1990 confirmation hearing to become a federal judge.

During that hearing, according to Senate records reviewed by The Associated Press, Pickering testified he "never had any contact with the Sovereignty Commission," Mississippi's now-defunct segregation watchdog agency.

However, a 1972 letter in the Sovereignty Commission files includes a reference to three then-state senators, including Pickering, saying they "requested to be advised" about a group organizing pulpwood workers in the state.

The Sovereignty Commission was established in the 1950s to spy on individuals and groups who might threaten the state's official policy of segregation. Its agents also kept tabs on organizations it felt had Communist leanings.

The 1972 letter was addressed to the commission's director, W. Webb Burke, from Edgar C. Fortenberry, one of its investigators assigned to southern Mississippi. Fortenberry's letter did not identify to whom Pickering's request was made.

There was no other documentation in the files to indicate Pickering had direct contact with the commission, which ceased functioning in 1973. Pickering served in the Mississippi Senate from 1972 to 1980.

Pickering, who was given a "well qualified" rating by the American Bar Association, told AP in a telephone interview he was aware of the issues likely to be brought up at his next hearing.

"It is not appropriate for me to comment on the Sovereignty Commission issue or any other issue until I appear before the Judiciary Committee," he said.

Lott (R-Miss.) said he has received "commitments of support" for Pickering from Sens. Patrick Leahy (D-Vt.) the Judiciary Committee Chairman, and Sen. Tom Daschle, the Senate Majority Leader.

"I've been assured they're going to vote on him in early February and he'll be confirmed overwhelmingly," he said.

Lott also said Pickering had "broad support" politically.

Mimi Devlin, a spokesman for the Senate Judiciary Committee, said "no such promises or confirmations from Senator Leahy" were given to Lott. No date has been set for a second

hearing, she said.

The Alliance for Justice, a Washington-based association of advocacy organizations, has monitored judicial nominees since 1984. The self-described "progressive" group on Thursday plans to highlight Pickering's record, which it calls anti-women and anti-minority.

The alliance points to Pickering's political record from the 1970s, including his votes for a Republican Party platform against abortion rights, and his votes as a state senator in the voting rights arena.

Judicial Nominee to Face Questions About Enron Contributions

The Associated Press
Wednesday, January 23, 2002

A federal judicial nominee who wrote a ruling favorable to Enron Corp. after taking campaign money from the now-bankrupt energy trader will get close scrutiny, Vermont Sen. Patrick Leahy said.

Texas Supreme Court Justice Priscilla Owen wrote a unanimous ruling that saved Enron $225,000 in taxes, two years after taking $8,600 in campaign contributions from the company, according to the watchdog group Texans for Public Justice. President Bush has tapped Owen to become a member of the 5th U.S. Circuit Court of Appeals in New Orleans. She has been awaiting Senate confirmation.

"The Senate will look at Justice Owen's Enron rulings as part of her overall record," Leahy told The Dallas Morning News in Wednesday's editions.

"She has a right to take contributions, but any judge - liberal or conservative - faces the legitimate question about whether a contribution influenced their thinking," said Leahy, a Democrat.

Owen, a Republican, was the author of a unanimous Texas Supreme Court opinion in 1996 that settled a tax issue in Enron's favor. The opinion rejected the Spring Independent School District's argument that the Enron natural gas inventory should be assessed at a value $15 million higher than stated by the company.

That decision spared Enron $225,000 in taxes. It came two years after Owen accepted $8,600 in Enron contributions, according to Texans for Public Justice. The nonprofit group tracks campaign spending.

Owen has not fielded questions regarding the Enron contribution or her judicial decisions.

Texas Justice’s Enron Money Draws Criticism

By Michelle Mittelstadt
The Dallas Morning News
Wednesday, January 23, 2002

An Enron scandal that has proved nettlesome to the executive and legislative branches now is spilling over to the judiciary, with word that a prospect for a prestigious federal appellate court seat received Enron campaign contributions and later authored a Texas Supreme Court opinion favorable to the bankrupt energy trader.

Senators "undoubtedly" will examine Texas Supreme Court Justice Priscilla Owen's dealings with Enron when her nomination to the 5th U.S. Circuit Court of Appeals is considered, the Senate Judiciary Committee chairman said Tuesday.

"The Senate will look at Justice Owen's Enron rulings as part of her overall record," said Sen. Patrick Leahy, D-Vt. "She has a right to take contributions, but any judge liberal or conservative faces the legitimate question about whether a contribution influenced their thinking." The Republican justice was the author of a unanimous Texas Supreme Court opinion in 1996 that settled an arcane tax issue in Enron's favor, rejecting the Spring Independent School District's argument that the Enron natural gas inventory should be assessed at a value $15 million higher than stated by the company.

That ruling, which spared Enron $225,000 in taxes, came two years after she accepted $8,600 in Enron contributions, said Texans for Public Justice, a nonprofit group that tracks campaign spending.

Liberal advocacy organizations, which already have been geared up for a fight over the Owen nomination, said her Enron ties raise questions about the conservative jurist's candidacy.

"We're talking about a candidate to the second-highest court in the land and for a lifetime appointment," said Nan Aron, president of the Alliance for Justice, which calls Justice Owen and other Bush judicial nominees too extreme. "Already there are several major questions that have been raised concerning her overall bias, as revealed in her opinions in favor of wealthy and powerful interests.

"She will have a very, very tough road ahead."

The judiciary committee has yet to schedule hearings on Justice Owen's nomination.

"I'm not at all saying this is a total disqualification . . . but it is an additional factor that makes her all the more controversial," said Elliot Mincberg, legal director of People for the American Way.

Justice Owen was not fielding questions, but her defenders rejected the notion that the donations should disqualify her.

"Absolutely not," said Sen. Phil Gramm, R-Texas.

At the White House, the Owen criticism was dismissed as partisan posturing.

"Judge Owen is a person of the highest integrity, who is extremely well qualified," said White House spokesman Scott McClellan.

Mr. Gramm noted that Enron, once one of Texas' largest companies, gave to many candidates.

That's the problem, said Craig McDonald, noting that Texas, unlike most states, elects judges and allows them to take contributions from law firms and other interested parties. A Texans for Public Justice study estimates that 43 percent of Justice Owen's campaign contributions have come from interests that have done business before the state's highest court.

Since 1993, Enron has contributed $134,000 to Texas Supreme Court members, the group says.

"We're all victims of our times, and the Enron scandal has probably just increased the scrutiny over this practice," McDonald said.

While Justice Owen is precluded by judicial ethics from discussing her 1996 opinion, Supreme Court spokesman Osler McCarthy, who spoke for her, said the criticism directed at her was partisan gamemanship.

Her ruling, in a 9-0 decision, affirmed the constitutionality of a law passed 171-1 in the Texas House and 30-1 in the state Senate, he said.

The Fall of Enron; Contributions at Issue in Judge's Confirmation

By Janet Elliot
The Houston Chronicle
Wednesday, January 2002

Enron's political contributions have become an issue in the confirmation battle involving a Texas Supreme Court justice who has been nominated to a federal appellate bench.

Liberal groups concerned about President Bush's nomination of Justice Priscilla Owen to a vacancy on the 5th U.S. Circuit Court of Appeals have seized on a 1996 opinion that saved Enron hundreds of thousands of dollars in property taxes.

Owen took $ 8,700 in contributions from Enron's political action committee and executives during her 1994 election campaign.

"Now that the Enron scandal has every politician scrambling to clear their name of Enron contributions, I think that the money absolutely will be a key issue in Owen's confirmation," said Craig McDonald, director of Texans for Public Justice, which monitors campaign contributions.

Owen is one of the most conservative members of the all-Republican Supreme Court.

The tax case involved a dispute with Spring Independent School District over the date on which Enron would inventory natural gas stored in a salt dome facility. The inventory volume differed by $ 15 million worth of gas between Sept. 1, 1989, and Jan. 1, 1990.

Because Enron elected to use the earlier appraisal, the school district claimed it lost $ 225,000 in tax revenue.

Owen wrote the opinion for a unanimous court that reversed a ruling by Houston's 14th Court of Appeals that a law classifying inventory separately from other property was unconstitutional.

"The winter months are typically a period of peak demand for natural gas. It is not arbitrary or capricious for the Legislature to permit the taxable value of natural gas inventories to be determined on a date other than January 1, when inventories may be higher than at other times of the year," wrote Owen.

Owen's opinion stated that the lost tax revenue was $ 15 million, but she apparently confused the tax loss with the difference in valuation, said Osler McCarthy, a spokesman for the Supreme Court. McCarthy said the case was a "pretty routine tax case soundly decided based on U.S. Supreme Court precedent."

The school district and its lawyers declined comment on the case. But a lawyer who represented Enron said he's offended at the suggestion that the court decided the case on anything other than the law.

"We won that thing on the merits. That was a clear case of interpretation of legislative ability to give taxpayers the opportunity to reduce their tax burden," said Berry Bowen, a Houston solo practitioner who worked in Enron's legal department from 1990 to 1995.

Elliot Mincberg, legal director of People for the American Way, a group that monitors judicial nominations, said Owen's authoring of an opinion after accepting a political contribution "raises an issue about the appearance of impropriety."

"It would be equally a problem if it wasn't Enron. It's an issue regardless of who the corporate contributor would be," said Mincberg, whose group has expressed concern but not opposed Owen.

Last May, Bush nominated Owen to the New Orleans-based court, which hears appeals from Texas, Louisiana and Mississippi. The Senate Judiciary Committee has not yet scheduled a hearing on her nomination.

In another 1996 case involving Enron, Owen recused herself.

McCarthy, the court spokesman, said she apparently recused herself because her former law

firm, Andrews & Kurth, was involved in the case.

Justices can legally accept donations from lawyers or parties with cases before the court. Texas has been regularly criticized for its high-dollar Supreme Court races.

"Nobody on this court is going to dispute that the system is broken and needs to be corrected. But it's the system we have until the Texas Legislature gives Texas voters the chance to change it," said McCarthy.

U.S. Bench Nomination Expected for Martinez

By Jay Weaver
The Miami Herald
Wednesday, January 23, 2002

President Bush is expected to nominate Jose "Joe" Martinez as a Miami federal judge as soon as today, capping his career as a legal Naval officer, U.S. prosecutor, drug-enforcement director and top civil lawyer.

The affable Martinez would also bring a sports fanatic's perspective to the bench.

Next to the law, his real passion is his alma mater, the University of Miami. He's crazy about UM baseball, and he calls the Canes football games in Spanish on the Archdiocese of Miami's radio station, WACC. Martinez, born in the Dominican Republic and raised in Miami, was the front-runner over Miami-Dade Circuit Judge Jerald Bagley and Miami federal Magistrate Ted Bandstra, according to sources familiar with the nomination. The lifetime appointment to the Miami federal seat, which pays $150,000 a year and had been occupied by U.S. District Judge Edward Davis for 21 years, must be confirmed by the U.S. Senate.

"His dedication to this country and this community is incredible," said Thomas D. Wood Sr., a UM trustee. He was Martinez's Naval Reserve commander in 1977 when both went to the U.S. base in Guantanamo Bay to provide legal assistance to military personnel.

"I've never heard him say an ugly word about anyone," said Wood. "Liking people is what enables him to help people."

Martinez, 60, declined to comment about his imminent nomination, saying it would be "inappropriate." The White House, which has scheduled a press conference for today on federal judicial nominations, wouldn't comment either.

Martinez, a Republican, was recommended along with Bagley and Bandstra as finalists last summer for Davis' position by the 22-member Federal Judicial Nominating Commission. The Florida panel's chairman, Roberto Martinez, a former U.S. attorney in Miami, said they were interviewed by the state's Democratic U.S. senators, Bill Nelson and Bob Graham, and then the White House.

Joe Martinez came close to being nominated for the federal bench in 1992, when then-Republican Sen. Connie Mack recommended him to President George Bush. But when Bill Clinton won the White House, Martinez's bid for the bench came to a halt.

This time, his appointment seems certain.

Davis, now chairman of Florida litigation for the Miami-based law firm, Akerman Senterfitt, described Martinez as a "real trial lawyer" who would make a popular choice to replace him. "He'll come on well prepared for the federal job," Davis said. "He's well liked by people who do business with him. You can rely on his word."

Said past Florida Bar President Herman Russomanno: "He has the virtues of a federal judge - integrity, honesty, high moral standards and what I refer to as open-mindedness and impartiality."

Martinez's life is an immigrant's success story.

His parents left the Dominican Republican with Martinez, his sister and their grandmother at the end of World War II. They first settled in New York City, but relocated to Miami in 1949.

His father, though a lawyer in the Dominican Republican, launched an import-export business here. Young Martinez worked his way through the University of Miami, studying marketing.

He dreamed of becoming a Naval pilot, but that was dashed. He reset his sights on law school at UM, graduating in 1965, and married his wife, Mary Anne, the following year.

His first job was as a Naval officer in the Judge Advocate General Corps in Key West. After he left active duty in 1968, he joined the Reserves and retired decades later as a captain.

Martinez quickly made his mark as an assistant U.S. prosecutor in the late 1960s - an era when the nation's war on drugs was in its infancy in Miami. He was tapped to become the regional director of the Office for Drug Abuse Law Enforcement in 1972.

"We were looking for an experienced person who was liked by the agents but also one who was tough enough and could not be conned by the agents," said former ODALE Deputy Director John R. Bartels Jr. "Joe was heads and tails above everyone else in Florida. His name kept coming up."

Since the mid-1970s, Martinez has still kept his hand in criminal law, from tax evasion to racketeering cases. But he has been more active as a corporate civil lawyer, including major product-liability trials, such as the Florida class-action lawsuit against Philip Morris.

Martinez, a father of two grown daughters, lives in Coral Gables.

Mays Tapped to Fill Bench; West Tennessee District Court Short-Handed

By James Brosnan
The Commercial Appeal
Thursday, January, 24, 2002

President Bush Thursday nominated Memphis lawyer Hardy Mays to the depleted U.S. District Court for West Tennessee.

Mays, 54, is a partner at Baker Donelson Bearman and Caldwell, and is a former chief of staff to Gov. Don Sundquist.

The Mays nomination came almost two years after the death of Judge Jerome Turner and six months after Mays was recommended for the vacancy by Tennessee's two Republican senators, Fred Thompson and Bill Frist. The district court also has been further short-handed because of the forced six-month leave of absence of Judge Jon McCalla, who last year admitted "improper and intemperate conduct."

His absence has created more work for judges Bernice Donald and Julia Gibbons, who is awaiting Senate action on her nomination to the Sixth Circuit Court of Appeals. The other district judge, James Todd, mostly hears cases in Jackson.

"I'm grateful the President has confidence in me and I hope to justify that," said Mays. "If and when the Senate sees fit to confirm me, I'm ready to go to work."

When the Senate will act is uncertain.

Thompson indicated Thursday he would like to press the Gibbons nomination first.

"We're going to work on it. We've got a big problem with the Sixth Circuit," said Thompson.

The Cincinnati appellate court is down to half its usual complement of 16 judges. None of Bush's nominees has been approved, in part because Michigan's Democratic senators have a "hold" on the Michigan nominees.

Nationwide, only one of Bush's 23 circuit court nominees has gotten a hearing from the Judiciary Committee, Sen. Don Nickles) (R-Okla.) noted Thursday.

Today, four liberal groups are expected to announce opposition to the nomination of U.S. Dist. Judge Charles Pickering of Laurel, Miss., to the Fifth Circuit Court of Appeals.

Nominations

City News Service

Thursday, November 24, 2002

Two lawyers who are former federal prosecutors were nominated by President Bush for positions as U.S. District Court judges.

Bush yesterday named Percy Anderson, 52, a partner at Sonnenschein, Nath & Rosenthal, and John Walter, 57, senior partner at Walter, Finestone & Richter, a firm that he founded. They are the president's first nominations for the District Court in Los Angeles, which has six vacancies. There are 21 federal trial judges in Los Angeles.

Anderson and Walter were nominated for federal judgeships by Bush's father in 1992, but their nominations died without a hearing as the confirmation process ground to a halt in the closing months of the senior Bush's presidency, the Los Angeles Times reported.

Last year, Anderson and Walter were unanimously recommended for the judgeships by a six-member screening committee of both Democratic and Republican attorneys.

Anderson, born and raised in California, graduated from UCLA and UCLA Law School. He worked for two years at San Fernando Valley Legal Assistance before joining the U.S. attorney's office in 1979. Most recently, Anderson has done civil litigation and white-collar criminal defense work.

Walter, a native of Buffalo, N.Y., graduated from Loyola University and Loyola Law School. He was a federal prosecutor from 1970 to 1972. After his government service, he joined a large national firm before founding his own firm.

Bush Names 2 for Judgeships in L.A. Courts: The President’s Picks Were Also Tapped Bu His Father, but no Hearings were Held

By Henry Weinstein
The Los Angeles Times
Thursday, January 24, 2001

President Bush on Wednesday nominated two Republican attorneys from Los Angeles who are former federal prosecutors for prestigious positions as U.S. District Court judges.

Bush tapped Percy Anderson, 52, a partner at Sonnenschein, Nath & Rosenthal, and John F. Walter, 57, senior partner at Walter, Finestone & Richter, a firm that he founded.

They are the president's first nominations for the District Court in Los Angeles, which has six vacancies and where judges are carrying heavy caseloads. There are 21 federal trial judges in Los Angeles. Anderson and Walter were nominated for federal judgeships by Bush's father in 1992, but their nominations died without a hearing as the confirmation process ground to a halt in the closing months of his presidency.

Last year, Anderson and Walter were unanimously recommended for the judgeships by a six-member screening committee of Democratic and Republican attorneys that was created by representatives of the Bush administration and California's two Democratic senators, Barbara Boxer and Dianne Feinstein.

The nominations were among 24 Bush sent to the Senate on Wednesday for judgeships around the country. In recent weeks, Bush has complained about the pace of the confirmation process. When the Senate adjourned Dec. 20, it had confirmed just 28 federal judges. Before Wednesday's action by Bush, there were 23 nominations to federal appeals courts and 14 nominations to District Courts. Both California senators issued statements praising the nominees, which should enhance their prospects for a swift confirmation, said Gerald Parsky, the West Los Angeles attorney who heads Bush's California judicial screening team.

"Mr. Walter and Mr. Anderson both demonstrated strong skills and qualifications to the advisory committee and this bodes well for the nomination process in the Senate," Feinstein said.

Boxer added: "Both are very well qualified to serve on the federal bench."

Walter, a native of Buffalo, N.Y., graduated from Loyola University and Loyola Law School. He was a federal prosecutor from 1970 to 1972 and obtained a conviction in a well-known case involving a group of sophisticated burglars who broke into a Laguna Niguel bank, rifled every safe deposit box and got away with millions of dollars. After his government service, Walter joined a large national law firm and then founded his firm, specializing in complex civil cases.

Anderson, born and raised in California, graduated from UCLA and UCLA Law School. He worked for two years at San Fernando Valley Neighborhood Legal Assistance before joining the U.S. attorney's office in 1979.

Perhaps his most noteworthy case as a government lawyer was the successful 1985 prosecution of Thomas P. Cavanaugh, an engineer who tried to sell the Soviets information about the U.S. Air Force's stealth technology, which makes airplanes invisible to radar. Cavanaugh received a life sentence.

Anderson recently has done civil litigation and white-collar criminal defense work. In addition, he served on the Christopher Commission, which investigated the Los Angeles Police Department in the aftermath of the 1992 riots.

Los Angeles attorney Jan L. Handzlik, who knows both nominees, said they deserve swift confirmation. "They were bridesmaids before," Handzlik said. "Hopefully, the ceremony will be completed this time."

Op/Eds

Confirm Moderate Judges

By Bill Lakin
The Los Angeles Times
Thursday, January 24, 2002

The current impasse in the Senate approval of federal appellate court judges isn't about payback or politics, and it isn't a "game," as suggested in the headline of your Jan. 21 editorial, "Judgeship Game Cycles On." It's about not confirming judges who would set the country's laws back 200 years. The judicial nominees sent down by President Bush were handpicked by the ultra-right-wing Federalist Society, a group of lawyers so extreme they advocate rolling back the law to the 18th century. I don't believe these kinds of people should be part of our judiciary.

The Times recommends bringing all candidates to an immediate Senate confirmation vote. But that's only a short-term solution and won't fix the problem.

Bush should no longer rely on advice from his handlers and should stop being the front man for the Federalist Society. He should withdraw these nominations, go back to using the American Bar Assn.'s recommendations (as our past presidents did) and nominate moderates--Democrat or Republican.

The Leahy Detainees

The Washington Times
Thursday, January 24, 2001

President Bush is planning to place still more human beings into that punishing state of incarceration we've been hearing so much about of late, but Amnesty International won't be staging any protests. Nor will Ramsey Clark be filing suit. The shameful fact is that no human-rights group cares enough to speak out on behalf of this newest lot of detainees - judicial detainees, that is - and the Leahy limbo of neglect and stagnation they now prepare to enter. We used to call such people judicial nominees, but that was back when the federal judicial confirmation process had a beginning, a middle and an end. Since Sen. Patrick Leahy, Vermont Democrat, assumed control of the Judiciary Committee gavel, however, the process has undergone a few fundamental changes. The beginning remains reassuringly the same: Mr. Leahy still allows the president to appoint judges to the federal bench, which is really quite accommodating of him when you think about it. But the middle (the committee hearing) is a dicey thing, and the end (the floor vote) is nowhere in sight. Hence the change in terminology from judicial nominee to Leahy detainee.

It could be that one day we look back upon the Democratic delaying tactics of the last session and see a game of "Mother, May I" next to the mass obstructionism Senate Democrats seem to have in store for the new Congress. Since the president appointed Otto Reich assistant secretary of state for Western Hemisphere affairs and Eugene Scalia solicitor of the Labor Department earlier this month - after Mr. Reich was "detained" for some nine months by the Senate Foreign Relations Committee without a hearing, and Mr. Scalia was denied a floor vote by Senate Majority Leader Tom Daschle - the rhetoric among Senate Democrats regarding all White House

appointees, from ambassadors to humanitarian aid workers to judges, has become downright alarming. As Sen. Joseph Biden put it on NBC's "Meet the Press," even before Mr. Bush made the two recess appointments, several Democratic senators came to him and said, "Communicate to the president that if he does this, we will retaliate with regard to the rest of his nominations."

Sounds like tough-guy, take-no-prisoners talk. But whose side are the Democrats on? By refusing to confirm assorted key players on Mr. Bush's foreign policy team, and by refusing to move forward on dozens of federal judicial nominees urgently needed to fill a precarious 11 percent (and growing) vacancy rate in the federal judiciary, Senate Democrats cannot be said to be fighting for the American people. They are fighting for themselves and their prerogatives - not exactly the noblest causes up for grabs at the moment - and if they win, the country loses. Meanwhile, scores of Americans, willing and able to serve their country, will only be able to serve time.

Bench Politics: Senate Stalls on Judges Who Would Uphold the Constitution

By Roger Pilon
The CATO Institute
Monday, January 21, 2002

Should the Senate Judiciary Committee grill nominees for the federal courts about their ideology and then reject those who fail an ideological litmus test? The implications are breathtaking. Yet Senate Democrats appear prepared to do that-or to reject nominees outright, without a hearing, based simply on their perceived "ideology."
The roots of this effort are deep, going back a century, but the proximate cause is *Bush v. Gore*. Just after the decision came down, the legal academy, overwhelmingly Democratic if not leftist, exploded in a torrent of anger. Some 550 professors from 120 law schools ran a full-page ad in *The New York Times* a year ago claiming that the Court's majority had acted as "political proponents for candidate Bush, not as judges." In op-eds, .articles, books, and TV appearances, the venom poured forth. Yale Law School's Bruce Ackerman went so far as to urge Senate Democrats to reject every judicial nominee that the illegitimate President George W. Bush offered up.

They haven't done that, but they're certainly in a confirmation stall. Since Bush took office, there have been 128 vacancies on the 862-member Article III courts. To date, Bush has nominated 65 candidates to fill those vacancies. Only 28 have been confirmed, leaving 100 empty seats, 39 of which are judicial emergency vacancies according to the Administrative Office of the U.S. Courts. On the U.S. Court of Appeals for the 6th Circuit, half the seats today are empty.

In fact, the stall is most evident at the circuit level. Only six of Bush's 29 circuit court nominees have been confirmed, and two of those were Clinton holdovers, re-nominated as a gesture to the Democrats. More telling still, 11 of those nominees have been hanging since May, never having had a hearing, much less a vote.

And we're not talking here about political hacks. Miguel Estrada, Michael McConnell, John Roberts Jr., Jeffrey Sutton-those are just some of the stellar appellate nominees whose names have been before the Senate since May. Their problem, it seems, is that they cannot get through the Democrats ideological filter. Those are some of the same Democrats, recall, who condemned Reagan Republicans for their alleged use of a pro-life litmus test, despite having no evidence of the practice.

What is plain now is that it's not the use of a litmus test that troubles Democrats, but the content of such a test. And they're not at all reluctant to give evidence of their own test.

'CORE VALUES' REVEALED

Last June, Sen. Charles Schumer, chairman of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, wrote an op-ed for The *New York Times,* "Judging by Ideology," which appeared on the same day he held hearings on whether ideology should play a role in the selection and confirmation of judges. He concluded it should, to no one's surprise. In fact, Schumer gave us a three-part test for determining when to invoke ideology: "the extent to which the president himself makes his initial selections on the basis of a particular ideology, the composition of the courts at the time of the nomination and the political climate of the day." One looks in vain for bright lines in that test.

Schumer's aim, however, is clear. It is, expressly, to keep conservatives like Justices Antonio Scalia and Clarence Thomas off our courts. "The Supreme Court's recent 5-4 decisions that constrain Congressional power," Schumer wrote, "are probably the best evidence that the court is dominated by conservatives." Thus, "tilting the court further to the right would push our court sharply away from the core values held by most of our country's citizens."

Never mind, apparently, what the law might say about the scope of congressional power-or anything else, for that matter. What counts, rather, is our citizens' "core values."

That glimpse of the Democratic agenda was embellished two months later, again just prior to another Schumer hearing on ideology, when party elder Joseph Califano Jr. wrote an op-ed for *The Washington Post,* "Yes, Litmus-Test Judges." Complaining that gridlock and big money have long kept Congress from legislating on a wide range of urgent matters, Califano noted that concerned citizens have been petitioning the courts with matters they once took to the political branches, making the courts "increasingly powerful architects of public policy."

Indeed, "who sits in federal district and appellate courts is more important than the struggle over the budget" or virtually anything else today in Washington. For we've all learned, Califano continued, "that what can't be won in the legislative or executive may be achievable in a federal district court where a sympathetic judge sits." "The Senate, therefore. needs to decide, on explicitly ideological grounds, who will be "setting national policy" from the bench.

There you have it. Everything is politics. Nothing is principle. Judges don't simply *apply* law. Sympathetic judges *make* law, like so many legislators, setting national policy in the process.

Meanwhile, our nominal legislators in tile Senate are reduced to vetting our true rulers.

Interestingly, the Constitution, which spells out the actual separation of powers. is mentioned not once in Califano's piece. Doubtless, it is an embarrassment, utterly inconsistent with his picture of a thoroughly politicized judiciary.

LOSING SIGHT OF LIMITS

Yet for all that, Califano's picture is too close to the truth to be ignored. He's put his finger on just why the confirmation battles today loom so large. What he and his Democratic colleagues have failed to do, however, is explain, much less justify, this flight from constitutional principle. To get at that, we have to go further back.

The main origins of the problem lie in the Progressive Era, when the social engineers of the time often sought to do through government what the Constitution plainly left to the private sector. Things came to a head during the New Deal when a
frustrated Franklin Roosevelt attempted to pack the Supreme Court. The scheme failed, but FDR won the day when a cowed Court began rethinking the Constitution, effectively eviscerating constitutional limits on federal power.

Although the Court that emerged was called "restrained"-by virtue of its deference to the political branches-it was in truth, activist-finding congressional and executive powers nowhere granted, ignoring rights plainly in the Constitution. And the Court's rethinking led ineluctably to a general shift of power to the judicial branch. The shift had two aspects. First, with the political branches now free to rule almost every aspect of our lives, it was only a matter of of time before their ever- expanding product ended up in the courts, with the courts asked to sort out the mess that Congress was making. But those who promoted such schemes didn't always win in the political branches. Thus, second, when they lost, they turned increasingly to the courts, trying to win from sympathetic judges what they had failed to win politically. And the Earl Warren and Warren Burger Courts, already deferring to the political pursuit of "social justice," were only too willing to step into the fray, thinking themselves a legislature of nine.

The Rehnquist Court, by contrast, has taken modest steps over the past decade toward resurrecting constitutional principles of limited government. However modest, those steps have alarmed liberal Democrats. They can't imagine anyone thinking that Congress' powers are limited; that if an end is worthy, Congress still might not have the power to pursue it; that James Madison might have meant it when he said that the powers of the new government would be "few and defined."
Thus, when Democrats seek today to subject judicial nominees to an ideological litmus test, they're continuing the work of an earlier generation of their party. The test they would impose has little to do with law or with the ideology of the Constitution-a document understood for 150 years as having instituted limited government. Rather, it has to do with whether the nominee subscribes to the version of the Constitution that the 1937-38 Court invented to allow the modem welfare state to bloom. That version, which encourages judges both to ignore limits on power and to find rights nowhere to be found, requires a judge to be sensitive to "evolving social values"- sometimes even before they've evolved.

Having earlier Politicized the Constitution, Democrats are now bent on politicizing the judiciary. If they succeed, it will mark the triumph of ideology and the death of law.

There is a Purpose to Compromise in Judicial Nominations

By Evan Schultz
The Fulton County Daily Report
Wednesday, January 23, 2002

Michael McConnell, meet Judith McConnell. Or, as their most venomous critics might say, will the highfalutin homophobe please come on over and give a big "howdy-do" to the pervert-loving home-wrecker?

These two lawyers (no relationship, according to Judith) have something in common besides their last names: Both have been put through the wringer after being tapped for federal judgeships. No doubt, it's sad to see distinguished jurists smeared in the name of upholding the Constitution. But maybe there's also something reassuring about it (really).

First, a bit more about the unhappy couple. Judith was nominated in 1994 by President Bill Clinton to be a federal district judge in California. Michael was nominated by President George W. Bush last May for a seat on the 10th U.S. Circuit Court of Appeals. Michael is one of the country's pre-eminent constitutional scholars. Now a professor at the University of Utah College of Law, he previously taught law at the University of Chicago, clerked for Justice William Brennan Jr., and has received endorsements from across the ideological spectrum.

Judith is a widely respected judge who, at the time of her nomination in 1994, had served on the bench of the state superior court in San Diego for 15 years. She had support from the state's conservative chief justice and was named San Diego's judge of the year by one group of lawyers in 1991.

Michael McConnell has drawn fire for advocating a vigorous role for religion in American public life, and for helping the Boy Scouts of America successfully argue in the Supreme Court that they should be allowed to exclude homosexuals.

Judith McConnell was savaged for a 1987 opinion in which she agreed with a 16-year-old boy's wish to live with his dead father's gay partner rather than with his mother. Clinton withdrew support for Judith when Senate Republicans opposed her. Bush is still backing Michael, but the Democratic-controlled Senate has not scheduled a hearing for him.

These situations should make all thinking people shiver. We've perfected the politics of destruction to the point where we slander the sterling records and distort the complex thinking of those who strive to serve the common good. Shame on us. Right?

Not necessarily. The nomination process isn't pretty. But it still serves a crucial purpose:

ensuring that no one branch of government, political party or ideology dominates the judiciary.

Yes, No, No, Yes

Since New Year's, the news here in Washington has been drawn back to the fight over judicial nominations between the Senate and the president. Republican senators (Orrin Hatch of Utah leading the charge) have been beating up on the Democrats for stalling by pointing to what Republicans claim is the small percentage of Bush's judicial nominees on whom the Senate has voted and the large number of vacancies on the federal bench.

At the same time, Democrats (led by Patrick Leahy of Vermont) have insisted that they confirmed a record number of judges in 2001. All this, of course, follows six years of the reverse-the Senate Republicans obstructing while the Democratic president complained.

The statistics, though, cloud the real issue. And that, simply put, is whether the administration backs nominees whom the Senate will approve.

The Constitution gives the president the role of playing offense ("he shall nominate ... Judges of the supreme court, and ... all other Officers of the United States"). And it gives the Senate the job of defense (giving "Advice and Consent"). The historical argument rages over how much power each side should have.

On the one hand, Alexander Hamilton stated in The Federalist No. 66 that "There will, of course, be no exertion of CHOICE on the part of the Senate." On the other hand, the Senate rejected one quarter of presidents' choices for the Supreme Court during the nation's first 100 years, including one of George Washington's nominees for chief justice.

At this point, the situation can be summarized pretty simply. The president can nominate whatever geniuses or morons he wants. And the Senate (or at least the party in charge of the Senate) can let them rot. It's a system that demands negotiating-even more so when the two branches are controlled by different parties. That's especially true for this Senate, with its precarious majority, and this president, with his controversial election.

Unfortunately for the McConnells, that's where the mudslinging comes in. All senators say they want moderate nominees. Whenever they obstruct, they claim that it's only because the president has sent rabid extremists-or, more often, they simply refuse to move the nominees as others fling the accusations.

Listen Up, Mr. President

Harsh as it may be, the rhetoric serves an important role-it signals to the president exactly how much leeway he has. It also tells the president when he needs to sit down and talk to the Senate before going forward.

As former Clinton Justice Department official Eleanor Acheson says, some presidents can be

very insistent "that this is the choice of the president, that 'I will reserve to myself the final choice.' "

Some presidents have a more soft view of that, namely, they can be pretty easily swayed by a strong pitch made by a senator. And some presidents can do both, depending on who they need to be doing business with when the vacancy arises, and depending on the merits of the candidate. So things can be very varied."

Clinton apparently didn't have a tin ear-he withdrew nine nominees in the face of opposition. The result? Despite Bob Dole's claims during the 1996 presidential campaign that Clinton had established a "judicial hall of shame," an academic study of Clinton's judges pegged their rulings from the bench as just a bit more liberal than those of Gerald Ford's judges.

And, so far at least, Bush seems to be following suit. Despite the roar of protest that greeted Michael McConnell and a few other Bush nominees (Miguel Estrada and Jeffrey Sutton, in particular), the first batch, at least, of Bush's nominees was called "more eclectic and conciliatory than most people expected" by The New York Times.

And, as Leahy likes to point out, the Senate has responded by confirming 28 judges, more than it approved in the first year of either the Clinton or the first Bush administration.

So the more the Senate signals the president by accusing a select few nominees of witchcraft, the more the president gets the message that he needs to consult and compromise with the Senate. The upside is that everyone can take credit for appointing "moderate" judges.

As Abner Mikva, former chief judge of the D.C. Circuit, said while serving as Clinton's White House counsel, "Get a good judge, and he'll be good for all seasons."

The downside, though, is the risk of creating a judiciary that, though competent, doesn't shine. As legal commentator Jeffrey Rosen lamented about Clinton's nominees, "there are few standouts. They are largely a group of soldierly and obscure judges and prosecutors."

And the temptation to nominate such people is strong no matter who's in the White House. For instance, look at the 11th Circuit. Clinton's last appointment to that court was Charles Wilson, a former state judge, federal magistrate and U.S. attorney. Bush's first nominee to the same circuit? William Steele, now a federal magistrate in Alabama.

There are two ways around this. One is to nominate as many creative, original thinkers as possible who, by consensus, still count as moderates. Clinton's successful choice of former Yale Law School Dean Guido Calabresi for the 2nd Circuit was along these lines. (Calabresi was confirmed by unanimous consent.)

The other solution lies in the sort of quiet confirmation vote that took place last November for another controversial Bush nominee-Edith Brown Clement. Clement is a member of the Federalist Society whom the National Abortion and Reproductive Rights Action League has

criticized. Yet the Senate approved her by a vote of 99-0.

And for certain confirmable but controversial nominees, Senate opponents still could make their point by letting the fight spill to the floor. The nominee wins-with bruises. This might happen to Michael McConnell.

Moderation in Moderation

Which is to say, getting a moderate judiciary does not mean getting a judiciary composed only of moderates. The vote on Clement shows that the Senate knows this. So does a comment by Sen. Charles Schumer, D-N.Y., in hearings he called last year on the role of ideology in judicial selections. He said, "Having one or even two justices like (Antonin) Scalia and (Clarence) Thomas might be legitimate because it provides the (Supreme) Court with a particular view of constitutional jurisprudence. But having four or five or nine justices like them would skew the court."

This approach-of approving some novel thinkers mixed in with many more middle-of-the-road judges-has the advantage of keeping the bench stable. At least as important, it respects both the ideological characteristics of judging and the constitutional power of the president.

And it opens the way for horse trading: The Senate will approve some Clements if Bush nominates some Clinton choices (as he did with Roger Gregory, whom Clinton had put on the 4th Circuit though a recess appointment) and/or lots of Steeles.

Even better, the approach probably makes for good government-at least the best hope for good government we have in this world. As a recent New Yorker profile summarized the views of 7th Circuit Judge Richard Posner on judicial selections, "One individual judge, Posner reasons, will never be able to put aside his personal disgusts and instincts, so the trick is to have lots of different judges whose instincts clash, and hope that, in the end, their views will cancel out in such a way as to approximate fairness."

The result, the New Yorker article conceded, may not be fair to any particular litigant. It also might have noted that the result is not fair to any particular judicial nominee. But that's the price of living in a diverse society with a government of checks and balances. And it's the pain of being a McConnell.

Transcripts/Members of Congress

Senator Feinstein Statement on Nominations

Senator Feinstein Press Release
Wednesday, January 23, 2002

The nomination by President Bush of Percy Anderson and John Walter to the U.S. District Court for the Central District of California marks the first two nominations to emerge from a bipartisan

screening process to fill open judicial positions in California. These nominees both received 6-0 votes from the Judicial Advisory Committee that was established through an agreement Senator Barbara Boxer and I reached with the White House. In achieving these unanimous votes, Mr. Walter and Mr. Anderson both demonstrated strong skills and qualifications to the Advisory Committee and this bodes well for the nomination process in the Senate. I am hopeful that a hearing will be held by the Judiciary Committee at an early date. I also look forward to early White House action to fill the remaining open seats in California: four more in the Central District and one each in the Eastern and Northern Districts.

Percy Anderson is a partner at the national law firm of Sonnenshine, Nath & Rosenthal, in its Los Angeles office. He received his BA and JD degrees from UCLA, graduating from the law school in 1975. He worked as a Staff Attorney and then Directing Attorney for San Fernando Legal Services from 1975 - 1979. He then became an Assistant U.S. Attorney, specializing in criminal litigation. Within that office, he also acted as First Assistant Division Chief and Chief of the Criminal Complaints Unit. In 1985, he left the U.S. Attorney's Office and went into private practice at the Los Angeles office of Bryan, Cave, McPheeters & McRoberts, then at the Sonnenshine firm.

John Walter is a name partner at the Los Angeles law firm of Walter, Finestone & Richter. He received his bachelor's and law degrees from Loyola University, graduating from the law school in 1969 and being admitted to the bar in 1970. After graduation, he worked at Kindel & Anderson from 1969-70, then spent two years at an Assistant U.S. Attorney in the criminal division before returning to Kindel & Anderson. He formed his own firm in 1976 and practices civil and criminal litigation.

The Judicial Advisory Committee is comprised of four six-member subcommittees -- one for each judicial district in the state. Each subcommittee has one member selected by Senator Boxer, one selected by me and one jointly by both Senator Boxer and myself along with three members named by Gerald Parsky, President Bush's State Chair for judicial appointments.

Interest Groups/Press Releases

People's for Neas, Other Progressive Leaders Urge Senate Judiciary Committee to Reject Appeals Court Nominee Charles Pickering

By Ralph Neas
People for the American Way
January 24, 2002

People For the American Way President Ralph G. Neas called on the Senate Judiciary Committee to reject the nomination of Charles W. Pickering, Sr. to the U.S. Court of Appeals for the 5th Circuit and released a detailed report documenting Pickering's troubling public record on a range of critical issues. At a press conference with other progressive leaders, Neas said PFAW and other groups would launch a grassroots effort against Pickering's nomination, making this the first major judicial confirmation battle of the Bush administration.

"Achieving ideological domination of the federal judiciary is the top goal of right-wing activists inside and outside the Bush administration, and judges like Charles Pickering are the means to that end," said Neas. "Many of our basic rights and freedoms are at risk. The Senate Judiciary Committee should review Judge Pickering's record and reject his elevation to the appeals court."

Neas said Pickering's record makes him an especially problematic choice for the 5th Circuit, which presides over a three-state area with the largest and most diverse minority population in any Circuit in the country, and which has already decided a number of cases restricting civil and reproductive rights.

The PFAW report released today examines Pickering's public record both before and after he became a judge. Among the report's conclusions:

His record demonstrates insensitivity and even hostility toward key principles and remedies that now safeguard civil rights, and indifference toward the problems caused by laws and institutions that have previously created and perpetuated discrimination.

Even conservative appellate court judges have reversed Judge Pickering on a number of occasions for disregarding controlling precedent on constitutional rights and for improperly denying people access to the courts.

He has been a staunch opponent of women's reproductive rights.

He has demonstrated a disregard for the separation of church and state by repeatedly using his position on the bench to promote involvement in religious programs.

"Elevating Pickering to a powerful appellate court position would give him enormous influence on the interpretation of statutory and constitutional provisions that safeguard the rights of all Americans," concludes the report.

Neas noted that the report released today is based on an incomplete record of Judge Pickering's tenure on the District Court, because Pickering has told the Senate Judiciary Committee that approximately 40 percent of his unpublished opinions as many as 400 are not available.

"We don't know what's in those missing rulings," said Neas, "but the rulings we do have make it clear that Pickering has opposed basic principles protecting civil rights and has sought to limit their application. He has even denigrated people who have turned to the courts to protect their civil rights."

Pickering has, for example, criticized the fundamental "one-person, one-vote" principle recognized by the Supreme Court under the Fourteenth Amendment. He has also criticized or sought to limit important remedies provided by the Voting Rights Act.

As a state senator, Pickering supported voting-related measures that helped perpetuate

discrimination against African Americans, and voted to appropriate money to fund the Mississippi Sovereignty Commission, a notorious agency created by the state in 1956 to resist desegregation. At his 1990 confirmation hearing, Pickering testified that he had never had any contact with the Sovereignty Commission. But PFAW's report notes that a 1972 memorandum by a Commission investigator to its Director stated that "Senator Charles Pickering" and two other state legislators were "very interested" in a Commission investigation into union activity that had resulted in a strike against a large employer in Pickering's home town.

The report also notes that Pickering did not take the opportunity at his confirmation hearings to repudiate a 1959 article he wrote as a law student advising the state legislature how to fix the state's law criminalizing interracial marriage in response to a state Supreme Court ruling that had rendered the law unenforceable. The legislature took his advice.

The report also cites specific instances in which Pickering was overturned by the 5th Circuit, to which he has been nominated, for violating "well-settled principles of law" involving constitutional issues, civil rights, criminal procedure or labor issues. For example, the conservative 5th Circuit has reversed Pickering's misuse of "dismissal with prejudice" a severe sanction against an inmate alleging civil rights violations and against a group of plaintiffs in a toxic torts case against a chemical company.

The report documents Pickering's use of his judicial position to promote religion and religious ministries to those coming before his court. It also documents a decades-long hostility to reproductive choice, including his advocacy of a constitutional amendment to ban abortion.

Neas said the grassroots effort to defeat Pickering's nomination would be the first of many unless
President Bush engages in genuine bipartisan dialogue with members of the Senate. Neas urged senators, especially members of the Judiciary Committee, to fulfill their constitutional responsibilities to carefully scrutinize judicial nominees and reject those who have not demonstrated a commitment to upholding civil rights.

"Right-wing senators perpetuated dozens of appeals court vacancies by carrying out an unprecedented ideological blockade against judges nominated by President Clinton," said Neas. "Now they hope President Bush will take advantage of those vacancies to fill the appeals courts with right-wing nominees like Charles Pickering."

Neas noted that 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. 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.

"A federal judiciary completely dominated by right-wing judges would be a disaster for Americans' rights and freedoms," said Neas. "Senators must be willing to say no to Judge

Pickering and they must be willing to say no to right-wing efforts to pack the federal judiciary."

Opposing the Confirmation of Charles W. Pickering, Sr. to the U.S. Court of Appeals for the Fifth Circuit

People for the American Way
January 24, 2002

Click on link below for report:

http://www.pfaw.org/issues/democracy/pickering.pdf

Judicial Nominees Special Report: Our Courts at Risk

National Organization of Women
Thursday, January 24, 2002

Click on link below for report:

http://www.now.org/issues/legislat/nominees/index.html

Statement of Kate Michelman Announcing Opposition to Judicial Nominee Charles Pickering.

NARAL
Tuesday, January 22, 2002

Good morning, thank you for coming here today. As you know, this coalition has gathered today to announce our opposition to the nomination by President Bush of Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit.

Charles Pickering's nomination by President Bush is part of a continuing effort to hasten the reversal of Roe and the end of legal abortion. A lifetime appointment to the Court of Appeals for Charles Pickering may lead to a lifetime of disappointment and hardship for women seeking to exercise their constitutional right to choose.

Pickering's record on choice is crystal clear -- during his lifetime as a conservative political activist, Pickering has demonstrated open hostility to a woman's right to choose and has sought to reverse Roe through a constitutional amendment to ban abortion. This fact alone must disqualify him from sitting on the Fifth Circuit - a court that has done more than most courts in recent years to limit that fundamental right.

The Fifth Circuit is one of the most critical courts in the United States to the future of reproductive rights for women. This Circuit - consisting of Louisiana, Mississippi, and Texas -- reviews legislation from an area of the country that is particularly hostile to a woman's right to choose. It is at the center of attempts by state legislatures to restrict abortion and limit women's ability to exercise their constitutionally protected rights under Roe. Indeed, since 1995, the three states in the Fifth Circuit have introduced nearly 175 measures to restrict abortion rights.

The Fifth Circuit has eroded the exercise of choice in prior decisions, and poses a continued threat to these rights in the future. Confirming Pickering would add fuel to the ultra-conservative fire on this court for decades. It's the wrong court for Charles Pickering. And Charles Pickering is the wrong nominee for this court. Close scrutiny of Charles Pickering's record over the last four decades shows someone who should not be confirmed for a circuit court judgeship.

Pickering's career has been notable, not for his record as a judge or as a legal scholar, but as a partisan political activist. Pickering has been at the front lines on some of the most divisive political issues of our time, and repeatedly has pursued a far-right conservative agenda that demonstrates hostility toward reproductive choice, individual rights, and disdain for a federal court system that serves as a guardian of those rights.

As a Mississippi state legislator, he called for a constitutional convention to propose an amendment banning abortion. As Chairman of the Human Rights and Responsibilities subcommittee of the Republican Platform Committee in 1976, he led the fight to have the Republican Party adopt a constitutional amendment to ban abortion in the party platform. That was a major step in providing anti-choice forces a powerful national vehicle through which to organize a roll back of this core right for American women. And while President of the Mississippi Baptist Convention, the organization adopted a resolution calling for legislation to ban abortion except to save the life of the woman.

One hallmark of our free society is the independence of the federal judiciary from politics. This independence allows the federal courts to protect constitutional rights free of political interference - especially important in the area of reproductive choice. Pickering showed little willingness to respect judicial independence - as a Senator, he was eager to amend the Constitution when he disagreed with decisions by the federal courts. In the Mississippi Senate, Pickering co-sponsored legislation calling for a constitutional amendment limiting the tenure of federal judges, and voted for a constitutional amendment to limit federal judges to six-year terms.
He also supported holding constitutional conventions to pass amendments to reverse desegregation and separation of church and state court decisions.

Clearly, he wishes to create a federal judiciary that responds to ultra-conservative political pressure, rather than one which independently interprets the laws and the constitution. Freed from the limitations of the district court, Pickering would be in a position to use a Fifth Circuit seat as a vehicle for his own judicial activism -- where his disdain for precedent and for plaintiffs with the temerity to assert their own civil rights would have broader ramifications. Pickering's career is marked by conservative political activism, not by thoughtful legal jurisprudence.

Because of the large caseload in the federal courts, circuit courts are increasingly for most people the courts of last resort. A die-hard conservative activist with strongly held views on critical constitutional issues, Pickering is exactly the wrong kind of person to serve on an appellate court so pivotal to the lives of so many women.

The Senate's proper role is to consider a nominee's views, and to reject those judges who would roll back the rights of women. The Constitution provides for this and the American people want their Senators to exercise advice as well as consent.

We are issuing a report today to help educate our members on the need to oppose this nomination. We also call on Senators to read our report to understand how critical this nomination is to the future of reproductive freedom and choice. And we trust once they do, they will understand how critical it is for them to reject this nomination.

Click here for a link to the full report on Charles Pickering:

http://www.naral.com/mediaresources/fact/pdfs/pickering_rpt.pdf

LCCR Opposes Pickering Nomination to Fifth Circuit- Serious Concerns About Nominee's Civil Rights Record

Leadership Conference on Civil Rights
Thursday, January 24, 2002

Wade Henderson, Executive Director, Leadership Conference on Civil Rights (LCCR), issued the following statement today regarding President Bush's nomination of Judge Charles W. Pickering, Sr. to the U.S. Court of Appeals for the Fifth Circuit:

"Although I am honored to join my colleagues this morning in defending the integrity of the federal courts, I regret that today's action has been made necessary by the nomination of an individual to the 5th Circuit Court of Appeals whose background, actions and temperament render him unsuitable for elevation to this most important court.

As we know, the federal courts often are called the guardians of the Constitution because their rulings protect the rights and liberties guaranteed by this most hallowed of documents. For many Americans, the federal judiciary is the first line of defense against violations of dearly held constitutional principles; for others, it is the last bastion of hope in a system that has marginalized, mistreated or simply ignored them.

The Leadership Conference strongly believes that the composition of the federal judiciary is a civil rights issue of profound importance to all Americans, because the individuals charged with dispensing justice in our society have a direct impact on civil rights protections for us all.

As such, the federal judiciary must be perceived by the public as an instrument of justice, and the individuals who are selected for this branch of government must be the embodiment of fairness

and impartiality.

Our exhaustive and careful review of Judge Charles W. Pickering Sr.'s public record -- from law student to state legislator to judge, as well as the presentations we have heard today, have left us with little alternative but to oppose his nomination because of his extreme views on important civil rights, women's rights and constitutional issues.

When taken together, these immoderate positions ought to disqualify Judge Pickering from serious consideration for any federal Circuit, much less the important 5th Circuit Court of Appeals.

It is especially important to note that we are discussing this nominee in the context of the Circuit to which he has been appointed. With Mississippi, Texas and Louisiana, the Fifth Circuit has the largest percentage of people of color of any Circuit Court in the country. Unquestionably, much is at stake when it comes to civil rights.

Historically, the Fifth Circuit was the Circuit of "Unlikely Heroes," who in the face of much opposition, issued scores of important opinions that in effect desegregated the South. This is the Circuit of:

John Minor Wisdom who ordered that James Meredith to be admitted to the University of Mississippi;

Richard Rives who outlawed segregation on the Montgomery city buses;

Elbert Tuttle who ordered the integration of the University of Georgia and struck down Louisiana's segregated pupil placement laws; and finally,

John Brown who, in U.S. v. Mississippi, wrote that "no nation can survive if it flagrantly denies its citizens the right to vote."

Today, the Fifth Circuit is dramatically different. It is now one of, if not the most hostile appellate courts in the country when it comes to civil rights. The Fifth Circuit is now the Hopwood Court that refused to apply Bakke to college admissions, impacting educational opportunities for black and brown students. The Fifth Circuit is now the Reeves Court that issued an opinion about the "intent" standard in employment discrimination cases so extreme it was overturned by the Supreme Court, 9-0. The Fifth circuit is the LULAC v. Clements court that held that the Voting rights Act does not apply to at-large judicial elections; again, an opinion so extreme, it was reversed by the U.S. Supreme court.

After our careful review of Judge Pickering's record -- on and off the bench -- we are forced to conclude that he is the wrong man for the Fifth Circuit. This Circuit requires a jurist who will have a moderating influence on the Court. We urge the Senate to consider all of these circumstances and to exercise its constitutional prerogative to reject this nominee cries out for moderation. And we implore President Bush to nominate a moderate for this critical position.

The Case Against the Confirmation of Charles W. Pickering, Sr.

Independent Judiciary
Thursday, January 24, 2001

Click on link below for full report:

http://www.independentjudiciary.com/news/release.cfm?ReleaseID=13

Schauder, Andrew

From: Schauder, Andrew
Sent: Tuesday, January 29, 2002 6:35 PM
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Subject: judicial media review
Attachments: Judicial Media Review 1-28-02.wpd

Please see attached review

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General Judicial Articles

Going After the Bush Bench as They Begin to State Their Case, Liberals Target Pickering

By Jonathan Groner
Legal Times
Monday, January 28, 2002

The liberals have found their poster boy. His name is Charles Pickering Sr.

Almost nine months after President George W. Bush unveiled his first judicial nominees, a broad coalition of liberal civil rights groups gathered Jan. 24 to announce their opposition to Pickering,

a nominee for the U.S. Court of Appeals for the 5th Circuit.

To the groups, Pickering, a U.S. district judge in Mississippi, is wrong on civil rights and abortion. He is also a close friend of fellow Mississippian Trent Lott, the conservative Senate minority leader who is pushing hard for Pickering. And while other nominees have waited months for a confirmation hearing, Pickering is scheduled to get a second, highly unusual go-round before the Senate Judiciary Committee the week of Feb. 4-thanks to Chairman Patrick Leahy, the liberal Democrat from Vermont.

Pickering is the first Bush judicial nominee to draw formal, public opposition. But he is unlikely to be the last.

In a Jan. 25 speech, Leahy vowed to hold hearings on such controversial nominees as 5th Circuit nominee Priscilla Owen, D.C. Circuit nominee Miguel Estrada, and 10th Circuit pick Michael McConnell.

The liberal coalition, which includes such groups as NARAL, the National Women's Law Center, and the Leadership Conference on Civil Rights, has not said much lately about Estrada or McConnell.

But Owen, as well as 9th Circuit nominee Carolyn Kuhl and 6th Circuit pick Jeffrey Sutton, seems likely to face formal opposition.

At the Jan. 24 press conference, Alliance for Justice President Nan Aron took care to distinguish between "unqualified candidates with controversial records" such as Pickering, and noncontroversial Bush choices. That same day, the Senate Judiciary Committee held hearings for six judicial nominees who have drawn no opposition, including Richard Leon, nominated to the U.S. District Court for the District of Columbia.

"The president must understand that when he sends to the Senate experienced, moderate candidates, he will have the support of the Senate and the American people," Aron declared. On the other hand, Aron said, Pickering "represents just the first threat to turn back the clock on rights all Americans rightly enjoy."

At the press conference, NARAL President Kate Michelman said Pickering came first simply because "he is the most controversial nominee to date who has received a hearing." That relatively unpublicized event took place Oct. 18 at the height of the anthrax scare on Capitol Hill.

Pickering was denounced for a student law review note he wrote in 1959, explaining how Mississippi could strengthen a law then on the books that prohibited interracial marriages. He also drew fire for supporting a constitutional amendment to overrule Roe v. Wade when he was a Mississippi legislator in the 1970s.

The civil rights groups also claimed that as a federal trial judge for the last 11 years, Pickering

has often revealed distaste for the Voting Rights Act and other civil rights laws, and routinely ruled against plaintiffs in discrimination cases.

"His positions leave us little alternative but to oppose his nomination," said Wade Henderson, executive director of the broad-based Leadership Conference on Civil Rights, at the press conference. "These positions ought to disqualify him for any federal circuit court, all the more so for the 5th Circuit, which has more people of color than any other."

But supporters of Pickering find little merit in the criticisms.

"When you look closely at the objections, there's nothing there. He is committed to following the law and Supreme Court precedent," replies John Nowacki, deputy director of the Center for Law and Democracy, a conservative group active on judicial nominations. "The law review article was three and a half pages of academic analysis, and Pickering says he wouldn't support the statute today."

Pickering's supporters also note that he has served on the board of directors of the Institute for Racial Reconciliation, a biracial project established in 1999 by the University of Mississippi to come to terms with the state's history of racism.

Next in Line?

While the liberal activists only targeted Pickering, they suggested another candidate that they may well end up opposing.

"One doesn't have to look any further than the other nominee named to fill a second vacancy on the 5th Circuit bench to see how the rights of minorities and women may be threatened," Aron said.

That person is Owen, a Texas state judge who, like several other controversial Bush choices, was nominated last May and has not had a hearing. Until now, Owen's selection has not drawn the publicity that has surrounded selections such as Sutton or Estrada.

Owen, a partner at Houston's Andrews & Kurth before winning election to the Texas Supreme Court in 1994 and again in 2000, is criticized for repeatedly ruling against permitting minors to have abortions without parental consent.

Ten such cases came before the court under a new Texas law in 2000. In one of those cases, she was in the minority, and Alberto Gonzales, then a fellow judge on the court and now White House counsel, said the dissenters' view was "an unconscionable act of judicial activism."

The Alliance for Justice Web site says that Owen's record "strongly suggests a strain of conservative judicial activism."

A Bush administration lawyer responds that the key criterion for prospective judges is that they

must be "advocates of judicial restraint, the notion that judges should follow the law.

"As far as we're concerned, whether you are pro-choice or pro-life is irrelevant," this lawyer says. "If groups wish to impose a political litmus test on abortion, then we are just talking past each other. We see a person's policy views as completely irrelevant."

Owen made the news last week when it was disclosed in The New York Times that in 1996, she wrote the opinion in a 7-0 ruling that saved the Enron Corp. about $220,000, after she had accepted campaign contributions from the now-bankrupt company.

In a position paper handed out at the Jan. 24 press conference, People for the American Way singled out two other Bush nominees who "have troubling records and could cause serious damage to our rights and liberties." These were Sutton and Kuhl.

Kuhl, a state judge in Los Angeles since 1995 and a former clerk for then-9th Circuit Judge Anthony Kennedy, drew scrutiny for work she had done while in the solicitor general's office from 1981 to 1986, during the Reagan administration.

PFAW said Kuhl urged the Supreme Court to overturn Roe v. Wade in Thornburgh v. American College of Obstetricians and Gynecologists, a 1986 Supreme Court case. PFAW also claimed that Kuhl "reportedly played a key role in convincing then-Attorney General [William French] Smith to support tax-exempt status for racially discriminatory Bob Jones University."

Charles Cooper of D.C.'s Cooper & Kirk, who worked with Kuhl at the Justice Department, terms these descriptions "unfair" and "grossly incomplete." Cooper says that as a 28-year-old special assistant to the SG, Kuhl "wasn't making policy, she was taking notes-when she and I were even in the room."

Besides, says Cooper, whether the Internal Revenue Service had the legal right to deny tax exemption to Bob Jones was in fact a "tough legal issue"-the Supreme Court took it up and ruled 8-1 against the SG's position that the IRS had no such right-and the Reagan administration in any case wanted to amend the tax code to deny the exemption.

On abortion, Cooper says, "I don't even know her personal view on abortion. But I hope we haven't come to the point where a nominee is disqualified because they take a certain interpretive approach to the due process clause."

Sutton, PFAW said, has worked to "severely limit federal protections against discrimination and injury based on disability, race, age, sex, and religion." In Alabama v. Garrett, a 5-4 Supreme Court ruling last year, the 41-year-old Jones, Day, Reavis & Pogue partner successfully argued on federalism grounds against the application of the Americans With Disabilities Act to the states.

Several disability-rights groups have announced opposition to Sutton, and he has tried to mend fences with the disability community.

Supporters say that Sutton, like other Bush nominees, should not be pilloried for advocating the position of his clients.

Says Cooper: "It is the very definition of 'extreme' to focus on a case that involved successful advocacy of a client's cause in the Supreme Court. If that is what the opposition has come to, it is very sad."

Judicial Fight Seen as Prelude to 'Supreme' War

By Paul Kane
Roll Call
Monday, January 28, 2002

With control of appellate courts appearing to teeter in the balance, both liberal and conservative activists have launched new offensives to heighten the political pressure on the Senate's confirmation process of judicial nominees.

While last year's fights on judicial nominations focused on statistical arguments over which administration had more judges confirmed, this year's battles are shaping up to be personalized fights over specific nominees.

And the subtext to the battles, particularly over the circuit court nominees, is the political war that's expected when one of the current Supreme Court justices retires. The circuit court fights are a warm-up. "It's definitely getting ratcheted up," said John Nowacki, a judicial expert for the conservative Free Congress Foundation. "This is an attempt to gear up for the next Supreme Court nomination, whenever that is."

First up in the judicial battles for the new year is U.S. District Judge Charles Pickering, nominated to take a seat on the Fifth Circuit Court of Appeals. Pickering is expected to have a second hearing before the Judiciary Committee next week. He is the father of Rep. Chip Pickering (R-Miss.) and a close friend of Senate Minority Leader Trent Lott (R-Miss.).

Lott has been pushing to get Pickering confirmed, but has run into a wall of opposition from liberal groups and Judiciary Democrats who are demanding to see more of the judge's opinions before allowing the full panel to vote on him. Sen. Dick Durbin (D-Ill.), a Judiciary member, said Lott tried to get Pickering's nomination included on any non-controversial bill that was moving by unanimous consent at the end of last session.

"He's been working it like a demon. He wants this man. All roads led to Pickering," said Durbin, an assistant floor leader for Senate Majority Leader Thomas Daschle (D-S.D.).

A coalition of liberal groups - led by the Alliance for Justice and People for the American Way - launched a campaign to defeat Pickering, accusing him of hostile views toward women and minorities. Unlike the first 30 judicial nominees approved, including two Friday, Pickering is the

first of the Bush administration nominees to face vigorous opposition.

"This will be the first one where the battle will be joined," said Ralph Neas, president of People for the American Way.

Nan Aaron, president of Alliance for Justice, said Pickering was the first circuit court nominee to face high-profile opposition from the liberal coalition, and predicted a similar fate for Texas Supreme Court Judge Priscilla Owen, also nominated to the Fifth Circuit, and others.

Some Republicans accused Democrats and their liberal allies of singling out Pickering to fire a political shot across the bow at Lott for his own high-profile attacks on Daschle and Leahy over the handling of nominees.

"It just sounds to me like they're trying to give the Minority Leader a hard time," said Sen. Orrin Hatch (R-Utah), ranking member on Judiciary.

Calling Pickering "eminently qualified," Lott said Democratic demands to read the judge's unpublished opinions were a "classic" delay tactic. "This is unnecessary and ridiculous harassment."

Aaron and Neas said they would prefer not to take on Lott. Instead, they suggested that this is part of their wider effort to fight an increasingly conservative tilt on the circuit courts, which are one step below the Supreme Court and hear appeals from the district courts, giving these judges wide power to interpret the law.

According to Neas, seven of the 13 appellate courts have a majority of judges who were appointed by a Republican president, four more with a Democratic majority, and two that are evenly split. And the Bush administration has already nominated enough potential judges for circuit court openings to control 11 of the 13 courts by the end of this year, he added.

In his first year in office, President Bush nominated 28 individuals for circuit court openings, more than three times as many appellate court nominees as were sent to the Senate by President Ronald Reagan in 1981 and the first President Bush in 1989.

And in their attacks on Leahy, Senate Republicans have repeatedly cited the low percentage of circuit court nominees (21 percent) who moved through the Democratic-controlled Senate last year.

Like their liberal opponents, however, Republicans, led by Minority Whip Don Nickles (R-Okla.), have begun to take a more personalized tack in promoting the nominees. At a press briefing just before the close of last session, Nickles hoisted a chart onto the dais of the Senate Radio-TV Gallery with the picture of every nominee who was being held up by Democrats.

Last week, every time Nickles mentioned Miguel Estrada - nominated to the D.C. Circuit - he

talked about his rise from poverty as "a native from Honduras" who ended up in the Ivy League legal community.

One senior GOP aide said the personal touch is an effort to better sell the issue to the public, while another said the campaign for circuit court nominees has taken on the appearance of past battles over Supreme Court nominations.

Durbin accused Republicans of an orchestrated plan to block then President Bill Clinton's circuit court nominees when they controlled the Senate. "They know that's where decisions are made that determine policy," he said.

Leahy noted that while Republicans controlled the Senate, the Fifth Circuit went seven years without a new judge; the Fourth, three years; and the 10th, six years.

Aaron also said that another reason for the new fight over appellate court nominees is that circuit courts have been a "farm team" for the Supreme Court, Aaron said, and any one of these current nominees, if not defeated now, could end up on the High Court in the future.

Leahy promised that conservatives such as Estrada and Owen would soon get their hearings, but also added that "consensus will be difficult." He hinted that an admission from Republicans that they obstructed the judicial nomination process in the 1990s would help.

"If they did things they now regret, their admissions would go far to helping establish a common basis of understanding and comparison. Taking that step would be a significant gesture,"he said in a floor speech Friday.

Leahy Seeks Clout on Judges

By Dave Boyer
The Washington Times
Saturday, January 26, 2002

The chairman of the Senate Judiciary Committee yesterday called on President Bush to nominate more Democrat-friendly judges to speed the contentious confirmation process.

"The White House's unilateralism is not the way the process is intended to work," said Sen. Patrick J. Leahy, Vermont Democrat. "The most progress can be made most quickly if the White House would begin working with home-state senators to identify fair-minded, non-ideological, consensus nominees to fill these court vacancies." He said it would help to "repair the damage of the last six years" in confirming federal judges. Republicans controlled the Senate during that time.

White House spokeswoman Ann Womack said Mr. Bush "welcomes the senator's pledge to hold prompt hearings." She said the president has worked "extensively" with Democratic home-state senators on nominations.

A conservative analyst who monitors the pace of judicial confirmations said Senate Democrats are "once again changing the rules to highjack the judicial selection process."

"Senator Leahy's so-called 'recommendations' boil down to a single directive: Democratic senators will confirm nominees as long as they can pick them in the first place," said Thomas Jipping, director of the Judicial Selection Monitoring Project affiliated with the Free Congress Foundation.

The Democratic-led Senate last year confirmed 28 of the 64 judicial candidates nominated by Mr. Bush, the lowest confirmation rate for the first year of each of the past four presidents.

This week Mr. Bush nominated an additional 24 judges. Two district court judges were confirmed by the Senate yesterday, leaving 58 judicial candidates still awaiting action.

An administration source said Mr. Bush "will continue to select the same kind of well-qualified nominees that he has since taking office."

Mr. Leahy also called on the president to "reconsider" his decision not to ask the American Bar Association for peer reviews in vetting judges. The committee does ask for the ABA's input, and Mr. Leahy said delaying that process until the nominations reach the Senate "has needlessly added months to the time required to begin the hearing process."

White House counsel Al Gonzales announced early last year that the administration was ending the ABA's 54-year advisory role in nominating federal judges partly because the group takes public positions on "divisive political, legal and social issues that come before the courts."

Mr. Leahy, who has led the fight against some Bush nominations, said he will "restore steadiness" in the judicial hearing process. But his pledge essentially was to continue the pace of confirmation hearings since Democrats took control of the panel in July - 12 hearings in seven months.

Roger Pilon, a legal specialist at the Cato Institute in Washington, said Democrats last year held hearings "aimed at justifying the use of an ideological litmus test to ignore or disqualify judicial nominees. This year, with elections looming, they appear ready only to intensify the stall."

Mr. Leahy said Democrats would hold hearings for "a number of controversial nominees who do not have blue-slip problems," a term for senators raising formal objections to a candidate. Mr. Leahy said the panel will hold a hearing next week for Charles W. Pickering of Mississippi, a candidate for the 5th Circuit Court of Appeals who is opposed by a coalition of liberal groups.

Pickering Lied About Contacts to Anti-Segregation Commission, Groups Say

By Ana Radelat
Gannett News Service

Friday, January 25, 2002

National groups who oppose the candidacy of Mississippi Judge Charles Pickering intensified their criticisms of his judicial and political career Thursday and circulated a document claiming he lied during 1990 confirmation hearings for his federal judgeship.

Wade Henderson, executive director of the Leadership Conference on Civil Rights, called Pickering "the worse nominee" Bush has considered for the federal bench.

A friend and political ally of Sen. Trent Lott, R-Miss., Pickering has come under attack from the National Association for the Advancement of Colored People, the Leadership Conference on Civil Rights, People for the American Way, the National Abortion and Reproductive Rights Action League and other interest groups. President Bush selected the U.S. District Court judge, former state senator and former chairman of the Mississippi Republican Party in May to fill an opening on the New Orleans-based appeals court. The groups opposed to his nomination have reached far back into the judge's past to try block his candidacy. They say a law school article Pickering wrote about interracial marriages indicates a contempt for civil rights and have criticized his role as chairman of a subcommittee at the 1976 Republican Party convention that created the GOP's first anti-abortion plank to the party's platform. At a press conference Thursday, they circulated a report that says Pickering gave false testimony during his 1990 confirmation hearing to become a federal judge.

At that hearing, Pickering said he "had never had any contact" with the Sovereignty Commission, a now-defunct Mississippi agency formed to fight federal desegregation efforts.

"I had disagreement with the purposes and methods and some of the approaches they took," Pickering said a dozen years ago.

But the groups' report included copies of a 1972 letter a commission investigator wrote that said Pickering and former state Reps. Liston Shows and R.H. Donald "requested to be advised" by the commission about a group trying to organize pulpwood workers in the state.

In 1971, the Gulfport Pulpwood Association organized a successful strike among pulpwood producers, cutters and haulers at the Masonite Corp. in Pickering's hometown of Laurel.

The judge, father of Rep. Chip Pickering, R-Miss., said it would be inappropriate for him to comment on the criticisms leveled against him, but he looked forward to responding to questions about the allegations at his next congressional hearing.

The interest groups fighting the nominations say they don't want another conservative judge to sit on the 5th U.S. Circuit Court of Appeals, which hears cases from Louisiana, Mississippi and Texas. Republican presidents have appointed nine of the court's judges; Democrats appointed five.

"Judge Pickering has a record that speaks volumes of his tendency to snatch away the shield of civil-rights protection," said Hilary Shelton, director of the NAACP's Washington bureau.

While some former Mississippi NAACP officials have written letters in support of Pickering, Shelton said they do not reflect the organization's position on the issue.

NARAL President Kate Michelman said Pickering's stand on abortion is crystal clear.

"He has an open hostility to a woman's right to choose," she said.

Ralph Neas, head of People for the American Way, complained Lott has put extreme pressure on members of the U.S. Senate to approve an unqualified nominee.

Neas and others involved in the anti-Pickering campaign were active in the successful effort to derail Robert Bork's Supreme Court candidacy. But they are unlikely to stall Pickering's candidacy much longer. A hearing on his candidacy that could clear the way for a Senate vote is expected in two weeks.

"They're just trying to smear him," Lott said of Pickering's opponents. "He's clearly qualified and deserves to be confirmed."

The American Bar Association deemed Pickering's 11-year record as a federal judge "well qualified," the highest ranking given. But during a Senate Judiciary Committee hearing in October, some Democrats said they wanted to see some of the judge's unpublished opinions, especially on civil rights, women's rights and labor law. Pickering had issued more than 1,000 opinions but only 75 were in print.

David Carle, press secretary to Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., said Pickering submitted roughly 600 opinions.

The liberal groups' attacks on Pickering come as Republicans intensified pressure on the Democratic-controlled Senate to move on 90 Bush judicial nominees. The president nominated two dozen Wednesday.

GOP senators complain that Democrats are stalling. But Leahy says his committee is moving as fast as it can and has countered that Republicans delayed President Clinton's nominees when the GOP had control of the Senate.

Mississippi Judge Is Latest Focus of Confirmation Fight

By Helen Dewar
The Washington Post
Sunday, January 27, 2002

The Senate, accused by conservatives of dragging its feet on President Bush's judicial nominations, is coming under pressure from liberal groups to reject one of those choices: a Mississippi jurist championed by Minority Leader Trent Lott (R-Miss.).

At issue is the record of U.S. District Judge Charles W. Pickering, a friend and ally of Lott whom Bush nominated in May to the 5th U.S. Circuit Court of Appeals, which covers several states in the deep South. Pickering is also the father of Rep. Charles W. "Chip" Pickering Jr. (R-Miss.). While conservatives describe the elder Pickering as thoroughly qualified for the appeals court, liberal critics say he has a "troubling record on civil rights and reproductive choice." They say he would tilt the already conservative 5th Circuit even further to the right.

The Senate Judiciary Committee held a hearing on Pickering's nomination in October and plans another for next month to examine unresolved questions. They include hundreds of opinions written by Pickering that were not available at the first hearing. The committee is waiting for Pickering to submit several hundred of them, according to Democrats.

In a vigorous defense of Pickering last Tuesday, Lott said it was "unnecessary and ridiculous harassment" to subject the judge to a second hearing. "He's a classic case of how the committee has kicked the can down the road." What's next, Lott asked. "How about his unpublished opinions? Oh, by the way, how about his secretary's notes?"

Democrats, including Judiciary Committee Chairman Patrick J. Leahy (Vt.), have not indicated how they might vote on the nomination. It is unusual for senators to reject a home-state friend of one of their leaders, regardless of party.

The quarrel over Pickering is but the latest example of partisan disputes over the pace of action on Bush's nominations.

Including two district court nominees who were approved Friday, the Senate has confirmed 30 of the 65 nominations that Bush submitted last year, most of them for district courts. Bush sent an additional 24 nominations for district courts to the Senate earlier this month.

Republicans contend that Democrats are dragging their heels, especially on appellate court nominations, leaving more than 100 vacancies on the federal bench nationwide. Democrats, noting that they took control of the Senate only last June, say they have done far better than Republicans did in processing nominations from President Bill Clinton, especially toward the end of his administration.

Leahy and Sen. Orrin G. Hatch (R-Utah) continued the argument Friday with a mix of the old rancor and some new gestures toward conciliation.

Leahy promised to schedule hearings "at a pace that will exceed the pace of the last six years." The plans will include hearings for controversial nominees such as Miguel Estrada, whom Bush nominated to the District of Columbia Circuit Court of Appeals and who is among those mentioned as a possible Bush choice for the Supreme Court.

But Leahy also called on Bush to seek "consensus nominees" by consulting widely within the Senate and to resume use of the American Bar Association to screen nominations before they are made. Leahy said he's still waiting for Republicans to "concede any shortcomings in the practices they employed" to stall or block Clinton nominations.

Hatch defended GOP treatment of Clinton's nominees, saying the former president won nearly as many confirmations as President Ronald Reagan. He said Bush has been more cooperative than other recent presidents in soliciting advice from senators. The yardstick for measuring the Democrats' performance, Hatch said, will be whether it matches the 100 confirmations that occurred during Clinton's second year in office. But, he added, "I think we're off to a good start."

As for Pickering, some interest groups are sharply critical. The Alliance for Justice, one of about 50 liberal groups that announced a drive to defeat Pickering last Thursday, said a study of his record shows it is "characterized by a consistent lack of support for efforts to remedy racial injustice and by a strong opposition to reproductive freedom."

The Alliance questioned the veracity of Pickering's claim, at his 1990 district court confirmation hearing, that he never had any contact with Mississippi's now-defunct State Sovereignty Commission, which was created to combat integration. Recently released commission records show that Pickering, as a state senator, asked to be "advised of developments" in a commission probe into union organizing in his hometown of Jackson.

John Nowacki, deputy director of the Free Congress Foundation's Center for Law & Democracy, defended Pickering. "Left-wing groups are counting on people listening to their charges without taking a closer look," he said. "The facts show that Judge Pickering has been a supporter of civil rights for five decades, both on the bench and off."

Senate Confirms Judge

By Tony Batt
Las Vegas Review-Journal
Saturday, January 26, 2002

After a delay of more than a month, the Senate voted 81-0 Friday to confirm the nomination of Clark County District Judge James Mahan to become the newest federal judge in Nevada.

Mahan's confirmation means fast-growing Nevada will meet the national caseload average for federal judges for the first time in 17 years, according to the state's chief U.S. District judge, Howard McKibben of Reno.

Mahan will be stationed in Las Vegas with four other federal judges. Two federal judges are based in Reno. McKibben said he believes Mahan will receive his presidential commission and be sworn in within days.

Mahan's confirmation stalled in the Senate last month when an angry Sen. Tom Harkin, D-Iowa, blocked judicial nominations on the final day of the 2001 session after a farm bill he wrote had been forced aside.

Speaking on the Senate floor Friday, Harkin, chairman of the Senate Agriculture Committee, said he agreed to lift his hold on the nominees because he has been assured the Senate will take up the farm bill again in two weeks.

Mahan, 58, said the delay did not bother him.

'It was politics, and I knew this process was political,' Mahan said.

Sen. John Ensign, R-Nev., said the confirmation delay did not hurt Nevada, but he had worried about the toll it might take on Mahan.

'It even showed that much more of Judge Mahan's character the way that he handled the delay,' Ensign said.

Mahan said his objective, as a federal judge in Nevada, will be to remember courts are a third branch of government designed to serve U.S. citizens by providing a fair forum for them to seek redress for their grievances.

'It's an honor just to be nominated because of all the people who are considered, and going through the Senate process is a humbling experience,' Mahan said.

Sen. Robert Byrd, D-W.Va., serving as acting president of the Senate during the vote on Mahan, mistakenly announced that Mahan had been confirmed to be a federal judge for the District of Columbia.

A federal judgeship is a lifetime appointment with an annual salary of $145,100.

Despite the delay, Mahan's confirmation was never seriously in doubt after his nomination cleared the Senate Judiciary Committee last month by a vote of 19-0.

Senators Divided on Judicial Nomination

By Susan Roth
Gannett News Service
Friday, January 25, 2002

Hawaii's senators appeared divided Thursday on the White House's nomination of Honolulu attorney Frederick W. "Fritz" Rohlfing III for federal district judge.

The approval of both senators is required for the nomination to go forward to a hearing in the Senate Judiciary Committee and confirmation in the committee and the full Senate.

Rohlfing, 45, is the son of former Republican state Sen. Fred Rohlfing, who was also a part-time U.S. magistrate on Maui. For senior Sen. Dan Inouye, who knows the senior Rohlfing and also knew the nominee as a child, the relationship qualifies Rohlfing for the lifetime judgeship. "I know the father very well and I'm certain this appointee is a good man," Inouye said. He said he has requested Rohlfing's FBI background report and the opinion of the Hawaii State Bar Association, but "as soon as I get word from them, I will tell the committee to proceed expeditiously."

Sen. Daniel Akaka also knows Rohlfing's father and he is ultimately expected to approve the nomination as well, but he was more reserved than Inouye.

"I had a very good meeting with Mr. Rohlfing last October," Akaka said in a statement. "I look forward to reviewing his qualifications when his nomination comes before the Judiciary Committee." Akaka has also requested the FBI report and bar association review.

Both senators have been holding up the June nomination of Hawaii Republican Party counsel Richard Clifton to the 9th Circuit Court of Appeals because they disapproved of the way the White House chose him -- without their consultation.

Both had been involved in the Clinton administration's 1999 nomination of attorney James Duffy, whom they enthusiastically supported, for the same position. Duffy's appointment was one of many never acted on by the Senate, which was then controlled by Republicans.

But Inouye said Thursday that he has given Clifton his nod. He said had been waiting to hear from the White House that the Duffy nomination was officially dead, and he recently received that word. The senator is still angry that Republicans held up Duffy's appointment for two years, but he said he did not ask the White House to consider Duffy for another position.

"This is their show. I'm not going to beg," he said.

Akaka's spokesman, Paul Cardus, said Akaka is still reviewing Clifton's materials and qualifications but he may be near a decision as well. Akaka has not spoken with Inouye about the matter since December and did not know that Inouye had approved the nomination.

President Names Two District Judges While Top State Law Jobs Are Filled

By Michael Booth
New Jersey Law Journal
Monday, January 28, 2002

President Bush will nominate U.S. Magistrate Judge Stanley Chesler and former U.S. Rep. William Martini as U.S. district judges, filling two vacancies in New Jersey, the White House

announced last Wednesday.

If confirmed, Chesler would take the seat vacated by Judge Anne Thompson in Trenton and Martini would take Judge John Lifland's seat in Newark. Thompson and Lifland are on senior status.

In Trenton, Gov. James McGreevey continued to build his administration by making with top appointments in the Department of Law and Public Safety. Last Thursday, he made Assistant Attorney General Kathryn Flicker the director of the Office of Counter-Terrorism, which he created by executive order the same day. She is responsible for coordinating anti-terrorism efforts with local, state and federal law enforcement and emergency management agencies. On Jan. 16, Attorney General David Samson appointed Douglas Wolfson, a state Superior Court judge in Middlesex County, to head the 400-attorney Division of Law. Wolfson, assigned at present to the Civil Division, was appointed to the bench during the administration of Gov. James Florio. Before that, he was a partner at Woodbridge's Greenbaum, Rowe, Smith, Ravin, Davis and Himmel.

Flicker is a career prosecutor who, since May 2000, has headed the Division of Criminal Justice, which First Assistant Attorney General Peter Harvey will run for the foreseeable future, according to a division spokesman. Flicker was a deputy assistant attorney general from 1971 to 1981. She then joined the Mercer County Prosecutor's Office, serving at various times as deputy first assistant, first assistant and acting prosecutor. She is a 1966 graduate of Indiana University and a 1970 graduate of Rutgers Law School-Camden.

The two federal judge nominees have backgrounds in government service. Chesler, 54, has 15 years as a U.S. magistrate judge and 13 years in law enforcement. He was an assistant district attorney in Bronx County, N.Y., from 1974 to 1980. He then became a special attorney in the U.S. Justice Department's New Jersey Organized Crime Task Force, of which he was deputy chief from 1984 to 1986. He was an assistant U.S. attorney in New Jersey from 1986 to 1987, when he went on the bench. Chesler earned his B.A. from the State University of New York at Binghamton in 1968 and graduated from St. John's University School of Law with honors in 1974.

Martini, 54, also has a record of government service. After law school, he clerked for Superior Court Judge Joseph Hanrahan and then served as an assistant Hudson County prosecutor and as an assistant U.S. attorney before starting his own law practice in 1978.

From 1990 to 1994, he was on the Clifton City Council and from 1991 until 1994 was a member of the Passaic County Board of Chosen Freeholders. In 1994, he was elected to Congress in the Eighth District. A Republican, he served one term and was defeated for re-election by William Pascrell in 1996. He served as commissioner of the Port Authority of New York and New Jersey in 1999.

A commercial-litigation and regulatory lawyer at Sills Cummis Radin Tischman Epstein & Gross in Newark, where he is a partner, Martini earned his B.A. degree from Villanova

University in 1968 and his law degree from Rutgers Law School-Newark in 1976.

Although the Office of Counter-Terrorism is part of the Attorney General's Office, the agency will be "separate and distinct" from the department, McGreevey said in his order. It will be Flicker's responsibility to maintain day-to-day contact with the federal Homeland Security Council, run by former Pennsylvania Gov. Tom Ridge, and with the multitude of local, state and federal agencies that deal with terrorism.

Bush's Nominations for District Benches Sent to Senate

Shannon Duffy
Pennsylvania Law Weekly
Monday, January 28, 2002

President Bush last week announced six nominees for the federal bench, three in the Eastern District and three in the Western District.

Sen. Arlen Specter made the announcements in Philadelphia last Wednesday. All face Senate confirmation.

Nominated to the federal bench in Philadelphia are attorney Michael M. Baylson and Judges, Legrome D. Davis and Cynthia M. Rufe. Nominated to the federal bench in Pittsburgh are two partners at Buchanan Ingersoll, Joy F. Conti and Arthur J. Schwab, and an Allegheny County Common Pleas Judge, Terrence F. McVerry.

Specter praised the president for picking the three nominees and to give credit to the 16-member, bipartisan nominating panel of lawyers and laymen that helped choose them.

Specter said the Eastern District of Pennsylvania federal bench is already a "very, very distinguished" court and that Baylson, Davis and Rufe "will add extra luster."

The chairman of the nominating panel, attorney Thomas R. Kline of Kline & Specter, likewise had strong words of praise for the three nominees and also for Specter, whom he described as "the architect of the Eastern District bench."

"I think these three nominations show once again that Senator Specter is really committed to finding the highest caliber nominees - that his interest is in getting the strongest bench possible," Kline said.

Kline said he was especially pleased by the re-nomination of Philadelphia Common Pleas Judge Legrome Davis, who was tapped twice before by President Clinton - in 1998 and again in 1999 - only to watch the nominations expire before the Senate took any steps to confirm him.

If confirmed, Davis will fill the vacancy created when U.S. District Judge Edmund V. Ludwig took senior status.

Davis earned his bachelor's degree at Princeton University in 1973 and his law degree at the Rutgers School of Law in Camden in 1976. His first job was as an assistant district attorney in Philadelphia, from 1977 to 1980, followed by a year as counsel to the Pennsylvania Crime Commission, and a return to the DA's office for another six years.

The year 1987 brought rapid change for Davis - a resume hat trick - beginning with a post in the general counsel's office at the University of Pennsylvania, followed by a move to Ballard Spahr Andrews & Ingersoll as an associate, and ending the year with a gubernatorial appointment to the Philadelphia bench. He went on to win the judgeship in an election and earned a second 10-year term in a retention election.

Rufe is a former high school teacher who earned her law degree in 1977 at the State University of New York at Buffalo and spent the first five years of her legal career in the Bucks County public defender's office. In the decade of private practice that followed, she served four years as solicitor to the Bucks County Children & Youth Social Service Agency.

In 1993, Rufe was elected to the Bucks County Common Pleas Court. Known first as Judge Cynthia Weaver, she changed her name after she married Common Pleas Judge John J. Rufe.

If she is confirmed by the Senate, she will fill the vacancy created when U.S. District Judge Norma L. Shapiro took senior status.

Baylson, a Duane Morris partner, is perhaps the best known of the three nominees because he served as U.S. Attorney from 1988 to 1993.

A 1964 graduate of the University of Pennsylvania Law School, Baylson is a longtime friend of Sen. Specter, dating back to 1969 when Specter hired him as a prosecutor in the Philadelphia District Attorney's office.

While an assistant district attorney, Baylson served stints as chief in both the homicide and narcotics divisions.

Currently, Baylson focuses his practice on the areas of antitrust, commercial and securities litigation, often advising clients on insurance fraud matters, corporate compliance programs and governmental affairs involving environmental and health law issues.

If confirmed, Baylson will fill the vacancy created when U.S. District Judge Robert F. Kelly took senior status.

Buchanan attorney Conti, a former tenured professor at Duquesne University Law School and a past president of the Allegheny County Bar Association, was nominated to fill the seat vacated by Senior U.S. District Judge Alan N. Bloch.

Buchanan lawyer Schwab, who has served as the firm's chief of complex litigation, was named

to fill Senior U.S. District Judge Maurice B. Cohill Jr.'s vacancy.

Allegheny County Judge Terrence F. McVerry, who served 12 years as a Republican state representative, was named to fill Senior U.S. District Judge Donald E. Ziegler's vacancy.

Specter confirmed that he and Sen. Rick Santorum are continuing to use a "formula" of choosing nominees to guarantee political diversity. For every three nominees from the political party of the president, he said, there will be one from the other party, regardless of who controls the Senate.

But one source said Davis "doesn't really count as the one Democrat" because his nomination was not made at the urging of the Democratic Party leaders.

The same source said that attorney Timothy Savage, a Philadelphia Democratic Party ward leader and an administrative law judge, is one of the most likely candidates for one of the two remaining seats on the Eastern District bench.

Sources said the final Eastern District vacancy is almost sure to go to a lawyer in the Lehigh Valley - from Lehigh, Berks or Northampton counties - because Specter is intent on finding a judge who will sit in the new federal courthouse in Allentown.

Palm Beach Circuit Judge, Miami Lawyer Tapped by President for Federal Judgeships

By Dan Christensen
Miami Daily Business Review
Friday, January 25, 2002

President George W. Bush, pending the completion of FBI background checks, has nominated Palm Beach Circuit Judge Kenneth A. Marra and Miami lawyer Jose E. Martinez to be U.S. District Court judges in South Florida.

Meanwhile, big names dot the list of 20 applicants looking to fill a third local federal judgeship - one that's been billed as possibly the last to become available for several years.

Those candidates include outgoing U.S. Attorney Guy Lewis, U.S. Magistrates Ted E. Bandstra and Barry S. Seltzer, 3rd District Court of Appeal Judge Juan Ramirez, Miami-Dade Circuit Judges Jerald Bagley, Peter Lopez and Cecilia M. Altonaga and Broward Circuit Judges James I. Cohn and Robert A. Rosenberg. Bandstra and Bagley were finalists for the nomination that went to Jose Martinez. Seltzer and Cohn were finalists for the slot that Marra was picked to fill.

Other well-known lawyers have applied for the lifetime seat that will open in March when Judge Shelby Highsmith takes senior status. They include U.S. Bankruptcy Trustee Roberto A. Angueira, U.S. Immigration Judge Lilliana Torreh-Bayouth, Miami lawyers Michael A. Hanzman and Linda Osberg-Braun, assistant U.S. attorneys Caroline Heck-Miller and Marvelle McIntyre-Hall, and Frank A. Shepherd, a leader of the conservative Federalist Society and

managing attorney at the Miami office of the Pacific Legal Foundation.

Rounding out the list of applicants are Miami-Dade Legal Aid Society lawyer Peter Sylvester Adrien, Miami lawyer John R. Kelso and West Palm Beach lawyers Diana Lewis and D. Culver Smith. Smith, with Holland & Knight, has represented the Daily Business Review.

The White House's announcement late Wednesday that Bush was nominating Marra and Martinez for confirmation by the Senate came more than two months after word of those choices first leaked.

Martinez, a 60-year-old native of the Dominican Republic, is a stalwart Republican, former federal prosecutor and name partner in the nine-attorney firm Martinez & Gutierrez. He specializes in liability cases, including tobacco and automotive product liability defense.

Martinez was in trial in a tobacco case on Thursday and could not be reached for comment. He will fill the position once occupied by retired Chief Judge Edward B. Davis.

Marra, 50, is a Stetson law school graduate who was first appointed to the Palm Beach bench by Gov. Lawton Chiles in 1996. Before that, he worked as a civil trial attorney for the Department of Justice and was a partner and commercial attorney in Palm Beach's Nason Gildan Yeager Gerson & White. The firm is now know as Nason Yeager Gerson White & Lioce.

Marra said in a statement released by his office that he was "humbled and honored" by his nomination.

"I look forward to completing the nomination process before the United States Senate, and to the many challenges that await me as a United States district judge," said Marra, who will sit in a newly created seat in Fort Lauderdale.

The Senate has not yet scheduled confirmation hearings for either man.

Op/Eds

Vacant Benches; Candidates on the Hit List

By Nancy Pfotenhauer and Jennifer Braceras
The Washington Times
Monday, January 28, 2002

Last week, President George W. Bush nominated 24 men and women to the federal judiciary, bringing to 60 the number of judicial nominations now pending before the Senate. As the Senate's backlog of nominations mounts, the number of vacancies on the federal bench also continues to rise. But, rather than act swiftly to alleviate the logjam, Senate Democrats - under pressure from radical feminist groups - have undertaken a vicious and ideological campaign to stonewall the president's judicial nominees. In so doing, they have increased the pressure on the

already overburdened federal courts and jeopardized the independence of our federal judiciary.

When Mr. Bush took office, there were 82 federal judicial vacancies. During his first year in office, Mr. Bush nominated 66 men and women to Article III judgeships. Yet, when the Senate adjourned in December, it had confirmed only 28 of these nominees and the number of vacancies had increased to 94. As of today, there are 99 vacancies - meaning that the federal courts are currently operating without 12 percent of the allotted judgeships. Why the Senate intransigence? The delay in processing judicial nominees has nothing to do with the qualifications of the candidates and everything to do with interest-group politics. In December, The Washington Times reported that Democratic senators have been coming under intense pressure from the National Organization for Women (NOW), the Ms. Foundation and other left-wing feminist groups to block the confirmation of nominees whose willingness to strike down all legislative restrictions on abortion procedures is not clearly documented and whose support for other "key issues" on the left's social agenda is in question. On Jan. 22, NOW issued an incendiary press release threatening retribution at the ballot box if senators vote to confirm any of the president's judicial nominees who do not meet the organization's ideological litmus test.

On the feminists' hit list are several highly esteemed female nominees, whom the interest groups view as insufficiently committed to the cause of abortion on demand. Take, for example, the nomination of Judge Carolyn B. Kuhl, who currently sits on the Superior Court of California, to a seat on the vastly overburdened U.S. Court of Appeals for the Ninth Circuit (which includes California). Prior to joining the state court bench in 1995, Judge Kuhl - a graduate of Princeton University and Duke Law School - was a partner at Munger Tolles, one of this nation's most prestigious law firms. Judge Kuhl also previously served in the Justice Department as deputy solicitor general, where she argued a number of cases before the U.S. Supreme Court.

Despite her obvious qualifications, the radical feminists have targeted Judge Kuhl for defeat. Her crime? As one of the government's top lawyers, she authored briefs on behalf of the United States arguing that certain restrictions on abortion were constitutionally permissible, and questioning the constitutional underpinnings of Roe vs. Wade. Of course, most lawyers understand that it is unfair to criticize (or, indeed, praise) any nominee based the positions adopted by his or her client (in this case, the U.S. government). But the radical feminists view Judge Kuhl's prior representation of a client whose views differ from their own as political apostasy.

Another highly qualified woman targeted for defeat by left wing feminists is Justice Deborah L. Cook of the Ohio Supreme Court, whom the president nominated in May to a seat on the U.S. Court of Appeals for the Sixth Circuit (which includes Ohio). Justice Cook has more than 10 years of experience as an appellate judge on the Ohio Supreme Court and Court of Appeals. She was also the first female partner at Akron's oldest law firm, Roderick Linton, where she practiced law from 1976 to 1991.

Rather than celebrate Justice Cook as a pathbreaker, NOW has chosen to attack her for being a member of the Federalist Society, a primarily conservative and libertarian group whose mission is to foster intellectual debate on the fundamental principles of individual freedom and limited

government. Responding to NOW's McCarthy-like tactics, the Senate has refused to schedule a hearing for Justice Cook, even though the Sixth Circuit, to which she was appointed, is currently operating at half-strength and is desperately in need of additional judges.

Because of this well-organized and well-funded ideological attack on candidates for the federal bench, nominations such as those of Judge Kuhl and Justice Cook have languished without Senate action for more than seven months. The irony, of course, is that the same radical feminists who have long whined about the need to break the "glass ceiling" in order to allow more women to succeed at the very highest levels of their professions are now trying to prevent certain female nominees from even obtaining a hearing before the Senate Judiciary Committee.

Demanding guarantees from judicial nominees that they will vote a certain way on cases that may
eventually come before them violates the principle of impartiality that is the cornerstone of an independent judiciary. Moreover, the campaign to derail the Bush judicial nominees does nothing to advance the cause of women's rights. To the contrary, it reveals as utterly disingenuous and hollow the feminists' purported goal of achieving "diversity" and gender equity in federal appointments. Worse still, it further entrenches the backlog in the administration of justice, thus increasing the chance that justice will be denied or that the law will not be enforced - a condition which surely cannot benefit women or others seeking protection from our legal system.

Recognizing the threat to our system of justice posed by the well-organized and well-funded ideological attack on the president's judicial nominees, the Independent Women's Forum on Jan. 21 delivered to Sen. Thomas Daschle a letter signed by more than 40 prominent women from both sides of the political aisle, urging the Senate to reject political litmus tests as the standard for confirming federal judges.

A fully staffed, balanced and independent judiciary is necessary for the protection of every American's safety, freedom and civil rights. If Senate Democrats really want to ensure that women - and, indeed, all Americans - have access to justice, they must act with all deliberate speed to conduct hearings and schedule floor votes on all of the president's judicial nominees.

Nancy Pfotenhauer is president of the Independent Women's Forum. Jennifer Braceras is the John M. Olin Fellow in Law at Harvard Law School.

Impartial Politicians? Follow the Money

By Clay Robison
The Houston Chronicle
Sunday, January 27, 2001

It would be premature and more than a little naive to predict that the Enron debacle will prompt lawmakers to finally clean up the cesspool of political contributions and special-interest clout in either Austin or Washington.

Embarrassed at being caught taking generous handouts from Corporate Enemy No. 1, members of the U.S. House finally have moved to force a vote on campaign finance legislation. But there is no guarantee that a meaningful bill will be passed.

Back in Texas, meanwhile, Enron and the appearance of unholy influence-peddling at the bar of justice may have claimed its first elected victim, Texas Supreme Court Justice Priscilla Owen. Owen, one of the most conservative members of a conservative court, was nominated by President Bush last May for promotion to the 5th U.S. Circuit Court of Appeals in New Orleans.

Even before Enron, her appointment was in jeopardy because of her conservatism. The Democratic-controlled Senate Judiciary Committee hadn't even scheduled a confirmation hearing, a fate suffered by a number of other Bush judicial nominees.

Now, Owen's liberal opponents have more ammunition to fire against her. She accepted $ 8,700 in contributions from Enron's political action committee and executives during her 1994 election campaign and, two years later, wrote a unanimous court decision that saved Enron $ 225,000 in a suit over school property taxes.

The Enron donations, under Texas law, were legal, as was Owen's participation in a case benefitting political contributors. And if she were commenting, she would say the former didn't influence the latter - and maybe they didn't.

In reality, $ 8,700 is peanuts in the high-dollar game of campaign finance in Texas, even in judicial races, which have some limits that campaigns for other state offices don't have.

The Enron ruling may have been soundly within the law, but the perception was bad. Reasonable people can certainly assume that officeholders - including judges - can be influenced by their campaign donations because contributions, indeed, are made to influence decisions.

In the real world, people spend their money to obtain a product or a service that they want, and motives aren't all that different in the political world.

Enron executives didn't give money to Owen's election campaign simply because they thought she was a good judge. They contributed because they thought she was a good judge who favored their general business philosophy and, more often than not, could be expected to rule on their side in contested cases.

And part of the price of accepting Enron money, it turns out, is putting up with fallout from the company's spectacular crash.

Owen was operating no differently than her colleagues on the high court and untold numbers of lower-court judges throughout Texas.

Enron-related contributors gave Supreme Court justices about $ 134,000 for the 1994 through

1998 election cycles, according to Texans for Public Justice, a group that tracks political contributions.

Most Texas judges are elected in partisan races and, with only modest limits on amounts, are free to accept campaign money from lawyers and other donors with interests in cases the judges will later decide. For years, the Legislature has stubbornly refused to change the system, despite repeated criticism from within and without Texas.

To their credit, Owen and some other Supreme Court justices have urged lawmakers to scrap the partisan election system, at least for members of the highest state courts.

Several alternatives have been suggested, but, for starters, the best approach would be to have the
governor appoint members of the two high courts - the Supreme Court and the Court of Criminal Appeals - to six-year terms, subject to Senate confirmation.

Selling that change to the voters, who would have to approve an amendment to the Texas Constitution, may be even more difficult than selling it to the Legislature. But, if successful, it could help begin lifting a cloud from at least one branch of state government. And who knows? The idea could become contagious.

"Giving large amounts of money to paid public officials is maybe not such a good idea," U.S. Sen. Fred Thompson, R-Tenn., observed in Washington the other day.

No fooling.

The Crisis in our Courts

By Alberto Gonzales
The Wall Street Journal
Friday, January 25, 2002

Federal courts protect constitutional rights, resolve critical civil cases, and ensure that criminals are punished. But as Chief Justice William Rehnquist cautions, the ability of our courts to perform these functions is in jeopardy due to the "alarming number" of judicial vacancies, 101 as of today.

President Bush has responded to the vacancy crisis by nominating a record number of federal judges: 90 since taking office, almost double the nominations that any of the past six presidents submitted in the first year. Despite his decisive action, the Senate has not done enough to meet its constitutional responsibility. It has voted on less than half of the nominees. Indeed, it has voted on only six of the 29 nominees to the courts of appeals. And the Senate has failed even to grant hearings to many nominees, who have languished before the Judiciary Committee for months.

For example, on May 9, 2001, the president announced his first 11 nominees. All were deemed "well qualified" or "qualified" by the American Bar Association, whose rating system Judiciary Committee Chairman Patrick Leahy has called the "gold standard" for evaluating nominees. Yet his committee has held hearings for only three of the 11. Although the Senate did confirm 28 judges last year, its overall record was unsatisfactory, given the number of vacancies and pending nominees.

As Congress returns to work, the administration respectfully calls on the Senate to make the vacancy crisis a priority and to ensure prompt hearings and votes for all nominees. The Senate should make this practice permanent, adhering to it well after President Bush leaves office, so as to ensure that every judicial nominee by a president of either party receives a prompt hearing and vote.

The federal courts desperately need reinforcements. There are 101 vacancies out of 853 circuit and district court judgeships. The 12 regional circuit courts of appeals have an extraordinary 31 vacancies out of 167 judgeships (19%). The chief justice recently warned of the dangerous impact the vacancies have on the courts and the American people, and the Judicial Conference has classified 39 vacancies as "judicial emergencies."

In 1998, when there were many fewer judicial vacancies, Sen. Thomas Daschle, now majority leader, and Mr. Leahy expressed their concern about the "vacancy crisis" -- with the latter explaining that the Senate's failure to vote on nominees was "delaying or preventing the administration of justice."

Today's crisis is worse, and is acute in several places. The D.C. Circuit Court of Appeals, which, other than the Supreme Court, is often considered the most important federal court because of the constitutional cases that come before it, has four vacancies on a 12-judge court. The Sixth Circuit Court of Appeals has eight vacancies on a court of 16. In March 2000, when that court had only four vacancies, its chief judge stated that it was "hurting badly and will not be able to keep up with its work load."

In the past, senators of both parties have accused each other of illegitimate delays in voting on nominees. The past mistreatment of nominees does not justify today's behavior. Finger-pointing does nothing to put judges on the bench and ease the courts' burdens; it only distracts the Senate from its constitutional obligation to act on the president's judicial nominees.

President Bush has encouraged the Senate to act in a bipartisan fashion, both now and in the future. He put it best at the White House last May while announcing his first 11 nominees: "I urge senators of both parties to rise above the bitterness of the past, to provide a fair hearing and a prompt vote to every nominee. That should be the case for no matter who lives in this house, and no matter who controls the Senate. I ask for the return of civility and dignity to the confirmation process."

It is time for the Senate to heed his call.

Mr. Leahy and Judges

The Washington Post
Sunday, January 27, 2002

SEN. PATRICK Leahy, Democratic chairman of the Senate Judiciary Committee, gave a speech on the Senate floor Friday that, on the surface, seemed like another round of partisan warfare over judges. But embedded within the rhetoric was a significant step toward bringing some comity back to the judicial nominations process. Mr. Leahy promised "steadiness in the hearing process" and "regular hearings" on judges at a pace faster than the Senate has managed in recent years. He promised also that these hearings would not be weighted too heavily toward relatively uncontroversial district judges but would give appeals court judges a fair shake too -- including specifically a number of court of appeals nominees whom liberals oppose. One can quibble about the names the senator left off his list; he did not, for example, promise a hearing for D.C. Circuit nominee John Roberts. But the overall message was positive. If Mr. Leahy sticks to the plans he laid out, this could be a fair and productive year for judicial nominations.

Mr. Leahy also asked that President Bush do more to accommodate the concerns of Senate Democrats in making nominations. It is a message that Mr. Bush should take to heart. In two courts of appeals in particular, the 6th and 4th circuits, Republicans blocked President Clinton's nominees for years, keeping seats open that Mr. Bush is now keen to fill. Democratic senators from Michigan and North Carolina want a say in who gets nominated and are blocking Mr. Bush's nominees. Mr. Bush has the right to name whomever he wants, but the Democratic grievance is legitimate, and the process would benefit greatly if these logjams could be broken in a fashion acceptable to both parties. It's hard to imagine that nowhere in these two states are there potential judicial candidates whose records and qualifications stand above politics.

Letters to the Editor

Dayton Daily News
January 25, 2002

Columnist Tom Teepen, in his Jan. 4 column, "Approval process, pay for jurists needs reform" was correct. Teepen wrote, "the confirmation mess will not end until both parties go back to making moderate appointments and the GOP stops being a willing partner in its right's scheming."

Support for strong civil rights, reproductive freedom and environmental protections is widespread in this country. However, President George W. Bush insists on nominating individuals who are far from the mainstream. For example, Charles Pickering, Bush's nominee for a vacant seat on the 5th Circuit Court of Appeals, has attempted time and again to undermine civil rights and other majority values.

We should applaud the Senate Judiciary Committee for creating a thorough and rigorous confirmation process so conservative ideologues such as Pickering will be exposed for what they

are: biased, unfair and not likely to be neutral on the bench.

Teepen was correct when he said the current nominees are among the most conservative ever put forward and that the larger blame for the current gridlock in federal appointments should be placed on the Republicans. I hope more people will support the Senate Judiciary Committee for endeavoring to create a fair and independent judiciary.

Bridget Tracy West Carrollton

Teepen should keep focus on GOP's stalling tactics

Tom Teepen blamed the Republicans for the current gridlock over judicial confirmations and criticized congressional inaction regarding federal judges' pay ('Approval process, pay for jurists need reform,' Jan. 4).

Teepen was right on the first count: President George W. Bush has nominated individuals who can be described as nothing but conservative ideologues ready and willing to roll back civil rights and environmental protections. Furthermore, judicial vacancies exist in part because of former Senate Judiciary Chairman Orrin Hatch's stalling tactics over judicial nominations. He used these tactics successfully for years during the Clinton presidency.

But on the second count I cannot agree with Teepen. Most lawyers would drop their current jobs in a heartbeat for the chance to become a federal judge, because sitting on the federal bench is among the highest honors in the legal profession.

Teepen should not focus on the smaller details of wages but on the major issues at hand: The Republicans are to blame for the numerous vacancies on the federal bench, and the public should show its support for the Senate Judiciary Committee. It is clearly dedicated to molding a balanced and fair judiciary.

Jeffrey M. Silverstein Washington Twp.

Judicial Offense; Bush’s Nomination of Pickering Deserves Rejection

Detroit Free Press
Saturday, January 26, 2002

With his nomination of Mississippi District Court Judge Charles Pickering to the U.S. Court of Appeals, President George W. Bush is substantiating fears that he would attempt to turn the federal judiciary into a right-wing monster.

Pickering is an unreconstructed Dixiecrat whose writings, votes and record over the course of a long legal and political career evince a disturbing degree of bias against civil rights, women's rights, civil liberties and black Americans in general. The Senate Judiciary Committee, which

will consider the nomination next week, should reject Pickering out of hand as an affront to African Americans and to any American who believes in equality and democracy.

As a Mississippi legislator, Pickering fought implementation of the 1965 Voting Rights Act, even co-sponsoring a resolution for its repeal. He supported the notorious and secretive Mississippi Sovereignty Commission, a state-funded agency established to oppose integration efforts after the landmark Brown v. Board of Education decision. The commission had close ties to the racist White Citizens Council and spied on civil rights and labor activists.

As a District Court judge, Pickering consistently criticized and opposed the one-person-one-vote doctrine and majority black voting districts.

He wrote an article in the Mississippi Law Journal in 1959 calling for legislation -- enacted shortly thereafter -- strengthening a Mississippi law banning interracial marriages.

His career also is characterized by a relentless hostility toward abortion rights, as well as the rights of habeas corpus and due process.

Americans deserve more from their courts than this type of narrow mindedness. The Pickering nomination suggests the Bush administration has a dangerous agenda for the federal judicial system.

Transcripts/Members of Congress

Leahy Charts 'The Way Forward' on Judicial Nominations

Floor Statement of Senator Patrick Leahy
Friday, January 25, 2002

As we begin this new session I will take a moment to report where we are in the handling of judicial nominations and to outline the road ahead. I will touch on the legacy of the last six years that has left a residue of problems that will take continuing effort to purge. Then I will offer the steps that we in the majority will take, in good faith, to undo the damage of the last six years, and I will call on the White House to take similar steps to help us move this process forward.

A GOOD BEGINNING

In the span of just six months, and in a year that was tumultuous for the nation and for the Senate, the Judiciary Committee between July and the end of the session in December held hearings on 34 judicial nominees and approved 32, and the Senate confirmed 28. I expect we will be adding to that tally today. Nearly all are conservative Republicans, and nearly all were unanimously approved by Democrats and Republicans and Independents alike, on the Judiciary Committee and by the Senate, by a Democratically controlled Senate.

We reported more judicial nominees after the August recess than in any of the preceding six

years and more than in any similar period over the preceding six and one-half years. Having not a year but only six months to work with, not only did the Senate confirm almost twice as many judges as were confirmed in the first year of the earlier Bush Administration, we confirmed more judges -- including twice as many judges to the Courts of Appeals -- as in the first year of the Clinton Administration. The Senate confirmed the first new member of the 5th Circuit in seven years, the first new judge on the 4th Circuit in three years, and the first new judge on the 10th Circuit in six years.

Of course more than two-thirds of the federal court vacancies continue to be on the District Courts. The Administration has been slow to make nominations to the vacancies on these trial courts. In the last five months of last year, the Senate confirmed a higher percentage of the President's trial court nominees, 22 out of 36, than a Republican majority had allowed the Senate to confirm in the first session of either of the last two Congresses with a Democratic President. Last year the White House did not make nominations to almost 80 percent of the current trial court vacancies. We began this session with 55 out of 69 vacancies without nominees.

We have acted to build better practices into the process to make the confirmation process for federal judges more orderly. We made some progress at the end of last year, when after many months the White House and our Republican colleagues finally agreed to limited steps to update and simplify our Committee questionnaire.

By the time the Judiciary Committee was reorganized and began its work last summer, the vacancies on the federal courts were peaking at 111. Since then 25 additional vacancies have arisen. Through hard work in the limited time available to us, we were able to outpace this high level of attrition. By contrast, when Republicans took charge of the Senate in January 1995 until the majority shifted last summer, judicial vacancies rose from 65 to more than 100, an increase of almost 60 percent.

We also held 16 confirmation hearings in the last five months of last year for Executive Branch nominees, and we sent to the Senate nominees who were confirmed for 77 senior Executive Branch posts including the Director of the FBI, the head of the DEA, the Commissioner of INS, the Director of the U.S. Marshals Service, the Associate Attorney General, the Director of ONDCP, the Director of PTO, seven Assistants Attorney General, and 59 U.S. attorneys.

Senators will recall that soon after Judge Gregory's confirmation last July, the White House Counsel said in an interview that he did not expect the Senate to confirm more than five judges before the end of 2001. That was actually a revision up from the initial charges from some on the other side of the aisle after the mid-year change in majority that the Democratic majority would not confirm a single judge. One might have thought from the constant barrage of partisan criticism that 2001 resembled 1996, a year in which a Republican Senate majority confirmed only 17 judges, none of them appellate-level nominees. The worst fear of some, it has been clear, is that Democrats would treat Republican nominees as poorly as Democratic judicial nominees were treated by a Republican Senate. That is not what happened. In just five months, we went on to confirm more than five times the number predicted by the White House Counsel.

The Committee also has opened up the process as never before. For the first time, the Judiciary Committee is making public the "blue slips" sent to home state Senators. Until last summer, these matters were treated as confidential materials and restricted from public view. We have moved nominees with less time from hearings to the Committee's business meeting agenda, and then out to the floor, where nominees have received timely roll call votes and confirmations. Over the preceding six and one-half years, at least eight judicial nominees who completed a confirmation hearing were never considered by the Committee and simply abandoned, without action.

Also, the past practices of extended unexplained anonymous holds on nominees after a hearing were not evident in the last five months of last year as they had been in the recent past.

Yesterday, the Judiciary Committee held another hearing for judicial nominees, the twelfth since last July. The Senate can be proud of its record in the First Session of the 107th Congress of beginning to restore steadiness in its handling of judicial nominees, and we are prepared to build on that record in the Second Session.

THE LEGACY OF THE LAST SIX YEARS

The legacy of the strife over the filling of judicial vacancies that we all must work to overcome began in 1996, when months went by without the Republican Senate acting on judicial nominations from a Democratic president. Later that year outside groups began forming to raise money on their pledge to block action on judicial nominees.

As the new session opened in 1997, efforts were launched on the Republican side of the aisle to slow the pace of Judiciary Committee and Senate proceedings on judicial nominations and to erect new obstacles for nominees. The results were soon apparent throughout the process, and they persisted throughout the remainder of President Clinton's Administration.

In the six years that a Republican majority was considering President Clinton's judicial nominations, more than 50 nominees never received a hearing and a Committee vote. They included Judge James A. Beaty, Jr. Judge James Wynn, and J. Rich Leonard, nominees to longstanding vacancies on the 4th Circuit; Judge Helene White, Kathleen McCree-Lewis and Professor Kent Markus, nominees to the 6th Circuit; Allen Snyder and Professor Elana Kagan, nominees to vacancies on the D.C. Circuit; James Duffy and Barry Goode, nominees to the 9th Circuit; Bonnie Campbell, the former Attorney General of Iowa and former head of the Violence Against Women Office at the Department of Justice, nominated to the 8th Circuit; Jorge Rangel, H. Alston Johnson and Enrique Moreno, each nominated to the 5th Circuit; Robert Raymar and Robert Cindrich, among the nominees to the 3d Circuit; and District Court nominees like Anabelle Rodriguez, John Bingler, Michael Schattman, Lynette Norton, Legrome Davis, Fred Woocher, Patricia Coan, Dolly Gee, David Fineman, Ricardo Morado, David Cercone, and Clarence Sundram.

None of these qualified nominees was given a vote.

Over the course of those years, Senate consideration of nominations was often delayed for not months but years. It took more than four years of work to get the Senate to vote on the nominations of Judge Richard Paez and Judge William Fletcher; almost three years to confirm Judge Hilda Tagle; more than two years to confirm Judge Susan Mollway, Judge Ann Aiken, Judge Timothy Dyk, Judge Marsha Berzon and Judge Ronald Gould; almost two years to confirm judge Margaret McKeown and Judge Margaret Morrow and more than a year to confirm several others during the preceding six and one-half years of Republican control.

During those years, the Republican majority in the Senate went entire sessions without confirming a single judge for the Courts of Appeals. As few as three appellate nominees were granted hearings and committee votes in an entire session. During that time, the Republican majority averaged eight hearings a year for judicial nominees and had as few as six during one entire session. One session of Congress, the Republican majority allowed only 17 judges to be confirmed all year, and that included not a single judge to any Court of Appeals. All the while, the judicial vacancy rate continued to worsen.

The problems did not end when President Clinton left office. New problems have arisen through unilateral actions taken by the Bush Administration in its handling of judicial nominations. When the new Republican White House decided to summarily end the 50- year practice, by Presidents of both parties, of allowing peer reviews of candidates by the American Bar Association to begin under White House auspices, that change alone added months to the Senate's clock in the handling of each nomination.

Similarly, the Bush Administration's unilateral approach in vetting nominees, virtually disregarding the Senate's longstanding practices that encourage consultation with home-state Senators, had needlessly complicated the Senate's handling of several of the President's nominees. Nor has the White House responded to our repeated requests to help the Senate work through residual issues caused by the Republican Senate's earlier actions and inactions relating to several Circuit Courts. These are problems that have grown and festered over time and cannot all be remedied immediately, especially in the absence of White House cooperation.

THE WAY FORWARD

We have made a good beginning in the first six months of Democratic leadership in the Senate. But the way forward will not be easy, and continued progress will require leadership and cooperation and good will within the Senate and by the White House.

These are the steps that the Judiciary Committee will take in good faith:
First, we will restore steadiness in the hearing process. The Committee will hold regular hearings at a pace that will exceed the pace of the last six years. Following longstanding committee practice, each hearing typically will involve several nominees -- one Circuit Court nominee and several district court nominees.

Since the Senate's reorganization last July, we have convened judicial nominations hearings each and every month. By contrast, in the 72 months that the Republican majority most recently

controlled scheduling such hearings, in 30 of those months no hearings were held at all and in another 34 months only one was held.

Yesterday we held our 12th hearing since July. If we are able to keep to this pace, we will hold more hearings this session than were held in any of the six and one-half years of Republican control and more than twice as many as were held in some of those years.

Second, we will include hearings for a number of controversial nominees who do not have blue slip problems. We will convene a hearing the week after next on the nomination of Charles W. Pickering for the Fifth Circuit Court of Appeals. I fully expect that we also will have hearings on other nominations for which consensus will be difficult, including such nominees as Judge Priscilla Owen, Professor Michael McConnell, and Miguel Estrada.

And third, we will continue to seek a cooperative and constructive working relationship with our colleagues on the other side of the aisle and with the White House to make the confirmation process more orderly, less antagonistic, and more productive.

Finding our way forward out of the legacy of the last six years will also require White House cooperation.

Today I ask the President, for his part, to consider several steps, each of which make a tangible improvement in the consideration of judicial nominations. First, the most progress can be made most quickly if the White House would begin working with home state Senators to identify fair-minded, nonideological, consensus nominees to fill these court vacancies. One of the reasons that the Committee and the Senate were able to work as rapidly as we did in confirming 28 judges in the last five months was because those nominations were strongly supported as consensus nominees by people from across the political and legal spectrums.

I have heard of too many situations, in too many States, involving too many reasonable and constructive home state Senators, in which the White House has shown no willingness to work to cooperatively find candidates to fill vacancies. The White House's unilateralism is not the way the process is intended to work, and it is not the way the process has worked under past administrations. I urge the White House to show greater inclusiveness and flexibility and to help make this a truly bipartisan enterprise. Logjams persist in several settings, the legacy of the last six years. To make real progress, the White House and the Senate should work together to repair the damage and move forward.

The Constitution directs the President to seek the Senate's advice and consent in his appointments to the federal courts. The lack of effort on the advice side of that obligation gives rise to a general impression, heightened by the White House's refusal to work cooperatively with some home state Democratic Senators, and by its unwillingness to listen to suggestions to continue the bipartisan commissions that have been a tradition in many states, that the White House and some in the Senate are intent on an ideological takeover of the courts. With the Circuits so evenly split in so many places, nominees to the Courts of Appeals may have a significant impact on the development of the law for decades to come. Some of us are concerned

that there not be a roll back in the protections of individual rights, civil rights, workers' rights, consumer rights, privacy rights and environmental protection.

Second, I ask the President to reconsider his early decision on peer review vetting, which has needlessly added months to the time required to begin the hearing process for each nominee. For more than 50 years the American Bar Association was able to conduct its peer reviews simultaneously with the FBI background check procedures. This meant that when nominations were sent to the Senate, the FBI report and ABA peer review arrived soon afterward. We had occasions last year when we proceeded with hearings with
fewer District Court nominees than I would have liked because recent nominees' files were not yet complete. I fear that same problem will be repeated this year. For example, the FBI and ABA background materials on the 24 District Court nominations being received this week cannot be anticipated before late March or April. That is regrettable, and it is avoidable.

Just as no Senator is bound by the recommendations of the ABA, so, too, the White House can make clear that it is restoring this traditional practice not because it intends to be bound by the results of that peer review or even take it into account, but solely to remove an element of delay that it had inadvertently introduced into the confirmation process. The White House can expressly ask the ABA not even to send the results of its peer review to the Executive but proceed only to transmit them to the Committee, if it chooses. Few actions available to either the Senate or the White House can make as constructive a contribution as would the President's resolution of this problem, and I ask him to seriously and thoughtfully consider taking it.

CONCLUSION

Whether we succeed will depend in large measure on whether those goals are shared by Republican Senators and the White House. We will not have repaired the damage that has been done if we make progress this year and the improvements we are able to make are not institutionalized and continued the next time a Democratic President is the one making judicial nominations. To date, we have yet to hear Republicans concede any shortcomings in the practices
they employed over the previous six and one-half years. Since the change in majority last summer, we have been exceeding their pace and productivity over the prior six and one-half years. If their efforts were acceptable, or as praiseworthy as some would argue, I would expect them to commend our better efforts since July. If they did things they now regret, their admissions would go far to helping establish a common basis of understanding and comparison. Taking that step would be a significant gesture. It is something that has not yet occurred.

These nominees we are voting on this morning are clear evidence, again, that consensus nominees with widespread and bipartisan support are more easily and more quickly considered by the Committee and confirmed by the Senate.

There are still far too many judicial vacancies, and we must work together to fill them. We have finally begun moving the confirmation and vacancy numbers in the right direction.

The way forward is difficult. Democrats, alone, cannot achieve what should be our common goal of regaining the ground lost over the last six years. But all of us together can achieve that. I invite each with a role in this process to join in that effort.

Interest Groups/Press Releases

Statement of the AFL-CIO in Opposition to the Nomination of Charles W. Pickering, Sr. to the United States Court of Appeals for the Fifth Circuit

AFL-CIO
Monday, January 28, 2002

The AFL-CIO joins with the Leadership Conference on Civil Rights and other civil rights organizations in opposing the nomination of Charles W. Pickering, Sr., to the United States Court of Appeals for the Fifth Circuit.

At this moment in our history, our nation needs to move forward and build on the progress we have made in enacting and implementing strong civil rights guarantees for all Americans. The federal courts play a crucial role in upholding and enforcing these rights. President Bush should nominate to the courts, and the Senate should confirm, civil rights champions, not nominees with questionable records on civil rights.

But Judge Pickering=s record is problematic in many respects, particularly in the area of civil rights. As a law student, Charles Pickering wrote an article suggesting how the state legislature could pass a law criminalizing interracial marriage -- recommendations that the legislature then adopted. During his eight years as a state senator in Mississippi, he cast several votes that denied electoral opportunities to African American voters. Also troubling is Judge Pickering=s apparent involvement with the Sovereignty Commission, a notorious state agency established to resist integration in the wake of the Brown v. Board of Education decision. And, during his tenure as a federal district judge, Judge Pickering has issued a number of questionable rulings in the civil rights area that indicate a lack of appreciation for important civil rights protections.

Judge Pickering=s record raises troubling questions about his suitability for a lifetime appointment to the Fifth Circuit. The significance of these questions is heightened given that the Fifth Circuit, which covers Mississippi, Louisiana, and Texas, has one of the highest concentrations of minorities of any circuit court in the country.

We urge the Senate to reject this nomination.

AAUW Strongly Opposes the Nomination of Judge Charles Pickering for the U.S. Fifth Circuit Court of Appeals

American Association of University Women
Monday, January 28, 2002

Senate Has Responsibility to Reject Candidate Hostile to Civil and Women's Rights

Statement of Nancy Zirkin, AAUW Director of Public Policy and Government Relations

The American Association of University Women (AAUW), with 150,000 bipartisan members nationwide, announces its opposition to the nomination of Judge Charles Pickering to the U.S. Fifth Circuit Court of Appeals. Careful examination of Pickering's record reveals a lack of regard for the protection of civil rights, reproductive rights, women's rights, and individual liberties. AAUW believes that the Senate has a responsibility to the American people to confirm only jurists who are committed to upholding these ideals. Charles Pickering does not meet this standard.

Charles Pickering's record demonstrates marked hostility to both a woman's right to reproductive freedom and to civil rights. As a state senator, Pickering voted to call a constitutional convention to outlaw abortion and voted against state funding for family planning programs. Additionally, Pickering chaired the Republican party platform committee that first inserted into the platform a denunciation of the Supreme Court's decision in Roe v. Wade and called for an amendment to the U.S. Constitution to ban abortion. We have no evidence that he has changed his mind on this issue.

Charles Pickering's documented contempt for civil rights is of particular concern in the circuit to which he has been nominated. With 43 percent of the 5th Circuit made up of people from underrepresented groups, it is crucial that the judges be extremely sensitive to the civil rights and concerns of these populations. However, as a state senator, Pickering voted to resist measures that would expand electoral opportunities for African Americans, even after passage of the Voting Rights Act of 1965. In addition, as a district court judge, Pickering has continued to strongly criticize the protection of voters' rights by federal courts under the "one person-one vote" doctrine as "obtrusive."

Federal judicial appointments lifetime positions are far too important to hastily confirm nominees with extremist or controversial positions. The Senate holds an enormous responsibility in its constitutional role to advise and consent on federal judicial nominations. That power must be wielded with the utmost of care. AAUW reminds the Senate that no nominee is presumptively entitled to confirmation. Nominees must be subject to the highest standard of scrutiny, and protection of the rights of the people should take precedence over the agenda of either political party or the aspirations of any judicial candidate.

AAUW strongly urges the Senate to deny Charles Pickering a federal judgeship and instead find another candidate who has a demonstrated record of upholding the rights of all Americans. We deserve no less.

NCJW Opposes Nomination of Judge Charles Pickering to the Fifth Circuit Court of Appeals

National Council of Jewish Women

Monday, January 28, 2002

The National Council of Jewish Women (NCJW) will oppose the nomination of federal district court Judge Charles Pickering to the 5th Circuit Court of Appeals because of his support for overturning Roe v. Wade.

In a statement released today, NCJW President Jan Schneiderman said:

"NCJW strongly believes that judges who serve on the federal bench must be firm defenders of constitutional rights and liberties, including women's reproductive rights. Judge Charles Pickering's record indicates that he is not. As a Mississippi state legislator in 1978, Judge Pickering voted to call a constitutional convention to outlaw abortion. He chaired the subcommittee of the 1976 Republican National Convention's Platform Committee which called for a constitutional amendment overturning Roe. He voted against state funding for family planning programs. Nothing in his record since then leads us to believe that his views have changed.

"The 5th Circuit Court of Appeals for which Judge Pickering is nominated covers Mississippi, Louisiana and Texas ' states with strong anti-choice state legislatures. It is likely that the 5th Circuit will have to rule on laws passed by those legislatures intended to restrict or overturn Roe. The 5th Circuit may well be the last word on most of those cases, since the Supreme Court considers only 80 to 100 cases each year of the 7,000 or so it receives annually.

"In launching BenchMark: NCJW's Campaign to Save Roe, the NationalCouncil of Jewish Women has made a commitment to act to ensure the confirmation of only those nominees to the federal bench who support fundamental freedoms, including a woman's right to choose abortion. In addition to his opposition to Roe and the right to privacy on which it is based, Judge Pickering has troublesome views on key civil rights issues, including affirmative action and the principle of 'one man, one vote.' NCJW will call on members of the US Senate to vote against his confirmation."

NCJW is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children and families and to ensure individual rights and freedoms through research, education, advocacy, and community service programs initiated by its network of 90,000 volunteers, supporters and members nationwide.

Schauder, Andrew

From: Schauder, Andrew
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Subject: judicial media review
Attachments: Judicial Media Review 1-31-02.wpd

Please see attached review

Media Review - Judicial Nominations
Thursday, January 31, 2002

General Judicial Articles

"A Rocky Milestone for Roe vs. Wade; Activists See Many Routes for Abortion Rights' Erosion," 1
Beth Kanter, *The Chicago Tribune*, January 30, 2002

"Privacy, Cameras in Court Are Senator's New Concern," 2
Linda Gasparello, *White House Weekly*, January 29, 2002,"

"Private Labor Lawyer Nominated for Spot on U.S. District Court," 4
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"Second Pickering Hearing Slated; NAACP Questions Record," 5
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NONE

Transcripts/Members of Congress

NONE

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NONE

General Judicial Articles

A Rocky Milestone for Roe vs. Wade; Activists See Many Routes for Abortion Rights' Erosion

By Beth Kanter
The Chicago Tribune
Wednesday, January 30, 2002

EXCERPT

Judicial nominations

President George W. Bush likely will nominate at least one U.S. Supreme Court justice--a prospect of paramount concern for those who support the Roe vs. Wade decision. Justices selected by Bush and confirmed by the Senate have the potential to overturn the 1973 Supreme Court ruling.

"The Supreme Court is in crisis with the current 5-4 split," said Feminist Majority President Eleanor Smeal, referring to the division among the high court when it comes to upholding abortion as a constitutional right. "But it is not just the Supreme Court we have to worry about but the federal Court of Appeals--eight of the 12 circuit courts are already comprised of anti-choice majorities. . . . The worst-case scenario is that we lose all 12 circuit courts and we can't get a case to the Supreme Court."

Hearings begin in February for some of the federal court nominees, and NARAL has identified several nominees the group plans to challenge with a national grass-roots campaign. Topping that list is Judge Charles W. Pickering Sr., nominated to the 5th U.S. Circuit Court of Appeals, which covers Mississippi, Louisiana and Texas. "Pickering, among other things, led the right-wing charge for the Republican Party's first call for a constitutional amendment to ban abortion, he fought against choice and family planning as a Mississippi state legislator and he was an open opponent of the Equal Rights Amendment," said Michelman.

Privacy, Cameras in Court Are Senator's New Concern

By Linda Gasparello
White House Weekly
Tuesday, January 29, 2002

A week after a federal judge rejected cable network Court TV's petition to televise the trial of Zacarias Moussaoui, the first person indicted in connection with the Sept 11 attacks, questions about cameras in the courtroom and personal privacy dominated the Senate confirmation hearing for five of President Bush's federal court nominees.

Sitting in Thursday for Sen. Patrick Leahy (D-Vt.), chairman of the Senate Judiciary Committee, Sen. Maria Cantwell (D-Wash.) asked Richard D. Leon, nominee to he U.S. District Court for the District of Columbia, to comment on cameras in federal courtrooms. Leon has a special appreciation of the issue: he was deputy chief minority counsel for the U.S. Select Iran-Contra Committee the second ranking counsel to Rep. Dick Cheney (R-Wyo.), and the Republican members of the committee from March 1987 to March 1988.

Leon said that cameras in the courtroom are a challenging and difficult issue for Congress and federal judges to wrestle. "On the whole," he said, "it is a close-call question." Court TV, which is owned by AOL Time Warner and Liberty Media Corp., had argued in legal papers that the ban on televising federal criminal trials is unconstitutional because the U.S. Constitution gives the public the right to have access to courtroom proceedings. On Jan. 18, U.S. District Judge Leonie M. Brinkema essentially ruled that it is up to Congress to change the law barring cameras in federal courtrooms.

"Given the growing public consensus and favorable experience in the majority of states that allow cameras in their courtrooms, we are optimistic that the United States Congress will soon pass legislation permitting cameras in our federal courts subject, however, to the sole discretion of the trial judge," Court TV's chairman and chief executive officer Henry Schleiff said in a statement.

Leon told Senate Judiciary Committee members that he prefers "not to have cameras in the courtroom, but to provide special access for the press. Part of my concern is for the security of the jury and the witnesses."

Noting that prior to Sept. 11, Americans were concerned about the issue of information attainment, Cantwell asked each of the six appointees for their views on how to "balance the need for individual privacy against the issues of information collected by the government, or in other criminal investigations."

James Edward Gritzner, nominee to the U.S. District Court for the Southern District of Iowa, said: "There are two issues involved here: One would be a social issue, and the other would be a legal issue.

As a social issue, Gritzner said "people have an expectation of privacy, whether that has actually been provided to them by the Constitution or by statute. So they come to Congress and the courts with that expectation."

He added: "With regard to the legal expectation of privacy, certainly we know in constitutional law that there have been cases involving the concept of privacy. Whether they would apply to this situation [anti-terrorism] is still not a resolved issue."

Americans are looking at certain courts, he said, for "a high degree of vigilance in protecting their privacy the concept of being left alone, being able to maintain your personal records, your own personal lifestyle.

"They're looking to both the courts and the Congress for assistance in protecting them not only under the current circumstances, but I think they felt that way on Sept. 10."

Having served as a prosecutor on national security matters, Leon said it is going to be an "interesting and difficult challenge to see that privacy interests are weighed fairly."

Jay C. Zainey, nominee to the U.S. District Court for the Eastern District of Louisiana, said that the courts and Congress should "look closely at the U.S. Constitution" for guidance on privacy issues.

Robert E. Blackburn, who has been appointed to the U.S. District Court for the District of Colorado, said that it will be "exciting and challenging" if he is confirmed as a judge. "The district-court level is going to be the first line of defense, really the first opportunity to balance

two of our most important concerns: our fundamental right to privacy, perhaps our most cherished civil liberty, and our growing concerns about national security," he said, adding that there is a "well-developed body of law for jurisprudence on both of these issues."

There were two other issues that committee members raised at the hearing. Sen. Chuck Grassley (R-Iowa) asked the nominees to comment on their experience with alternative dispute resolution. Calling it an "amazingly successful" process, Gritzner said he used it in his practice, and he would be "encouraged to use it to cut as much court time as possible."

Sen. Tom Harkin (D-Iowa), who introduced Gritzner and U.S. District Judge Michael Melloy of Cedar Rapids, nominee to the U.S. Court of Appeals for the 8th Circuit, raised the subject of federal criminal sentencing procedures. Harkin brought up the case of an Iowa man, Dane Allen Yirkovsky, sentenced by Melloy to 15 years in federal prison for possession of a single .22-caliber bullet.

"What sort of country is this when you can get 15 years for possessing a single bullet?" he asked.

Harkin said that when he voted for mandatory-minimum sentencing, he was "trying to give judges the right to judge." But after reading about Yirkovsky's case in an editorial in the Jan. 21 edition of The Des Moines Register, he said: "I was wrong. I think it's turned into a sentencing nightmare."

Asked to comment on mandatory-minimum sentencing, Melloy said: "There have been certain cases where mandatory minimums have been imposed and I wished I had more discretion. Cases where I felt somewhat constrained. Yirkovsky is probably one of them, quite frankly."

Private Labor Lawyer Nominated for Spot on U.S. District Court

The Associated Press
Wednesday, January 30, 2002

A private labor lawyer who has never tried a case in federal court but served as a legal and political adviser to U.S. Sen. Lincoln Chafee is being recommended for a spot on the U.S. District Court in Rhode Island.

Chafee said Wednesday he has recommended that President Bush nominate William E. Smith, 42, of East Greenwich, to the court to fill a spot being vacated by retiring Judge Ronald Lagueux.

Chafee and Smith have known each other for about a decade, when Chafee became mayor of Warwick and Smith's law firm, Edwards & Angell, began doing legal work for the city. Smith served as the city solicitor, heading a team of Edwards & Angell lawyers as the city's counsel. "Right away, we had a number of contentious issues," Chafee said, noting a longstanding labor dispute with local teachers, a scandal that rocked the police department and a spate of disability-related retirements in the city. "Will was there every step of the way, giving advice."

Chafee, a Republican, recommended Smith to President Bush in a letter sent on Wednesday. The senator said he expected Smith would be interviewed at the White House within the next two weeks.

If Bush nominates Smith, Chafee said he hopes it could be approved by the summer.

Smith, a native of Idaho where his father was a longtime state judge, received a law degree from Georgetown University in 1987. He is married and has two children.

Smith said he felt honored to have been recommended by Chafee. Smith, who served as staff director of Chafee's state office from January 2000 to January 2001, said he'd long harbored an ambition to be involved in public service.

"Being a federal judge is the highest form of public service, in my view, that any lawyer could be called to do," he said during a news conference on the steps of the federal courthouse in Providence. "It's the way I grew up."

Smith also served as a municipal court judge in West Warwick from 1993 to 1998, presiding over cases involving town ordinances, building codes, zoning and traffic violation complaints.

Chafee said he wasn't concern about the possible perception of patronage. He added that he has confidence that Smith has the requisite skills to be a federal judge.

"Yes, of course I do, or I wouldn't nominate him," Chafee said.

Second Pickering Hearing Slated; NAACP Questions Record

By Jason Straziuso
The Associated Press
Thursday, January 31, 2002

State NAACP leaders say Judge Charles Pickering has shown a "hostile attitude" toward civil rights cases - something the group will attempt to prove at the district judge's second nomination hearing next week.

Pickering, the father of Rep. Chip Pickering, R-Miss., has been nominated for a seat on the 5th U.S. Circuit Court of Appeals in New Orleans.

He had his first hearing in October. A second hearing has been set for Feb. 7, Senate Judiciary Committee spokeswoman Mimi Devlin said. Democrats insisted on a second hearing to review the Mississippi judge's unpublished opinions.

L.A. Warren of the Mississippi branch of the National Association for the Advancement of Colored People said Thursday his organization has forwarded six Pickering decisions to the

Judiciary Committee for review.

Warren said the six cases involve discrimination, labor and women's rights issues and will likely be brought up at next week's hearing.

"There's a pattern of a hostile attitude," Warren said. "It's the way he handled those cases by prolonging them. He controls the evidence that gets to the table. In a sense, that affects the outcome of the case."

Pickering said Thursday he looked forward to testifying before the committee, but he won't comment on specific issues until then.

A spokesman for Sen. Trent Lott, R-Miss., said that Pickering has broad support.

"The people in Mississippi that know Judge Pickering know his integrity and understand that he is a well-qualified judicial nominee," Lee Youngblood said.

The Judiciary Committee has received 37 support letters for Pickering, including letters from former Democratic Gov. William Winter and 10 former presidents of the Mississippi Bar Association, Senate records show.

The committee has received 26 letters in opposition, mainly from women's and civil rights groups, including the Magnolia Bar Association, a mostly black lawyer's group.

In highlighting one of the six cases, Warren said Pickering heard a case in 2001 brought by Britton Mosely Sr., a black man, who alleged in a federal lawsuit that he was set up on drug charges and wrongly dismissed by the Mississippi Department of Corrections.

The alleged drug setup was caught on tape by Mosely, Warren said.

Warren said that Pickering heard the Mosely tape outside the courtroom and then didn't allow the tape into evidence.

Another issue that groups opposed to Pickering have raised is his 1990 testimony to become a U.S. district judge.

According to Senate records, Pickering testified he "never had any contact with the Sovereignty Commission," Mississippi's now-defunct segregation watchdog agency.

However, a 1972 letter in the commission's files said Pickering, while a state senator, had "requested to be advised" by the commission about a group organizing pulpwood workers.

Schauder, Andrew

From: Schauder, Andrew
Sent: Monday, February 4, 2002 7:05 PM
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Subject: judicial media review
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Media Review - Judicial Nominations
Monday, February 4, 2002

General Judicial Articles

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Omaha World-Journal, February 1, 2002

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Pittsburgh Post-Gazette, February 1, 2002

Transcripts/Members of Congress

NONE

Interest Groups/Press Releases

NONE

General Judicial Articles

NAACP: Tape to Damage Pickering

The Clarion Ledger
Friday, February 1, 2002

NAACP officials said Thursday all the information needed to keep U.S. District Judge Charles Pickering from being appointed to the 5th U.S. Circuit Court of Appeals is on a cassette tape.

Only they didn't play the tape, nor did they say what was said on it.

Instead, L.A. Warren, chairman of the Mississippi NAACP Legal Redress Committee said, national NAACP officials have decided to let the tape be played for the first time at Pickering's Feb. 7 hearing before the Senate Judiciary Committee during which Democrats are expected to

question the judge again.

Warren said his organization has forwarded six opinions involving discrimination, labor and women's rights issues to the committee. "There's a pattern of a hostile attitude," he said. "It's the way he handled those cases by prolonging them."

Pickering said Thursday he looked forward to testifying to the committee but couldn't comment on specific issues until then.

A spokesman for Sen. Trent Lott, R.-Miss., said Pickering has broad support.

"The people in Mississippi that know Judge Pickering know his integrity and understand that he is a well qualified judicial nominee," said Lott spokesman Lee Youngblood.

The Judiciary Committee has received 37 support letters for Pickering, including letters from former Democratic Gov. William Winter and 10 former presidents of the Mississippi Bar Association, Senate records show.

The committee has received 26 letters in opposition, mainly from women's and civil rights groups, including the Magnolia Bar Association.

Pickering supporters planned and then cancelled an afternoon news conference to rebut NAACP allegations because they said they felt there was nothing of substance to respond to.

In highlighting one of the six cases sent to the Judiciary Committee, Warren said Pickering heard a case in 2001 brought by Britton Mosley Sr., who alleged in a federal lawsuit he was set up on drugs and wrongly dismissed by the state Department of Corrections because of his race. Mosley is black. The alleged setup, Warren said, was caught on tape by Mosley.

He said Pickering heard the Mosley tape outside the courtroom and then didn't allow the tape into
evidence.

After the news conference, Mosley said of the tape, "I think it's going to have a profound effect."

Judge's Record: What Was Left Out

By Jonathan Groner
Legal Times
Monday, February 4, 2002

You won't get the full story on Charles Pickering Sr. from liberals' portrayal of his life and record

As a young lawyer in Jones County, Miss., in the 1960s, Charles Pickering Sr. helped put

Klansmen in jail.

In the early 1990s, when preservationists and black activists clashed over a "colored only" sign in a county courthouse, Pickering helped craft a compromise that the black community applauded.

And as a federal trial judge, Pickering has tried to keep young African-Americans out of the criminal justice system, convening a group of local civic leaders to try to solve the problem.

When the Senate Judiciary Committee meets Feb. 7 to consider Pickering's nomination to the U.S. Court of Appeals for the 5th Circuit, his liberal opponents won't be focusing on these aspects of the nominee's record.

Liberal activists have combed through the decisions that Pickering has written in 11 years as a U.S. district judge in Hattiesburg, Miss., and have concluded that Pickering's confirmation "poses a grave danger to our rights and liberties."

But a Legal Times analysis of Pickering's important rulings, as well as interviews with community leaders in his home state, offers an alternate view to the liberals' conclusions that Pickering is racially insensitive and indifferent to constitutional rights.

As a potentially explosive showdown approaches, the record indicates that the judge is a more complicated individual than the foe of civil rights
that the liberals have depicted in their position papers.

This will be the second go-round on Pickering. A barely noticed Judiciary Committee hearing took place Oct. 18 during the anthrax scare, five months after Pickering's nomination. At the time, hundreds of the judge's unpublished rulings were not available, and Democrats reserved the right to call him back.

The campaign against Pickering's nomination has been led by women's rights, civil rights, and abortion rights groups. They have focused on the judge's consistently conservative record on employment discrimination, voting rights, abortion, and criminal law.

According to his opponents, Pickering often "injects his personal opinions" and "bias" into cases he handles. On civil rights, the groups regard him, in the words of Alliance for Justice leader Marcia Kuntz, as "a throwback to the days of the segregated South."

But a look at the 64-year-old Pickering's record shows that although he has often ruled against civil rights claims, the facts of the cases have often tilted strongly against the litigants claiming discrimination.

And although in some voting rights cases he has doubted the correctness of relevant Supreme Court decisions, he has followed the law in making his rulings.

One thing is clear: Pickering often voices his personal views on hot-button social issues in his opinions-even when such discussion isn't strictly necessary. These dicta have made him an easy target for liberal opponents.

Between Races

Pickering declines comment through a White House spokesman. Several people -- both black and white -- who know Pickering say the nominee has worked to achieve racial harmony in a county that for decades was sorely lacking in that quality.

"He's conservative, no question about that," says Susan Vincent, the mayor of Laurel, Miss., a town of 19,000 that is the county seat of Jones County, where Pickering grew up in the 1940s and 1950s. "He is also a very fair person."

"All his life he has been a leader in efforts to achieve equity and human rights," says Vincent, who is white and describes herself as a political moderate. "To say that he is in any way racially biased is unjust."

Says Johnny Magee, a Laurel bookstore owner and city council member who is African-American: "Pickering is not perfect -- no one is -- but he has courage. He was involved as a county prosecutor in fighting against the Ku Klux Klan and helped put Klansmen behind bars. That was something you just didn't do in Jones County in the 1960s."

Magee says his own stepson came before Pickering to be sentenced on drug charges. The young man "is currently serving time, and he deserves it," says Magee. "But Pickering dealt with him completely fairly."

In fact, Magee says that Pickering, sometime after he took the bench in 1990, called together the county's civic leaders to develop after-school programs "to keep black males from coming into his court on criminal charges."

Thaddeus Edmonson, the president of Laurel's city council and a leader of the black community there, says Pickering "is very sensitive on racial issues and always makes sure that they are safeguarded in his court."

Edmonson, a newspaper owner who was president of the local chapter of the National Association for the Advancement of Colored People in 1995 and 1996, recalls that about a decade ago, African-American citizens were upset about seeing the words "white" and "colored" engraved next to water fountains at the county courthouse in Ellisville, Miss., near Laurel.

Segregation, of course, hadn't existed for a quarter century, but the words were still carved into the courthouse wall. Historians wanted to keep them on the building as a record of bygone times.

Pickering along with Edmonson and Vincent -- served on a biracial commission that decided to retain the dual fountains, but cover the offending words with plaques.

"He understood that those things were offensive and had to be removed," Edmonson says.

Carey Varnado, a Hattiesburg litigator, says that, as a state senator in the 1960s, Pickering testified in court that a Klansman "was known to have a bad reputation in the community. That required a great deal of personal courage for someone with four young children.

"It's unfortunate that some members of my party are making a political football out of this nomination," says Varnado, a white Democrat who thinks liberal groups are deliberately picking a fight with Senate Minority Leader Trent Lott, a Mississippian who is a longtime friend of Pickering's.

The Record Speaks

The liberal organizations, such as People for the American Way, the Alliance for Justice, and the National Abortion and Reproductive Rights Action League (NARAL), say they are simply reading the record of Pickering's rulings as a district judge.

There is little question, based on Pickering's stances as a legislator, that he is personally anti-abortion, although he has never been called upon to rule on an abortion case. As a Mississippi state senator in the 1970s, Pickering led the effort to approve an anti-abortion plank in the 1976 Republican platform. The nominee testified at his earlier hearing that he would consider it his "duty as an appellate . . . judge to follow" Roe v. Wade.

Pickering has testified that he has been reversed or sharply criticized by the 5th Circuit 28 times, although full information is not yet available about all of Pickering's 1,000 unpublished rulings, and it has not been shown that Pickering was reversed more often than other district judges in his circuit.

On the civil rights front, liberals point to several employment discrimination cases that Pickering decided.

In Foxworth, et al. v. Merchants Co., an unpublished opinion from 1996, two blacks who owned a grocery store sued a supplier under the civil rights laws because the supplier stopped extending credit to them. Pickering ruled in favor of the supplier.

The liberal groups highlighted the "harsh" language that Pickering used: "When an adverse action is taken affecting one covered by [civil rights] laws, there is a tendency on the part of the person affected to spontaneously react that discrimination caused the action. All of us have difficulty accepting the fact that we sometimes create our own problems."

What the liberals did not point out is that the supplier canceled the credit terms after both store owners were arrested and indicted for allegedly threatening to murder a federal official. (They were later acquitted.) Pickering found that these serious criminal charges represented a "valid nondiscriminatory reason" for the supplier's

business judgment to cancel the credit arrangement.

The groups also omit from their position paper Pickering's comment in the same case: "America's basic racial problem, if it is to be solved, must be solved by men and women of goodwill, both black and white. There must be understanding and effort on the part of both races and there must be acceptance of responsibility for individual actions."

In Seeley v. City of Hattiesburg, a 1998 case, a black firefighter was fired and claimed a civil rights violation. Pickering granted summary judgment against him, finding that he was fired for insubordination and for repeatedly showing up late at work. There was "not one iota" of evidence
of racial bias, he ruled.

People for the American Way criticized Pickering for writing in Seeley that "the fact that a black employee is terminated does not automatically indicate discrimination. . . . This case has all the hallmarks of a case that is filed simply because an adverse employment decision was made in regard to a protected minority."

Pickering also wrote that "cases such as this case make it more difficult to guarantee that no American is discriminated against because of race or color. If employers are confronted with a frivolous lawsuit every time they discharge a person who is a protected minority, they will become calloused and cynical and less likely to be sensitive to real discrimination."

Elliot Mincberg, People for the American Way's legal director, replies, "What we are concerned about is not the results in the cases, but the fact that he goes out of his way to disparage the plaintiffs. When he writes that this case is an unwanted effect of the anti-discrimination laws, this reflects a hostile attitude and sends a message to future plaintiffs. That's very troubling to us.

"It's insensitivity to civil rights principles, not deliberate racism," says Mincberg. "But that is particularly troubling for an appellate judge. There is not a single smoking gun. This is a mosaic."

Mincberg also points out that the national and state NAACP have come out against Pickering, as has the Magnolia Bar Association, a predominantly black Mississippi bar group.

In the voting rights area, Pickering's opponents point to his decisions on redistricting and similar issues.

Regarding Fairley v. Forrest County, a 1993 ruling, liberals criticize Pickering for including in his opinion a lengthy digression on the history of the one-person/one-vote doctrine in the Supreme Court and for casting doubt on the doctrine, which he said could at times be applied too rigidly.

However, Pickering concluded that as a district judge, he was "bound to follow the precedents established by prior controlling judicial decisions."

The actual holding in the case -- which is supported by considerable precedent was that a Mississippi county did not have to hold special elections to remedy racial deviations in districts used to elect local officials.

Adam Shah, a lawyer at the Alliance for Justice, says that when there is a per se violation of the Voting Rights Act, which Pickering found, "the normal remedy is to have special elections, which he refused to order."

The case was not appealed to the 5th Circuit.

Op/Eds

End the Judicial Logjam. U.S. Senator's Remarks Indicate Consideration of Appointees May Speed Up

Omaha World-Journal
Friday, February 1, 2002

Democrats and Republicans offer differing explanations about why the U.S. Senate has failed to hold hearings, let alone vote, on dozens of federal judicial nominations put forward by President Bush.

Sen. Patrick Leahy, D-Vt., chairman of the Senate Judiciary Committee, notes that Democrats gained control of the Senate only last June. Democrats, he says, have approved judicial nominations at a faster clip than Republicans did during the Clinton administration. Alberto Gonzales, counsel to President Bush, describes things another way. Bush nominated a record 90 judicial candidates during his first year in office, Gonzales says, yet the Senate has voted on fewer than half of them. Votes were taken for only six of Bush's 29 nominees for the courts of appeals.

Gonzales quotes statements by Leahy from 1998, when the Vermont senator lamented a "vacancy crisis" and argued that the Republican-controlled Senate's slowness in considering Clinton judicial nominees was "delaying or preventing the administration of justice." A vacancy "crisis" could be said to still exist, Gonzales claims, given that 101 of 853 circuit and district court judgeships are vacant, as are 31 of 167 circuit court of appeals positions.

The president's attorney notes that Leahy has termed the American Bar Association's evaluation of judicial nominees to be the "gold standard" by which such appointees should be judged. But while the ABA declared Bush's first 11 nominees to be "well qualified" or "qualified," hearings have been held for only three of the nominees, Gonzales says.

Last Friday, Leahy spoke to the Senate on this topic. His remarks were encouraging. The Vermont lawmaker promised to schedule nomination hearings at a pace that exceeds that of the past six years. The hearings will include controversial appointees, he said. (Often, such nominations have tended to remain stalled without hearings.)

Sen. Orrin Hatch, R-Utah, offered a reasonable goal, saying the Senate should aim to confirm 100 judicial appointees this year, the same number as were confirmed during Clinton's second year in office.

The Senate need not rubber-stamp Bush's nominees. Political disagreement is inevitable in considering judicial nominations. But the process can't work unless the way is cleared for the senators to vote. Which is why Senator Leahy's promise of a speeded-up process is welcome. In the months to come, the senator should be held to his word.

Judge the Judges; Expedite Hearings for Bush's Nominees

Pittsburgh Post-Gazette
Friday, February 1, 2002

For reasons of principle and parochialism, we hope the Democratic-controlled Senate Judiciary Committee will move expeditiously on President Bush's nominations to the vacancies on the U.S. District Court here.

Last week Mr. Bush nominated three widely respected Pittsburgh lawyers to the federal trial court: Joy Flowers Conti and Art Schwab, both from the firm of Buchanan Ingersoll, and Allegheny County Solicitor Terry McVerry, a former Common Pleas Court judge. Mr. Bush also has nominated a well-regarded District Court judge, D. Brooks Smith, to the 3rd U.S. Circuit Court of Appeals.

There are currently four vacancies on the District Court. When U.S. District Judge William Standish takes senior status in March, that number will grow to five. And if Judge Smith is confirmed for the appeals court, there will be six vacancies. Locally and nationally, the work of federal courts has been held up in recent years by partisan squabbles between the White House and the Senate. First it was the Republican-controlled Senate that balked at acting expeditiously on nominations by Bill Clinton. Now, despite protestations to the contrary, the Democrats who control the Judiciary Committee are showing more deliberation than speed in acting on Mr. Bush's nominations.

In one respect, the Bush administration contributed to the delay by abandoning a bipartisan practice of running potential judicial nominees past the American Bar Association. But the ABA will still have its say because the Democrats in charge of the Judiciary Committee have indicated they will invite the bar group's opinion.

The Bush administration, echoing long-standing complaints by conservative legal commentators, suggests that the ABA allows political ideology to color what should be a purely professional evaluation of potential federal judges.

One of the Western Pennsylvania nominees, Mr. Schwab, is offered as a case study in such bias. He complained several years ago that ABA screeners opposed his candidacy for a federal

judgeship because of his conservative religious and political views, not because of any problems with his legal preparation.

That accusation -- and the Bush administration's more general complaint about bias -- should put the bar group on notice that it will have to justify its judgments about nominees on neutral grounds. If it can do so, its advice can be helpful to the Senate. But in the end it is the Senate that must decide whether to advise and consent to the president's choice. It should do so expeditiously -- and put aside the partisan bickering of the past.

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Subject: judicial media review
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Please see attached review

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Thursday, February 7, 2002

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General Judicial Articles

Fight Over Judicial Nominee Resumes

By Neil Lewis
The New York Times
Wednesday, February 6, 2002

The case of Judge Charles W. Pickering of Mississippi, who has been nominated to a federal appeals court post, may be the beginning of the long-expected war over judicial nominations in the Bush presidency.

Civil rights and abortion rights groups have selected Judge Pickering, now a federal trial judge, as their first major target for defeat, and some Democratic senators on the Judiciary Committee have suggested they might be inclined to block the nomination. The White House and Senate Republicans have vowed to fight to the end to see Judge Pickering confirmed to the United States Court of Appeals for the Fifth Circuit, based in New Orleans.

Judge Pickering, 64, a Mississippi native and longtime friend of Trent Lott, the Senate Republican leader, will appear before the Senate Judiciary Committee on Thursday for an unusual second public hearing to discuss his record.

Two competing depictions of Charles Pickering have been put forward. His opponents describe him as "a throwback to the old, segregated South," in the words of Marcia Kuntz from the Alliance for Justice, one of the liberal Washington-based groups opposing the nomination.

His supporters have portrayed him almost as a kind of Atticus Finch, the heroic lawyer standing against bigotry in the novel "To Kill a Mockingbird." They say he has been a progressive figure on racial issues in Mississippi, and they praised him for testifying against a Ku Klux Klan leader

at a murder trial in the 1960's.

Both sides have lined up rosters of people, especially black Mississippians, to support their version.

The case also provides another opportunity to consider the vexing issue of whether there is a moral or political statute of limitations on a Southerner's racial views; whether it is fair to blame someone for ideas held 30 or 40 years ago.

Most, but not all, of the evidence marshaled against Judge Pickering involves his behavior as a young man from 1959 to 1964. In 1959, while a student at the University of Mississippi law school, he wrote a three- page note for the law review, pointing out flaws in the state's law prohibiting marriages between blacks and whites. The antimiscegenation law, he said, was vulnerable to attack unless changes were made by the Legislature. They were.

L. A. Warren, an official of the Mississippi state conference of the N.A.A.C.P., said the 1959 article should still count in judging the man.

"This was a man who wanted to preserve the Southern way of life and that meant racial separatism," Mr. Warren said in explaining his organization's vote to oppose the nomination.

Mr. Warren also said that in Judge Pickering's early years as a lawyer in the 1960's, he was a partner of Lt. Gov. Carroll Gartin, a staunch segregationist. Mr. Warren said that he was not bothered that raising the issue of partnership amounted to guilt by association and that the partnership demonstrated Mr. Pickering's sympathies.

He also criticized Mr. Pickering's decision in 1964 to bolt the Democratic Party and become a Republican. "You have to understand that the only issue in the Mississippi Democratic Party in 1964 was whether the party was going to open some of its offices to black people," Mr. Warren said.

News articles at the time quote Mr. Pickering as attributing his move to a judgment that the national Democratic Party was too liberal for him.

James King, a black political consultant affiliated with the Republican Party, who has known Judge Pickering for more than 25 years, said he generally discounted instances of racial rivalry in Mississippi in the early 1960's.

"Back then, relations were quite heated," Mr. King said in an interview. "There was lots of hard, strong feelings on all sides."

He said he was stunned that anyone would charge that Mr. Pickering was insensitive on the issue of race. When Mr. Pickering was Jones County party chairman in 1976, Mr. King said, he reached out to black Republicans and made him the county's first black party official.

"He has always been my mentor," Mr. King said.

The one more recent issue about race involves Judge Pickering's statements about his connection to Mississippi's Sovereignty Commission. The commission was a notorious state agency dedicated to retaining segregation and causing difficulty for civil rights activists, especially those from out of state.

When he was first nominated for the trial court in 1990, Mr. Pickering testified before the Judiciary Committee that he had no connection to the agency and knew little of its activities. But he is likely to be challenged at Thursday's hearing about that statement by senators who have since obtained records of the commission that were released in 1998. The records show that Mr. Pickering, then a state senator, asked a senior commission official to keep him informed about a fractious labor dispute at a Masonite plant in Laurel, his hometown.

The issue of abortion rights and Judge Pickering is more straightforward but also illuminates a contemporary question about evaluating judicial nominees: Should Judge Pickering's undisputed personal opposition to abortion be considered or is it obviated by his pledge to uphold the law no matter his own views?

There is little doubt that Judge Pickering has been an ardent opponent of abortion rights. He was the moving force behind the Republican Party's first platform plank in 1976 calling for a human life amendment.

Kate Michelman, the president of the National Abortion Rights Action League, said: "The circuit courts are where the boundaries on the right to choose are being worked out. This man would turn back the clock on progress."

Senator Edward M. Kennedy, a Massachusetts Democrat and member of the Judiciary Committee, said through a spokeswoman this week that he had "serious concerns about Judge Pickering's record in upholding civil rights and reproductive rights" and planned to question him closely on Thursday.

The committee held a hearing on the Pickering nomination on Oct. 18, but it was little noticed because of the events of Sept. 11. Democrats insisted that another hearing be held after they learned that Judge Pickering had issued more than 1,000 unpublished opinions during his time on the bench. That is highly unusual volume, as unpublished opinions are supposed to be only for routine, noncontroversial matters, and most of the times Judge Pickering has been reversed involved unpublished opinions.

Senator Lott has been unrelenting in his support. Judge Pickering's son, Charles W. Pickering Jr., used to work for Mr. Lott and is now a congressman from Mississippi.

"Judge Pickering has been an outstanding, effective district court judge who is extremely qualified and supported by a broad group of Republicans and Democrats from our state," Mr. Lott said in a statement. "Unfortunately, he is being subjected to unnecessary partisan

harassment and obstructionism."

The Next Big Fight

By Byron York
National Review Online
Wednesday, February 6, 2002

It hasn't received much attention in the wake of Enron, the president's budget, and the Axis of Evil, but this week Senate Democrats plan to begin the first major judicial-confirmation battle of the Bush administration. At issue will be the nomination of Charles W. Pickering Sr., a 64-year-old federal judge in Mississippi picked by President Bush to be on the Fifth Circuit Court of Appeals.

Pickering was first appointed to the U.S. District Court by President George H. W. Bush in 1990. He was unanimously approved by the Senate Judiciary Committee and confirmed unanimously by the Senate as a whole. Now, after amassing a record of more than 11 years on the federal bench, he has received the American Bar Association's highest "well-qualified" rating, but faces intense questioning from Democrats on the committee - including some of the same Democrats who voted to confirm him in 1990. At confirmation hearings scheduled for Thursday, Democrats plan to attack Pickering on a familiar litany of issues: race, religion, and abortion. As in past nomination battles, Democratic opposition has been preceded by a publicity campaign against the nominee coordinated by liberal interest groups. In this case, that campaign is being led by People for the American Way (PFAW), which attacked Pickering's record in a detailed report released January 24. "Achieving ideological domination of the federal judiciary is the top goal of right-wing activists inside and outside the Bush administration," PFAW head Ralph Neas said when the report was released, "and judges like Charles Pickering are the means to that end."

In 35 single-spaced pages, the PFAW report levels dozens of accusations against Pickering. They are worth examining in some detail because they suggest the emergence of a new standard of opposition by groups fighting Bush administration judicial nominees. Facing candidates for the bench who have been carefully selected and vetted by the White House - candidates without any obvious professional or personal deficiencies - groups like PFAW have been forced to work more diligently than ever to weave a tapestry of accusations that suggest that a given candidate is "insensitive" or "indifferent" to critical constitutional protections. In Pickering's case, PFAW then argues that such alleged insensitivity constitutes a "troubling pattern" of behavior that disqualifies Pickering for a place on the federal appeals court. While the charge sounds quite ominous, a close look at the case shows that there is little, if any, evidence to support it.

Mississippi Burning

The PFAW report begins with the issue of civil rights. While Neas does not accuse Pickering of racism, he writes that Pickering's record "does not demonstrate an affirmative commitment to civil rights protections." Indeed, the report continues, Pickering's record "reflects insensitivity and even hostility toward key principles and remedies that now safeguard civil rights, and

indifference toward the problems caused by laws and institutions that have previously created and perpetuated discrimination."

It is a painstakingly worded statement, suggesting that PFAW has delved deep into Pickering's history to discover alleged racial insensitivity. Indeed, a major document in the nomination fight is a three-page law-review article that Pickering wrote in 1959 as a 21-year-old freshman at the University of Mississippi Law School. The article analyzed the language of the state's ban on interracial marriage, but did not express either approval or disapproval of the law itself. (At the time, 24 states, mostly in the south and west, but also including Delaware, had such laws.) Pickering wrote that Mississippi lawmakers made a technical mistake in the wording of the law, which led to the reversal of a 1942 conviction of a black woman who married a white man. Although Pickering wrote that "recent decisions in the fields of education, transportation, and recreation would cause one to wonder how long the Supreme Court will allow any statute to stand which uses the term 'race' to draw a distinction," he concluded that Mississippi state lawmakers should correct the mistake in the wording of the interracial marriage ban, "if [the law] is to serve the purpose that the legislature undoubtedly intended it to serve."

The PFAW report criticizes Pickering for failing to take the opportunity to express moral outrage about the law. Pickering later said the topic was suggested to him by a professor in the freshman law class and that he wrote the article as an "academic exercise." In confirmation hearings, Pickering told the Senate flatly that "who one marries is a personal choice and that there should be no legislation on that." Beyond that, it appears Pickering has made just one other public statement on the topic of interracial marriage in the 43 years since the law-review article was published. In a 1991 case, Pickering overturned a damage award given by a jury to a couple who had sued the WalMart company. Pickering said he believed the jury was biased against the couple because they were mixed race- a white man and Asian woman. Saying the bias had led the jury to set the award too low, Pickering ordered a retrial on the issue of damages, which resulted in a larger award for the couple.

Another PFAW criticism of Pickering on the issue of race concerns the question of whether he ever had any "contact" with Mississippi's racist Sovereignty Commission. The commission, which received state funds, had been created to resist desegregation in the days immediately following the 1954 Brown v. Board of Education decision. It had its heyday in the 1950s and 1960s, fell into disarray in the early 1970s, and was abolished in 1977. At his confirmation hearings in 1990, Pickering told the Senate that, "I never had any contact with [the commission] and I had disagreement with the purposes and the methods and some of the approaches that they took....This commission had, in effect been abolished for a number of years. During the entire time that I was in the State Senate [Pickering served as a state senator from 1972 until 1978], I do not recall really the commission doing anything. It was already de facto abolished. It was just not functioning."

The PFAW report says that in fact Pickering had a brief conversation, in 1972, with a commission staffer, and thus, contrary to his testimony, he had indeed had "contact" with the commission. In the conversation, Pickering is said to have asked the staffer for information about a labor dispute in Jones County, Mississippi. It appears that Pickering had, by the time of his

1990 confirmation hearings, forgotten about the conversation, but in any event it appears the substance of the conversation concerned not any sort of racial bias on Pickering's part but rather his worries about violence committed by members of the Ku Klux Klan. Chet Dillard, the former district attorney of Jones County, has told the Senate Judiciary Committee that Pickering was worried about a labor dispute at a Masonite plant in which "union members who were also members of the KKK shot into and burned homes in the middle of the night and brutally beat up workers....As a state senator representing Jones County, Charles Pickering had every reason to be concerned about further union violence involving the Masonite plant in Jones County." Pickering's request for information about the labor dispute is apparently the entirety of his "contact" with the Sovereignty Commission.

The attacks on Pickering on the issue of race have genuinely baffled his defenders. They cite many actions on the issue of civil rights that contradict the description of Pickering as "insensitive or even hostile to key principles and remedies that now safeguard civil rights." For example, it is widely known that in 1967, as a county prosecutor, Pickering testified against Sam Bowers, an Imperial Wizard of the Ku Klux Klan, in a case in which Bowers was accused of firebombing the home of a civil-rights worker. According to a letter written on Pickering's behalf by Charles Evers, brother of murdered civil-rights activist Medgar Evers, "In 1967, many locally elected prosecutors in Mississippi looked the other way when faced with allegations of violence against African-Americans and those who supported our struggle for equal treatment under the law. Judge Pickering was a locally elected prosecutor who took the stand that year and testified in the criminal trial against the Imperial Wizard of the Ku Klux Klan, who was accused of firebombing a civil rights activist. Judge Pickering later lost his bid for reelection because he dared to defy the Klan, but he gained my respect and the respect of many others as a man who stands up for what is right."

The Klan case, although 35 years ago, stands out in many memories. "Pickering is not perfect - no one is - but he has courage," Johnny Magee, a black city councilman in Laurel, Mississippi, recently told Legal Times. "He was involved as a county prosecutor in fighting against the Ku Klux Klan and helped put Klansmen behind bars. That was something you just didn't do in Jones County in the 1960s."

And Pickering's defenders cite more than just one case. Pickering hired black staffers when few other Republicans or Democrats in Mississippi did. As a private lawyer he defended a young black man accused of robbing a young white woman in a rural grocery store, then stuck with the case through two trials, and finally won the young man's acquittal. He pushed the chancellor of the University of Mississippi to establish the Institute of Racial Reconciliation and then served on its board of directors. And he built a reputation for fairness. Johnny Magee told Legal Times that his stepson, convicted of drug charges, came before Pickering for sentencing. Magee told the paper that his stepson "is currently serving time, and he deserves it. But Pickering dealt with him completely fairly."

That Old Time Religion

Another issue on which PFAW criticizes Pickering is an alleged "disregard for the separation of

church and state by repeatedly using his position on the bench to promote involvement in religious programs." In particular, the PFAW report says that Pickering has used the occasion of handing out sentences to convicted offenders as an opportunity to promote his religious beliefs. For example, in 1997, when sentencing a man convicted in a conspiracy case involving murder, Pickering said,

It's too late for you not to pay a price for what you've done. However, it is not too late for you to form a new beginning. For yourself and others, I hope you will do that. You have a lot to offer. You can become involved in Chuck Colson's prison fellowship or some other such ministry, and be a benefit to your fellow inmates and to others and to their families. I hope you will have a new beginning, even in prison; that you will make a positive contribution to society. It won't be easy, but it can be done.

The PFAW report underlines the phrase "You can become involved in Chuck Colson's prison ministry" as evidence of Pickering's disregard for the separation of church and state.

In another case, according to PFAW, Pickering, when sentencing a man convicted of receiving and sending child pornography over the Internet, told the man, "In the penitentiary, there are many ways to become involved. There are many areas of service and ministry that you can engage in in the penitentiary." The PFAW report underlines the words "areas of service and ministry" as evidence of Pickering's disregard for the separation of church and state. And in yet another case, involving a man convicted of conspiracy to commit murder, Pickering told the defendant, ""You will involve yourself in some type of systematic program whereby you will be involved in the study and consideration of effects and consequences of crime and/or inappropriate behavior in a civilized society. This may be a program through your church or some other such agency or organization, so long as it is approved in advance by the probation service." The PFAW report underlines the words "through your church or some other such agency" as evidence of Pickering's disregard for the separation of church and state.

Far Right to Life

Ralph Neas and PFAW have also charged that Pickering is "a staunch opponent of women's reproductive rights." The PFAW report bases its case mostly on Pickering's service on the Republican platform committee at the party's national convention in 1976. Pickering chaired the Human Rights and Responsibilities subcommittee, which approved a plank calling for the repeal of Roe v. Wade. A few years later, while serving as a Mississippi state senator, Pickering voted for a resolution calling for a constitutional amendment outlawing abortion. The PFAW report cites no evidence of any Pickering actions or public statements on abortion since 1984.

While it seems clear that Pickering personally opposes abortion, it is also clear that he has never had an abortion case come before him during his years as a U.S. District Court judge. It is not possible to predict how he would rule in an abortion-related case, but his defenders point out that he has heard a few cases involving issues of sexual privacy. In 1994, for example, he heard a case involving Camp Sister Spirit, a lesbian community then being built in Ovett, Mississippi. A group of local citizens went to court in an attempt to stop the project, but Pickering dismissed the

case. (Camp Sister Spirit was established and still exists today.)

In another case, in 1991, Pickering sharply rebuked an attorney who brought up a plaintiff's homosexuality during a fraud trial. "Homosexuals are as much entitled to be protected from fraud as are any other human beings, but not any more so," Pickering told the jury. "The fact that the alleged victims in this case are homosexuals shall not affect your verdict in any way whatsoever." In still other cases, which did not involve sexual privacy, Pickering has made clear that he has not always agreed with laws which he nevertheless enforced. None of that suggests how Pickering would vote should he ever be faced with an abortion case, but it does suggest, as his defenders say, that Pickering's record "reflects that, as a judge, he has followed the law."

Too Good To Pass Up

The PFAW report makes other criticisms of Pickering that are not based on race, religion, and abortion. For example, it alleges that Pickering has a "troubling record of reversals in the Court of Appeals." The report says there have been 26 cases in which Pickering decisions have been overturned by the Fifth Circuit Court of Appeals. PFAW compares that unfavorably to Judge Edith Brown Clement (who now sits on the Fifth Circuit), who was overturned "in only" 17 cases. The report does not mention that Pickering's 26 reversals came out of a total of more than 4,000 cases, giving him a reversal rate of well under one percent. Using that standard, Clement's reversal rate is not much different. At most, the difference between Pickering's reversal rate and Clement's is one tenth of a percentage point - hardly evidence of anything, other than the fact that both judges have impressively low reversal rates.

Finally, PFAW has criticized Pickering for not publishing many of his opinions in those 4,000-plus cases. Legal guidelines discourage judges from publishing opinions which are made on the basis of unquestionably settled law without any extraordinary circumstances - a description that fits most cases. The guidelines do encourage judges to publish opinions that establish precedent or involve particularly instructive circumstances. Pickering has been quite modest about publishing his own opinions, which means that most of his written work is not in law books but in files at the U.S. District Court in Mississippi. The PFAW report suggests there may be damaging information in the "missing" opinions, and demands that they all be brought before the Senate Judiciary Committee. "We don't know what's in those missing rulings," Ralph Neas said on January 24, "but the rulings we do have make it clear that Pickering has opposed basic principles protecting civil rights and has sought to limit their application."

Given the paucity of evidence against Pickering, one has to ask why PFAW, along with other liberal interest groups, is attacking him with such energy. Perhaps the urge to label a 64-year-old white man from Mississippi as a racist is just too strong to resist. More likely, though, it appears that PFAW is acting because activist organizations need to act. PFAW and other groups have been promising constituents and donors that they would fight George W. Bush tooth and nail on the issue of judicial nominations. Yet more than a year of the Bush presidency has passed and there still has not been a major nomination battle. Of course, that owes in large part to Democrats' strategy of stalling nominations, but at some point push had to come to shove. Democrats and their interest-group supporters have been wanting a fight, and now, in the

unlikely case of Charles W. Pickering, they have one.

Black Congressmen Urge Rejection of Bush Judicial Nominee

By Christopher Lee
The Dallas Morning News
Thursday, February 7, 2002

The Congressional Black Caucus denounced one of President Bush's judicial picks Wednesday as a conservative ideologue with a record of bias against minorities and women.

The Senate Judiciary Committee should reject Charles W. Pickering Sr., a federal judge from Mississippi who is Bush's nominee to the U.S. Fifth Circuit Court of Appeals, said Rep. Eddie Bernice Johnson, D-Texas, the caucus chairwoman.

"We simply want judges that can render fair justice, and his record does not indicate that he is capable of doing that," Johnson said. Pickering could not be reached for comment Wednesday. Supporters defended him as experienced and even-handed.

"I think he would be totally fair to everyone," said Sen. Thad Cochran, R-Miss. "He has demonstrated his excellent capabilities as a U.S. District Court judge and he deserves this promotion."

The committee is scheduled to hold its second hearing on Pickering's nomination Thursday but will not vote on it. The first hearing was Oct. 18.

They say he once wrote in favor of a Mississippi state law banning interracial marriages and has consistently opposed abortion rights.

They also say he has been hostile to the Voting Rights Act and other civil rights laws in his judicial rulings on discrimination cases.

"It's the right thing to do to oppose him," said Rep. Bennie Thompson, D-Miss. "It's about his competence and his lack of sensitivity."

Pickering, the father of Rep. Charles W. Pickering Jr., R-Miss., was appointed to the federal bench by President George Bush in 1990. Supporters say his view on race have evolved since the 1950s and claim he is the victim of a political crusade by Democrats against the current President Bush's appointees.

"He's being subjected to unnecessary partisan harassment and obstructionism that is becoming typical of the handling of most of President Bush's nominees by the Democrat-controlled Judiciary committee in the Senate," said Ron Bonjean, spokesman for Senate Majority Leader Trent Lott, R-Miss.

Black Lawmakers Oppose Bush Nominee for Federal Appeals Bench

By Peter Boylan
Knight Ridder
Thursday, February 7, 2002

Representatives of the Congressional Black Caucus on Wednesday opposed confirming President Bush's nominee to the Fifth Circuit Court of Appeals in New Orleans.

Members of the caucus contend that Bush's choice, U.S. District Judge Charles W. Pickering Sr., is too conservative on criminal rights, abortion and, especially, civil rights.

Pickering, 64, of Jones County, Miss., faces a Senate Judiciary Committee confirmation hearing Thursday afternoon. The fifth circuit encompasses Texas, Louisiana and Mississippi, all states with large minority populations. A three-page law review note that Pickering wrote in 1959 while a student at the University of Mississippi Law School is a key issue for his opponents. The note identified weaknesses in the state law that banned marriages between blacks and whites and suggested ways of strengthening it. The legislature adopted some of Pickering's ideas.

Also challenged is Pickering's party switch from Democrat to Republican in 1964, a time when Mississippi Democrats were opening offices to blacks.

Pickering's black Mississippi supporters say his views evolved as the South evolved, and no allegations of segregationism are more recent than 1964. The 36-member Black Caucus opposes him unanimously, however.

"If we have judges with extremist views, we can't mete out justice in an impartial way," Rep. Donald Payne, D-N.J., said at a news conference to publicize the caucus's opposition.

Pickering's Judiciary hearing will be his second. Senators want to recover and review about 1,000
unpublished opinions he issued during his tenure as a federal judge. They learned at Pickering's initial hearing Oct. 18 that those opinions important in appraising a judge's views had never been printed for wide distribution. Since then, about 400 have been provided to the Judiciary panel.

"It is very unusual to have a second hearing," said Rep. Bennie G. Thompson, D-Miss. "There are 600 opinions out there in cyberspace, and that tells me that there is trouble."

"He has a consistent record of hostility," said Rep. Robert Scott, D-Va. "We have to insist that all his opinions be made available, so that we can get a clearer picture of the man."

Pickering, a longtime friend of Senate Minority Leader Trent Lott, R-Miss., also has run afoul of Sen. Edward M. Kennedy, D-Mass., an influential Judiciary Committee member. Kennedy will question Pickering on civil rights and reproductive rights, according to a spokeswoman.

Mississippian Charles Evers, brother of slain civil rights leader Medgar Evers, said the Black Caucus was off base in its reading of Pickering.

"There is nothing to show that he has anything against black folks," said Evers, who was on Capitol Hill to lobby for Pickering's confirmation. "He fought against the Ku Klux Klan when no one else in Mississippi would fight them. He was the first Republican Party chairman to reach out to the black folks and bring them into the party."

Pickering, a 1961 graduate of the University of Mississippi, is a federal judge in Mississippi's Southern District. He was a Mississippi state senator from 1972 to 1980.

His son, Charles Jr., a Republican congressman from Mississippi, declined comment on his father's pending nomination.

Bush's Nominee's Hearing May Start Judicial Battles; Testimonies Today Crucial

By Joan Biskupic
USA Today
Thursday, February 7, 2002

Mississippi federal trial Judge Charles Pickering testifies today before the Senate Judiciary Committee in his bid for an influential appeals court post, kicking off what likely will be a series of bruising fights over President Bush's judicial nominees.

Pickering, 64, a friend of Senate Minority Leader Trent Lott, isn't a typical appeals court nominee of the Bush administration, which for the most part has focused on young, nationally renowned conservative thinkers.

To many observers, Pickering is more a symbol of the Old South. He has drawn criticism from civil rights and women's groups that say his 12 years as a trial judge and earlier record in the segregated South suggest a hostility toward racial minorities. On top of all that, though, Pickering's hearings will offer a glimpse of the strategies that the White House, opposing Democrats and interest groups will employ during the battles over Bush's efforts to make the federal bench more conservative.

Top administration aides have been coaching Pickering for the hearing. They're trying to make sure the judge successfully addresses the criticism about his record.

Democratic senators have been trying to figure out how to effectively probe the nominee's attitudes on key issues such as racial discrimination, while Republicans are focusing on ways to shore up Pickering's reputation.

Lott has been lobbying his colleagues to support Pickering and has told reporters that "he will be confirmed."

Interest groups on the left and right have fired off dozens of statements to the media offering dueling versions of Pickering's record.

The Congressional Black Caucus held a news conference Wednesday to declare its opposition to Pickering.

At the same time, some black supporters of Pickering from Mississippi -- including Charles Evers, brother of slain civil rights leader Medgar Evers -- were at the U.S. Capitol to endorse Pickering's elevation to the U.S. Court of Appeals for the 5th Circuit. The circuit covers Mississippi, Louisiana and Texas.

"The outside interest groups have made clear that the nomination of Judge Pickering and other lower court nominees is warm-up practice for an eventual Supreme Court nominee," says Viet Dinh, assistant attorney general for the Office of Legal Policy. "It is unfortunate that they are trying to co-opt the Senate Judiciary Committee for their own political agenda."

Nan Aron, president of the liberal Alliance for Justice, says, "We need to make sure that the American public realizes what's at stake, and that Judge Pickering represents just the first threat to turn back the clock on rights for all Americans."

Sen. Dianne Feinstein, D-Calif., who will lead what is expected to be a packed hearing today, said through a spokesman that she will be looking particularly at Pickering's attitudes on race, abortion rights and women's equality.

Pickering, a former county prosecutor and member of the Mississippi state Senate, is the father of U.S. Rep. Charles "Chip" Pickering Jr., R-Miss. The elder Pickering was named to the bench by the first President Bush in 1990.

Opposition has emerged both to his record as a jurist and his earlier record in times of heated racial tension.

As a law student at the University of Mississippi, he wrote a short article about problems with the state's criminal penalties for marriages between whites and blacks. It suggested ways the statute could be legally enforced.

His possible connection years later to the infamous Mississippi Sovereignty Commission, which opposed integration and monitored civil rights activists, also is likely to come up during his hearings here.

During Pickering's confirmation hearing in 1990 for trial judge, he said he never had any contact with the commission, and he disagreed with its purposes. But recently released records from the commission that have been circulated by Pickering opponents suggest that he was quite interested in its work.

He has declined to comment, but his White House supporters say his record on race relations should be considered as a whole. They note that Pickering once testified against a Ku Klux Klan leader in a murder trial and has been active in promoting racial relations in many ways in Mississippi.

John Nowacki, of the conservative Free Congress Foundation, says, "The left conveniently chooses to ignore that he testified against the imperial wizard of the KKK in Mississippi in 1967, is on the board of directors of the University of Mississippi's Institute for Racial Reconciliation and has broad support among African-Americans who know him well."

Pickering's rulings on voting rights and other civil rights issues have been subject to competing interpretations as well.

How Pickering explains himself today could be crucial in senators' views of his record.

Separately, some women's groups are urging senators to reject Pickering largely because, as a Mississippi state senator, he opposed a woman's right to end a pregnancy and, at the 1976 Republican Convention, he led the drive to add anti-abortion language to the party platform.

As a judge, Pickering has never ruled on an abortion case.

NAACP Chairman Urges U.S. Senate to Reject Pickering Nomination

The Associated Press
Thursday, February 7, 2002

NAACP Chairman Julian Bond urged the U.S. Senate on Thursday to reject the nomination of U.S. District Judge Charles Pickering to a federal appeals court seat in Louisiana.

"Pickering is absolutely unsuited to be a federal judge... He has supported measures perpetuating voting discrimination against black voters; he has consistently opposed civil rights; he would deny women control of their bodies; and he would deny ordinary Americans access to the courts," Bond said. Bond said the Mississippi judge, while a law student, supported stronger criminal penalties for violating a ban at the time on interracial marriage.

"His supporters may have roped in defenders who are willing to betray their own civil rights origins, but Pickering stands so far outside the basic standards we expect on our courts, he must be rejected forthwith," Bond said.

Pickering was scheduled to appear Thursday before a Senate committee considering his nomination.

The Mississippi judge was nominated by President Bush in May to the New Orleans-based 5th U.S. Circuit Court of Appeals.

He appeared at an initial hearing before the Senate Judiciary Committee in October. Democrats forced Thursday's second hearing after asking to see Pickering's unpublished opinions.

Groups opposed to Pickering made one last stand Wednesday. Members of the Congressional Black Caucus spoke out in Washington D.C., while the Mississippi branch of the National Association for the Advancement of Colored People reiterated its opposition to the Hattiesburg, Miss., judge.

The caucus opposes Pickering because of what they call his conservative record as a state senator in the 1970s, and his record from the federal bench on voting rights and women's reproductive rights.

Committee Approves Bunning's Son for Judicial Post

The Associated Press
Thursday, February 7, 2002

The Senate Judiciary Committee unanimously endorsed David Bunning on Thursday to be a federal judge in Kentucky.

He is a prosecutor in eastern Kentucky and the son of Sen. Jim Bunning, R-Ky. The nomination now goes to the full Senate for consideration.

President Bush nominated the younger Bunning to be a U.S. District Court judge for the Eastern District of Kentucky in August.

The American Bar Association subsequently told the Judiciary Committee that it thought Bunning was unqualified for the lifetime post.

At a hearing last month, David Weiner, an attorney who investigated Bunning's qualifications on the bar association's behalf, noted that Bunning was two years shy of the 12 years of experience the ABA recommends for federal judges.

Weiner said nominees with less than 12 years should have an extraordinary breadth and depth of experience. He said Bunning's civil experience was shallow and his writings "read very much like the work of a young associate."

After Weiner completed his review, another bar association lawyer conducted a separate investigation and concluded Bunning was qualified. When the two reports were submitted to the ABA Standing Committee on Federal Judiciary, the panel sided with Weiner.

Black Caucus Campaigns Against Pickering Day Before Second Hearing

By Jason Straziuso
The Associated Press

Wednesday, February 7, 2002

U.S. District Court Judge Charles Pickering of Mississippi is back in the political hotseat Thursday, returning to the Senate committee that is weighing his federal appeals court nomination.

Groups opposed to Pickering made one last stand Wednesday. Members of the Congressional Black Caucus spoke out in Washington D.C., while the Mississippi NAACP reiterated its opposition to the Hattiesburg-based judge. The caucus opposes Pickering because of what they call his conservative record as a state senator in the 1970s, and his record from the federal bench on voting rights and women's reproductive rights, said Caucus spokeswoman Devona Dolliole.

After being nominated by President Bush in May to the New Orleans-based 5th U.S. Circuit Court of Appeals, Pickering had an initial hearing before the Senate Judiciary Committee in October.

Democrats forced a second hearing, scheduled for Thursday at 2 p.m., after requesting to see Pickering's unpublished opinions. The hearing will likely last one day.

"This is sort of an information gathering session," said Judiciary Committee spokeswoman Mimi Devlin.

Pickering has strong support from Senate Minority Leader Trent Lott and other state Republicans, who say opposition to the judge is politically motivated. Pickering is rated as well qualified by the American Bar Association.

The state NAACP has said it opposes Pickering for his conservative record and for testimony he gave in 1990 concerning contacts he had with the long-defunct state Sovereignty Commission - testimony the NAACP has called false.

L.A. Warren of the state NAACP's legal division said Wednesday his group also opposes Pickering because he worked in a law firm with Carroll Gartin in the 1960s.

Gartin was a lieutenant governor in the 1950s and 1960s who ran his campaigns on a segregationist platform. Warren says that Pickering's association with Gartin taints his record.

But former Democratic Gov. William Winter said such a relationship must be put into perspective of the times.

"Carroll Gartin was no racist," Winter said Wednesday. "He did, as did every political candidate in those days, give lip service to segregation. But Carroll Gartin was a relatively progressive leader of the time."

In a letter of support of Pickering, Winter told the Judiciary Committee that Pickering "has been one of this state's most dedicated and effective voices for breaking down racial barriers."

Winter also said that he and Pickering have worked closely together as members of the Institute for Racial Reconciliation at the University of Mississippi.

Senate Approves Martinez as Federal Judges

The Associated Press
Tuesday, February 5, 2002

The Senate confirmed Phil Martinez on Tuesday to a federal judgeship in the Western District of Texas.

Martinez, 44, is judge of the state' 327th District Court in El Paso. A vote on his nomination was delayed last year by a squabble between the Senate Democrats and the White House over farm legislation. Congress adjourn in late December without approving his nomination. The Democrat with a law degree from Harvard was nominated last year by President Bush and approved by a Senate committee in mid-December. Sens. Kay Bailey Hutchison and Phil Gramm, both Texas Republicans, had recommended Martinez.

"I'm just so grateful. I realize every day nobody gets to where they want to go on their own. I had great family support and I'm grateful to the president and the two senators as well," Martinez said.

The district's caseload is considered one of the heaviest in the country and Rep. Silvestre Reyes, D-El Paso, said Martinez' confirmation is long awaited.

"The Western District of Texas has been in dire need of support for a long time, and I have worked hard to secure this appointment. Martinez is highly qualified and I know he is the best candidate for this position. Now El Paso will receive some relief from its overburdened caseload," said Reyes, who also wrote letters of support to Bush on Martinez's behalf.

El Paso has 884 pending cases, which is twice the caseload of either San Antonio or Austin, Reyes said.

U.S. District Judge David Briones, currently the only federal judge in El Paso, has been using federal judges from districts in other states to help him chip away at a huge caseload, mostly filled with drug smuggling and immigration offenders.

His workload grew larger in June after the departure of Judge Harry Hudspeth who accepted senior status.

The confirmation now goes back to Bush to sign Martinez's commission. Martinez will then take an oath of office and start his new job. The final details are expected to be done next week.

Accusations Stall Jurist Nomination

By Jerry Seper
The Washington Times
Tuesday, February 5, 2002

The nomination of Washington lawyer Miguel Estrada as the first Hispanic jurist on the U.S. Court of Appeals for the D.C. Circuit continues to be delayed by Senate Judiciary Committee Democrats because of what Republicans say are unfounded accusations by a former top aide to Attorney General Janet Reno.

Former Deputy Solicitor General Paul Bender has publicly opposed the nomination, criticizing Mr. Estrada's qualifications and judicial temperament. This has become the mantra not only of committee Democrats but also of several liberal groups and others seeking to block the appointment.

Mr. Bender, known at the Justice Department as the "political deputy," said during a recent interview that Mr. Estrada was "too much of an ideologue to be an appellate judge you could not count on him to be fair or neutral I could not rely on his written work as a neutral statement of the law."

Those comments almost immediately found their way onto Internet sites and into fliers from several liberal groups and others opposed to the Estrada nomination. The Alliance for Justice referred to Mr. Bender on its Web site, saying, "Some who know Mr. Estrada have expressed concern about his ability to hear cases fairly."

The National Organization for Women, also citing Mr. Bender, said Mr. Estrada's "ability to listen with an open mind to different points of view" has been questioned.

But Mr. Bender's specific concerns over the Estrada nomination and his judicial qualifications remain unclear, although they have been extensively investigated by the American Bar Association and the National Hispanic Bar Association. Democrats have declined to elaborate on why the nomination has been held.

Mr. Bender, now a professor at Arizona State University, did not return calls to his office for comment.

The American Bar Association, with a membership of 400,000, gave Mr. Estrada its highest rating of "well qualified" after an investigation into his background and experience. A source close to the ABA probe said the inquiry included a "thorough review" of Mr. Bender's concerns.

Boston lawyer Roscoe Trimmier Jr., chairman of the ABA's standing committee on the federal judiciary, said the rating was approved by a unanimous vote, but he declined comment on any aspect of the investigation.

The National Hispanic Bar Association, with 25,000 members, also voted to ratify the

nomination. NHBA President Angel Gomez said that while the organization's inquiry was covered by privacy concerns, "I can tell you that after an extensive review of Mr. Estrada's record and his qualifications, he was ratified for endorsement by the board of governors."

A source familiar with the NHBA probe said investigators also reviewed Mr. Bender's concerns, but, like the ABA, voted to ratify his nomination.

Ronald A. Klain, former Clinton White House associate counsel and Justice Department lawyer who later served as Vice President Al Gore's chief of staff, also has endorsed Mr. Estrada's nomination. In a letter to Sen. Patrick J. Leahy, Vermont Democrat and Judiciary Committee chairman, he called Mr. Estrada "an outstanding candidate who merits confirmation."

Mr. Estrada, 40, a partner at the Washington law firm of Gibson Dunn & Crutcher, declined to comment on the nomination.

Meanwhile, Mr. Bender has come under fire by Republicans who have described his efforts against Mr. Estrada as a "one-man borking campaign," referring to the defeat by Democrats of Supreme Court nominee Robert Bork. Since that October 1987 vote, the word "borking" has come to mean discrediting someone with false accusations.

Mr. Bender, however, is no stranger to issues that incite contentious debate. He was publicly rebuked over his efforts to overturn the country's child pornography laws reprimanded by the Senate in a 100-0 vote and by President Clinton, who blocked his efforts to liberalize anti-smut statutes outlined in the Child Protection Act of 1984.

Senate Urged to Oppose Pickering

By Ana Radelat
The Clarion-Ledger
Thursday, February 7, 2002

Rep. Bennie Thompson and other members of the Congressional Black Caucus urged the Senate on Wednesday to oppose the nomination of Mississippi Judge Charles Pickering to the 5th U.S. Circuit Court of Appeals.

And Thompson, Mississippi's 2nd District congressman, criticized any black Mississippians who may travel to Washington today to show support for Pickering at the U.S. District judge's second hearing before the Senate Judiciary Committee.

"Jesus had 12 disciples; one of them betrayed him," Thompson said. "I'm sure there's a Judas who will come up and support him."

Several black Mississippians have written in support of Pickering's nomination, including U.S. District Judge Henry Wingate, a former member of the NAACP. In his letter, Wingate called Pickering "a committed Christian who recognizes that racism is incompatible with God's law,

who recognizes that racism is destructive and contrary to the lofty principles of our beloved Constitution."

Caucus members, however, cited Pickering's "insensitivity" to civil rights and women's issues as a reason he should not sit on the appeals court in New Orleans that hears cases from Mississippi, Louisiana and Texas.

"We simply want judges that can render fair justice," said Thompson, a Democrat.

President Bush selected Pickering, a U.S. District Court judge for the Hattiesburg-based Southern
District, in May to fill an opening at the appeals court. The Senate Judiciary Committee has scheduled a second hearing on his candidacy today.

Rep. Donald Payne, D-N.J., accused Pickering of "extremist views" and of opposing federal civil rights laws when the judge served in the Mississippi Senate in the 1970s.

Other black lawmakers accused Pickering of withholding hundreds of unpublished opinions.

"Without them, we can't get a whole picture of his record," said Rep. Bobby Scott, D-Va.

The Senate first considered Pickering's nomination in October. But several Democratic members of the Senate Judiciary Committee said they wanted to review nearly 1,000 of the judge's unpublished opinions Pickering had submitted only 75 opinions to the panel. Since then, the committee has received 939 opinions, 219 of these as recently as Wednesday.

Pickering is likely to be asked about some of those opinions that were later reversed by the 5th Circuit Court, including a case brought by a prisoner who said a jail rule prohibiting inmates from receiving magazines by mail violated his First Amendment rights to receive religious materials. Pickering dismissed the case, but the appeals court ruled for the prisoner, finding that Pickering had violated well-settled precedent.

Thompson predicted the vote on Pickering's nomination in the Senate Judiciary Committee composed of 10 Democrats and nine Republicans "could go either way." If Pickering, who is supported by Sen. Trent Lott, R-Miss., is approved by the panel, he's likely to be approved by the full Senate.

Civil rights and other special interests groups have also strongly opposed Pickering's nomination. Among those arrayed against the judge are the National Association for the Advancement of Colored People, People for the American Way, the National Abortion and Reproductive Rights Action League and the Leadership Conference on Civil Rights.

The groups that oppose Pickering are concerned he'll increase the conservative tilt on the 5th Circuit Court of Appeals, which has a majority of Republican-appointed judges.

They may also view their opposition to Pickering as a test case. If they're able to defeat the Mississippi judge's nomination, they will probably be able to defeat the nominations of other judicial candidates they don't like, including Miguel Estrada, a nominee for the U.S. Court of Appeals for the D.C. Circuit, and Jeffrey Sutton, a nominee for the 6th Circuit Court of Appeals.

Pickering has said he won't comment on the criticisms leveled at him, saying he'll answer them if they're raised at his Senate hearing. At his first hearing, he said his actions as a former prosecuting attorney in Jones County in the 1960s prove he's a defender of civil rights. As a prosecutor, Pickering testified against former Ku Klux Klan Imperial Wizard Sam Bowers, who was on trial in Forrest County for the murder of a black civil rights leader, and initiated other cases against Klansmen.

But L.A. Warren, an official of the Mississippi state conference of the NAACP, says Pickering only took action against the Klan when it targeted local business interests.

"He came out against the Klan because the Klan was bombing white businesses," Warren said.

The NAACP official is also critical of Pickering's association with former Lt. Gov. Carroll Gartin, a staunch segregationist. From 1961 to 1971, Pickering was a partner in a law firm with Gartin.

Thompson also decried the judge's relationship with Gartin.

"I think his association with someone who is an avowed segregationist is reason for concern," he said.

Op/Eds

Say No to This Throwback

The Los Angeles Times
Wednesday, February 6, 2002

In 1958, a judge threw out Mississippi's ban on interracial cohabitation, not because he considered it morally repugnant and unconstitutional but because lawmakers had inadvertently mangled the statute's language so badly as to render it nonsensical and unenforceable. The next year, a law student by the name of Charles Pickering penned a law review article suggesting language that would fix the problem. The remedy he urged would let Mississippi authorities bring felony prosecutions against men and women because of whom they married or otherwise lived with. Charles Pickering Sr. now sits on the U.S. District Court in Mississippi, named to it in 1990 by then-President George Bush. Last year, President George W. Bush nominated Pickering for a seat on the powerful 5th Circuit Court of Appeals. Thursday, Pickering is scheduled to appear before the Senate Judiciary Committee to defend his record on the bench and, before that, as a state legislator and the Republican Party state chairman.

We have condemned the years-long partisan stalemate over judicial nominations. We are just as concerned, however, that the men and women who become life-tenured federal judges be committed to the principles of fairness and equality that guide this nation. At his hearing, Pickering will no doubt put the best light on his actions. But the Judiciary Committee should send his nomination back to Bush.

Pickering's decisions in voting rights, discrimination and prisoner rights cases display indifference if not hostility to those asking the courts to remedy injustice. In several voting rights cases, he sharply criticized the principle of one person, one vote as upsetting state and local government operations and as costing a "tremendous amount of taxpayer money." Pickering has been no more disposed toward hearing from plaintiffs who claim bias on the job. His tendency to interject his personal opinions, biblical quotations and other extralegal materials into judicial opinions demonstrates that he lacks the open mind and equanimity that Americans require of their judges.

Because Pickering served in the Mississippi Senate and as a party chairman, his ideological views are well known, among them his vigorous opposition to abortion rights and homosexuality. Pickering has, as well, been evasive if not misleading about his involvement over a number of years with the Mississippi Sovereignty Commission, a state-funded agency established to oppose integration efforts.

Nevertheless, Pickering has a powerful friend in Senate Minority Leader Trent Lott (R-Miss.), and Lott is playing hardball. Lott's colleagues can expect repercussions for "no" votes. Money for their pet projects may disappear. Their bills may bog down. But the American people have the right to expect their judges, especially those on the powerful appeals court, to listen to each case with an open mind and judge it on the law and its merits. Pickering can't do that. The Judiciary Committee should reject his nomination.

Left Targets Pickering...Again

By John Nowacki
Free Congress
Tuesday, February 5, 2002

As Judge Charles Pickering’s October 18th nomination hearing began, Senator Charles Schumer took the unusual step of announcing that there would be a second nomination hearing for Judge Pickering. Second hearings are usually reserved for extremely controversial nominees whose answers at their initial hearing raise more questions. In Pickering’s case, Senate Democrats and left-wing groups knew they would want a second shot at attacking the nominee, since they couldn’t come up with any credible charges against him the first time around. With that second hearing scheduled for this Thursday, they still haven’t.

Pickering, a federal district judge since 1990, was nominated by President Bush to be U.S. Circuit Judge for the Fifth Circuit on May 25, 2001. For those who are interested in such things, the not-remotely-conservative American Bar Association gave him a majority "well-

qualified"/minority "qualified" rating six months ago.

The attacks on Judge Pickering center on race-related civil rights issues, in spite of his exemplary record. The Left conveniently chooses to ignore that he testified against the Imperial Wizard of the KKK in Mississippi in 1967, is on the board of directors of the University of Mississippi's Institute for Racial Reconciliation, and has broad support among African-Americans who know him well.

Instead, left-wing groups have attacked Judge Pickering for writing a brief academic article while a law student in 1959, analyzing how Mississippi's miscegenation statute differed from similar statutes in other states and explaining what changes would eliminate the difference. His critics fail to mention that this was an academic exercise; that he didn't advocate or support a ban on interracial marriage at all. They also fail to acknowledge his statement at his 1990 confirmation hearing, reaffirmed at his 2001 hearing: "Marriage between people of different races is a matter of personal choice," he said, adding that it was his personal belief that miscegenation statutes are unconstitutional.

Those are more than just words; on the bench, Judge Pickering has followed the Supreme Court's precedent and application of the Equal Protection Clause. In Adams v. Walmart, for example, Judge Pickering set aside a jury's damages award because he believed the jury was biased against the plaintiffs -- a white man and his Asian fiancée -- based on their mixed-race relationship. On retrial as to damages, the couple received a larger award.

Liberals have also attacked Judge Pickering for "contacts" with the Mississippi Sovereignty Commission, a group active in the 50s and 60s but basically defunct by the 70s. During his 1990 confirmation hearing, Pickering had no recollection of contacting the Commission, and said: "I never had any contact with that agency and I had disagreement with the purposes and the methods and some of the approaches that they took." Pickering did have one contact with the Commission in 1972, but not surprisingly, the Left ignores the real reasons for that contact and Pickering's having forgotten it.

As Chet Dillard, a prosecutor during the 1960s with firsthand knowledge of the matter, explained in a letter to Senators Leahy and Hatch, then-State Senator Pickering was in a group of state legislators who requested to be advised about a group organizing pulpwood workers in the state. In 1972, Jones County was just emerging from a bitter labor dispute at a plant where union members who were also members of the KKK shot into and burned homes in the middle of the night and brutally beat up workers.

"As the former District Attorney of Jones County, Mississippi, I knew what Charles Pickering had known in 1972," Dillard wrote. "Indeed, in 1967, I filed a murder charge against reputed Klansman Vander L. 'Dubie' Lee, a member of the Woodworkers Union, for a murder at the Masonite plant in Jones County. As a state Senator representing Jones County, Charles Pickering had every reason to be concerned about further union violence involving the Masonite plant in Jones County.

Dillard addressed Pickering's having forgotten the request as well. "As any long-time resident of Mississippi knows, the mention of the Sovereignty Commission instantly brings to mind its high-profile investigations in the 1950s and 1960s. Thus, by 1990, Charles Pickering could easily have forgotten a 1972 conversation with a Commission investigator that occurred years after the Commission's heyday and involved no high-profile Commission activity," he wrote.

Where did the initial information on this issue come from? The Commission's files, which Pickering had actually fought to preserve. While a state senator, Pickering voted to shut down the Commission in 1977 and preserve the records under seal instead of supporting the other proposed alternative: burning them. But his Left-wing critics always seem to forget to mention that.

Pickering has come under attack from pro-abortion groups for his actions as a political figure, many years before he became a judge. While in the state senate, he expressed his concerns that there was no textual or historical basis for Roe v. Wade, an opinion shared by many liberals, including Justice Byron White (a Kennedy appointee), Watergate prosecutor Archibald Cox, and others. Pickering has not dealt with an abortion case as a judge.

Judge Pickering's critics also attack him for having "criticized or sought to limit important remedies provided by the Voting Rights Act," including the creation of majority black districts. In the relevant quote, what Judge Pickering actually wrote (in its entirety) was as follows:

"This Court is still concerned that as white voters are separated into separate districts and black voters are separated into other separate districts there is going to be less and less accommodation, less and less effort to resolve differences by reason and logic and more and more polarization. Candidates elected in majority black districts may well feel little need to accommodate the views of their minority white constituents, and candidates elected from almost exclusively white districts may well feel little responsibility to accommodate the views of their minority black constituents. Constitutional guarantees of equality should bring us together, not divide us."

In his rulings from the bench, Judge Pickering has shown he understands that the role of a judge is to interpret the law, not to legislate from the bench. He has followed Supreme Court precedent in voting rights and Miranda cases, and has demonstrated a commitment to being fair, impartial, and dedicated to following the law.

That commitment led the Democrat-controlled Judiciary Committee to approve him unanimously in 1990, with Senators Biden, Kennedy, Leahy, and Kohl giving their approval. And that's why the full Senate confirmed him by unanimous consent shortly thereafter. That same commitment, with his record as a federal judge to support it, should lead to that same support today. But it won't.

Liberals have made it clear that they will fight hard over Court of Appeals nominations, and they are going all-out to block Judge Pickering's nomination. And by attempting to smear his reputation, they've shown once more that they will go to any lengths to do it.

Left-wingers are counting on people listening to their charges without taking a closer look. But the facts show that Judge Pickering has been a supporter of civil rights for five decades, both on the bench and off, and that's why Senators should have no reservations about voting for his confirmation.

Extremist Judge is Unfit to Sit on Appeals Court

The Atlanta Journal Constitution
Thursday, February 7, 2002

President Bush is using his widespread popularity, a result of the easy rout of the Taliban, to shore up a domestic agenda that most voters find too conservative. The latest example of that is Bush's nomination of a right-wing extremist, Charles Pickering, for the federal bench in New Orleans.

In offering Pickering for the 5th Circuit Court of Appeals, the president is making a mockery of the bipartisan cooperation that he has touted since Sept. 11. Pickering has such a shameful record on civil rights that even moderate Republicans are having second thoughts about his nomination. Pickering has offered no apologies for a law review article he wrote in 1959 suggesting ways to strengthen a Mississippi prohibition on interracial marriage. In addition, he falsely denied any contact with the Sovereignty Commission, a segregationist organization. Records later uncovered from his state Senate days revealed a 1972 letter in which he asked to be kept informed of the commission's activities. He also worked tirelessly against the 1965 Voting Rights Act.

His anti-abortion stance is far more extreme than that of Bush or most conservative jurists. Like Attorney General John Ashcroft, Pickering supports a constitutional amendment to prohibit all abortions, regardless of the risk to the mother's life.

A former chairman of the Mississippi Republican Party and a federal district judge since 1990, Pickering has powerful GOP political ties. His son is a Republican member of the U.S. House of Representatives from Mississippi, and Senate Minority Leader Trent Lott (R-Miss.) is one of his strongest supporters.

Lott claims that Democrats are blocking Bush's judicial appointments, but he is exaggerating the record. So far, 32 of Bush's judicial appointments have already been approved, five more than the Republican-controlled Senate approved in President Clinton's first year.

If Bush wants his nominees to move more quickly, he should withdraw Pickering's name and choose a more mainstream candidate. There are plenty of qualified conservative judges whom senators in both parties can support. Harris Hartz, a former New Mexico Court of Appeals judge, a staunch Republican and a Bush contributor, recently received speedy bipartisan approval for appointment to the 10th Circuit Court. And former Georgia legislator Clay Land, a Republican moderate, easily won confirmation last month to the Middle Georgia U.S. District Court.

This is too important a matter for opponents to back down. All federal judicial appointments are made for life, but the decisions of the 13 circuit courts, especially, have enormous impact on the lives of millions of Americans. If judges like Pickering were appointed, American justice would be skewed beyond recognition.

If Bush will not withdraw Pickering's nomination, the Senate Judiciary Committee should recommend against his confirmation. U.S. jurisprudence came too far in the late 20th century to allow it to lapse back into a time when Pickering's prejudices reigned.

A Judge's Past

By Bob Herbert
The New York Times
Thursday, February 7, 2002

"I never had any contact with the Sovereignty Commission."

That's what Charles W. Pickering told the Senate Judiciary Committee at a hearing that preceded his appointment to the federal bench in 1990. The problem with that statement is that it doesn't appear to be true.

The Mississippi Sovereignty Commission was a grotesque, hateful, virulently anti-black organization established by the state of Mississippi in the mid-1950's to take whatever steps were necessary to maintain segregation and the privileges of white supremacy in the wake of the Brown v. Board of Education ruling outlawing segregation in the public schools.

The commission harassed black people, undermined efforts to secure voting rights, spied on civil rights leaders and infiltrated civil rights and labor organizations. Among other things, it helped screen potential trial jurors for Byron De La Beckwith, who murdered the civil rights leader Medgar Evers in 1963.

The commission was still doing its dirty work when Mr. Pickering served in the State Senate in the 1970's. But when Mr. Pickering was selected by President George Bush the First to fill a District Court seat in 1990 he not only denied any contact with the commission, he said that when he was a state senator it "had, in effect, been abolished for a number of years."

That certainly wasn't true.

This is relevant now because Judge Pickering has been nominated by President George Bush the Second to a seat on the U.S. Court of Appeals for the Fifth Circuit. It's a critically important appointment. The Fifth Circuit, based in New Orleans, covers the states of Louisiana, Mississippi and Texas. It's the poorest circuit in the country and more than 40 percent of the inhabitants are ethnic minorities.

Judge Pickering, a close friend of Senator Trent Lott, is a right-winger whose views over many decades have been insensitive, and frequently hostile, to the rights of minorities, the disenfranchised, the poor and women. Mr. Pickering is to appear today before the Senate Judiciary Committee to discuss his record. Civil rights and abortion rights groups are mobilizing to block his confirmation.

Mr. Pickering had a significant effect on his home state's racist past as early as 1959 when he was a student at the University of Mississippi Law School. He felt it was important to bolster Mississippi's anti-miscegenation law. A marriage between a black person and a white person was a felony, punishable by up to 10 years in prison. But Mr. Pickering recognized there was a loophole in the law that could allow some interracial couples to fall in love and marry without being arrested and sent off to prison. He wrote an article in The Mississippi Law Journal explaining how the law could be fixed.

The state legislature took his advice, amending the law the very next year.

Mr. Pickering's claim that he had had no contact with the notorious Sovereignty Commission seemed pretty dubious when the commission's previously sealed records were released a few years ago. People for the American Way, one of the groups fighting Judge Pickering's nomination, noted that in 1972 and 1973 he voted as a state senator to appropriate money to cover expenses of the commission.

The records included memos showing that he had asked to be kept apprized of the commission's information regarding a group promoting workers' rights in Laurel, Judge Pickering's hometown.

Throughout his career Judge Pickering has been antagonistic to the voting rights guaranteed by the 14th Amendment and the federal Voting Rights Act. After the debacle in Florida in 2000, one would think that a commitment to the protection of voting rights would be a prerequisite for anyone being considered for appointment to the federal bench.

But that idea is quickly trumped by the simple fact that President Bush was the beneficiary of the Florida debacle.

Some things never change. Mr. Pickering's nomination is an affront to black people from coast to coast. But in a Bush White House, when civil rights come up against the Republican right, it's not even a close call.

Judge Pickering's racist past, his problematic present and his apparent difficulties with the truth have not been enough to persuade the president to reel in this nomination.

A Brave Judge’s Name Besmirched

By James Charles Evers
The Wall Street Journal
Thursday, February 7, 2002

In recent days, I have been saddened and appalled to read many of the allegations that have been put forth about Judge Charles Pickering, whose nomination to the U.S. Court of Appeals for the Fifth Circuit will be the subject of a Senate Judiciary Committee hearing today. These allegations are mostly made by groups with a Washington, D.C., address and a political agenda, not by anyone with real knowledge of Mr. Pickering's long and distinguished record on civil rights.

As someone who knows Judge Pickering and is familiar with his commitment on matters of race, I could not sit by and watch these groups' attempts to destroy a good man. Let me tell you about the Charles Pickering many of us in Mississippi have known for well over 30 years.

In 1967, many locally elected prosecutors in Mississippi looked the other way when faced with allegations of violence against African-Americans and those who supported our struggle for equal treatment under the law. Mr. Pickering was a locally elected prosecutor who took the stand that year and testified in a criminal trial against the imperial wizard of the Ku Klux Klan, who was accused of firebombing a civil rights activist. Mr. Pickering later lost his bid for re-election because he dared to defy the Klan, but he gained my respect and the respect of many others as a man who stands up for what is right.

In 1976, while serving as chairman of the state Republican Party, Mr. Pickering hired its first black political staffer. Mr. Pickering didn't send this person only into the African-American community to look for votes. He felt that the Republican Party's message should be delivered by the same individual to all communities, regardless of skin color. I may not have agreed with the Republican Party's message then or even now, but I certainly admire and agree with Mr. Pickering's inclusive approach to politics.

In the 1980s, Mr. Pickering was in private practice as a lawyer, and became known as a person who took on difficult cases. One such case involved an African-American man accused of robbing at knifepoint a 16-year-old white girl while she operated a rural grocery store. Mr. Pickering believed the man was not guilty, and took on his case. Very few others in Mississippi would have believed the same thing. After two trials, the man was acquitted.

Since he was selected and confirmed to the federal bench in 1990, Judge Pickering has continued to amass a record of working to improve race relations in Mississippi and throughout the U.S. After President Clinton held a town hall meeting on race at the University of Mississippi in 1998, Mr. Pickering and Gov. William Winter led the effort to encourage Chancellor Robert Khayat to establish the Institute of Racial Reconciliation at Ole Miss.

Judge Pickering sat on the executive committee of the institute, whose goal is to promote understanding and goodwill between people of different races. Mr. Khayat also chose Mr. Pickering to serve on the institute's board of directors, not only because of his role in helping to shape its mission, but also because he has led a life which exemplifies the institute's primary objective -- eliminating racism.

As someone who has spent all my adult life fighting for equal treatment of African-Americans, I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues. He has taken tough stands at tough times in the past, and the treatment he and his record are receiving at the hands of certain interest groups is shameful.

In my view, picking judges should be about finding the right person for the job, someone who respects the Constitution, instead of distorting the record of good people for political purposes. I am afraid that is what is happening to Judge Pickering.

Those in Washington and New York who criticize Judge Pickering are the same people who have always looked down on Mississippi and its people, and have done very little for our state's residents. I urge the Senate to confirm Judge Pickering.

Mr. Evers, the brother of slain civil rights leader Medgar Evers, manages a radio station in Jackson, Miss.

Appeals Court Nominee Well-Qualified

By John Nowacki
The Atlanta Journal-Constitution
Thursday, February 7, 2002

Liberal interest groups are doing everything they can to thwart the nomination of federal district Judge Charles Pickering to the Fifth Circuit Court of Appeals, counting on people listening to their charges without taking a closer look. The facts actually show that that Pickering is a fair, qualified judge who has been a supporter of civil rights for five decades, both on the bench and off.

As a nominee, he received a majority "well qualified" rating from the American Bar Association and has the support of the current and 13 former presidents of the Mississippi Bar, the Federal Bar Association of Mississippi and others who have practiced before him for years.

On the personal side, he is on the board of directors of the University of Mississippi Institute for Racial Reconciliation, was chair of a race relations committee in his home county, helped establish a program for at-risk African-American youth, testified against the Imperial Wizard of the Ku Klux Klan in 1967 despite the risks to himself and his family, and is supported by prominent African-Americans who know him and his commitment to equal protection under the law well.

Nevertheless, liberal groups have attacked Pickering's civil rights record. They complain about incidental contacts almost 30 years ago (while he was a state senator) with the Mississippi Sovereignty Commission, a group Pickering voted to shut down. What liberals don't mention is that Pickering requested information about a union infiltrated by KKK members, one of whom had been charged with murder -- with Pickering's signature on the affidavit supporting the indictment. Information about the contact is available thanks to Pickering, who voted to preserve

the commission's records instead of burning them.

Liberals point to an academic article Pickering wrote while a law student in 1959, analyzing how Mississippi's miscegenation statute differed from those of other states. They ignore the fact that he didn't advocate or support the statute, just as they ignore his statement during his 1990 hearing -- reaffirmed last year -- that "marriage between people of different races is a matter of personal choice," and that those statutes are unconstitutional. Of course, they also ignore his rulings that follow Supreme Court precedent and put those words into practice.

Liberal interest groups have attacked Pickering on voting rights and Miranda issues as well, but a fair-minded examination looking at quotes and rulings in their entirety -- and not in bits and pieces -- shows that he followed the law and Supreme Court precedent. As for criticism related to abortion, even the left has to admit that Pickering has never had an abortion case before him.

Most of these issues existed when Pickering was confirmed as a district judge 12 years ago. There wasn't anything to them then, and that's why he was unanimously reported out of the Judiciary Committee, with Sens. Patrick Leahy (D-Vt.), Ted Kennedy (D-Mass.), Joseph Biden (D-Del.) and Herbert Kohl (D-Wis.) giving their approval. And that's why the full Senate confirmed him by unanimous consent shortly thereafter.

This is really an attempt to defeat a Bush judicial nominee and rally the left-wing troops for the eventual Supreme Court nomination fight. Pickering is well-qualified for the Court of Appeals, but as long as they can chalk one up on their scorecard, the liberals don't care whose reputation they sully in the process.

Laurel Leader-Call on "Judge Pickering's Nomination"

The Associated Press
Tuesday, January 29, 2002

It's the devils world. If you don't think so, look at the public thrashing Judge Charles Pickering Sr. is taking as he awaits confirmation for a seat on the 5th Circuit Court of Appeals, based in New Orleans.

Those opposing this presidential nomination can't attack Pickering's work for the past 11 years as a U.S. District Court judge. The American Bar Association reports that he is well qualified, the highest ranking it can give.

In a tired, monotonous effort to smear Pickering as a racist, the opposition places a great deal of emphasis on a student essay written in another era. They magnify a question he may have asked about a situation in the early 1970s in a weak attempt to brand him as a liar and in league with the Sovereignty Commission. Is this the best they can do?

They choose to ignore that as the county prosecuting attorney during the 1960s, Pickering prosecuted the Ku Klux Klan here in Jones County. They fail to mention that his life could have

been (and probably was) in danger during that time.

Charles Pickering has made an outstanding federal judge, and is deserving of this next step in the Federal Court system. He is a fine family man, a successful attorney and farmer, and a strong Christian leader. Is it no surprise in this day and time that his Christian beliefs are what the opposition seem to hate the most?

He has been criticized for being the first lay leader of the Mississippi Baptist Convention. Actually, that was an honor, and a tremendous responsibility which he handled very well.

During his life, Pickering has received many honors. Just last year, he and his wife, Margaret Ann, shared the honor of being named Alumnus of the Year at Jones Junior College, a great compliment to two native Jones County residents from the people who really know them.

And while Pickering truly believes in the Christian faith, his record reflects that he is a judge who follows the rule of law to the letter.

Those who know him do not believe he will try to create new laws from the Federal bench as some of the liberal members of the court have, and still try to do.

That's what is important in this discussion.

Federal Judicial Nominees Lean Too Far Right

By Nan Aron
The Fulton County Daily Report
Tuesday, February 5, 2002

President George W. Bush may criticize the Senate and exhort it to accelerate confirmations or give a thumbnail biography of one or two nominees without any real content regarding their legal views. But it's doubtful he gives the American people much insight into what his nominees stand for.

That's bad, because the American people need to know what the battle over judicial nominations is really about.

It is not simply a power struggle between the Senate and White House. It is not a childish exercise in payback for President Bill Clinton's troubles with a Republican Senate. It's not about process or procedure. It's about content. And this time the content is the soul of the federal judiciary. This administration understands the strategic importance of judicial appointments in carrying out the president's goals. Borrowing a page from previous Republican presidents, the Bush administration moved quickly to leave its imprint on the federal judiciary.

Starting with the swift decision to expel the American Bar Association from the judge-picking process, this administration has moved to take advantage of the goodwill a new president

normally enjoys early into his tenure. Three and a half months after Bush was sworn in, his first nominees were selected.

Now if the Senate were to rubber-stamp those and later nominees, what a sad legacy Bush would leave for the country. The administration is living up to its promise to move the judiciary to the right. With too few exceptions, its appellate court nominees are ideologues far out of the mainstream on issues about which there is broad consensus in this country.

Their records exhibit an aggressive hostility to civil and women's rights and to environmental, consumer and workplace protections. Providing pro bono legal services also has not been a big part of their lives.

Instead, the Bush nominees' resumes describe the large corporations, wealthy industries and right-wing causes they represent. Several belong to the Federalist Society, a group pledged to overturn hard-fought rights and consumer gains of the last several decades.

A Leaning Judge

The Senate Judiciary Committee is about to take up one in a series of controversial nominees. Charles Pickering, now a U.S. district judge in Mississippi, has been nominated to the 5th U.S. Circuit Court of Appeals. Interestingly, Pickering, 64, already has received one hearing before the Judiciary Committee-in October 2001. Now the committee is calling him back for another look. The view is not good.

Pickering has a record on race issues that demonstrates a consistent lack of support for-and arguably an outright hostility toward-efforts to remedy racial injustice. As a student in 1959, he published a law review article recommending ways to strengthen Mississippi's ban on interracial marriage; shortly thereafter, the legislature amended the law as Pickering had recommended. As a state senator from 1972 to 1980, he cast several votes to impede the full extension of electoral opportunities to African-Americans.

As a federal trial judge, Pickering has taken troubling positions on the Voting Rights Act and injected personal views into his opinions that call into question his willingness to deal fairly with race-related cases.

In one Voting Rights Act dispute, he wrote, "This case is simply another of those which demonstrates that many citizens have come to view the federal courts as a potential solution for whatever problem comes along."

In another, he criticized the creation of majority-black districts because "there is going to be less and less accommodation, less and less effort to resolve differences by reason and logic and more and more polarization."

In a constitutional voting rights case, he called the one-person one-vote doctrine "obtrusive." In a racial discrimination case, he remarked, "This case has all the hallmarks of a case that is filed

simply because an adverse employment decision was made in regard to a protected minority."

Through these and similar comments he reveals disdain for the problems of discrimination that continue to plague our society.

Pickering's record also suggests a strong opposition to reproductive freedom. As a state senator, he voted for a constitutional convention to overturn Roe v. Wade. As a Mississippi Republican Party official, he chaired the platform subcommittee that called for a constitutional amendment banning abortion.

On the bench, Pickering's opinions raise questions about his judicial temperament and commitment to fairness. In 11 of his 99 published opinions, he included extraneous sections-ranging from one paragraph to almost seven pages of an 18-page opinion-criticizing the state of the law, the actions of other unnamed judges, society in general or the losing party.

In several habeas corpus cases, he stated that federal courts should grant habeas petitions only if a
prisoner could prove actual innocence. In other cases, he criticized federal courts for creating rights or society for being too litigious.

Finally, Judge Pickering's 11-year record is one of gaping holes. A major reason for the Judiciary Committee's decision to call him back again is his large number-more than 1,000-of unpublished opinions.

When asked at his October hearing why he had chosen to publish fewer than 10 percent of his opinions, Pickering said that while he published more when he first took the bench, "the novelty wears off." He also said that "there is too much being written out there." The senators are understandably determined to get a better sense of what Pickering has been writing.

A Tilted Court

Even without Pickering, the 5th Circuit today is well known for its bias against civil rights and reproductive rights. Presidents Ronald Reagan and George Bush placed some of the most zealous ideologues in the country on this circuit. (Yet, historically, the court had led great advances in social justice. President Dwight Eisenhower's appointees to the old 5th Circuit left an indelible mark on American law and society.)

If confirmed, Pickering surely will prove a reliable ally in moving the 5th Circuit further to the right and far out of step with mainstream Americans.

Of course, the circuit's inability to grasp the injustice facing civil rights plaintiffs should not surprise us. Although the three states that make it up-Texas, Louisiana and Mississippi-contain the highest
concentration of minorities of all the circuits, the court boasts only one African-American and two Hispanic judges. (Charles Pickering would not add to that total.)

Yet the lack of minority judges certainly has not been due to a lack of 5th Circuit vacancies. Throughout the Clinton presidency, the court experienced severe backlogs due to unfilled seats. In l999, it was declared to be in a state of emergency.

Despite the unmet need during the 1990s, Mississippi Sen. Trent Lott (then the majority leader and now the minority leader) went along with efforts by Texas Sens. Phil Gramm and Kay Bailey Hutchinson to block two eminently qualified Hispanic candidates for the 5th Circuit. They were Enrique Moreno, who never received a hearing, and Jorge Rangel, who finally withdrew his name from consideration.

Today, Lott is suddenly in a big hurry to address this emergency-and secure a seat for his old friend and political ally Pickering. (Pickering is also the father of Rep. Charles "Chip" Pickering Jr., R-Miss.)

We need fair, compassionate, and wise judges. We need judges who are not reluctant to publish opinions because they know their reasons will stand up to scrutiny. And we need a Senate willing to take its constitutional role seriously and to look hard at every nominee to the federal bench.

Senate confirmation is our last opportunity to ensure that all federal judges are qualified for their lifetime appointments.

Putting judges on the bench who favor big business over little people, who will roll back hard-fought civil rights, reproductive freedoms, and consumer, worker and environmental protections, would be an abdication of duty by our officials and a great injury to all Americans.

Transcripts/Members of Congress

Should Pickering Ascend?

CNN The Point with Laura Ingram (guests: Marcia Kuntz, Charles Pickering, Jr., Allan Mayer, Rich Lowry
Wednesday, February 6, 2002

EXCERPT
A few months ago Capitol Hill sounded like this...

(SINGING)

... but that wartime unity may become the victim of a political war over judicial nominations.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: I'm sure somewhere there's a Judas who will come up in support of Charles Pickering. (END VIDEO CLIP)

ANNOUNCER: Flashpoint: Confirmation wars.

He fought with the Taliban. He's not getting out of jail. But can anything get him a little sympathy? Tonight, scandalous behavior: from John Walker to Ken Lay, to Bill Clinton, to Paula Poundstone.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: When you get in trouble, the access increases, the attention on you increases. And if you handle it successfully, your celebrity increases.

(END VIDEO CLIP)

ANNOUNCER: Flashpoint: reputation rescue. Now, from Washington, Laura Ingraham.

LAURA INGRAHAM, HOST: If you thought the Enron hearings were getting partisan, you ain't seen nothing yet. The mean season gets underway on Capitol Hill tomorrow, as a Senate Judiciary Committee takes up for the second time, the nomination of Judge Charles Pickering, President Bush's choice for the fifth circuit court of appeals.. Today, the Congressional Black Caucus gave us a taste of what we can expect to hear from the Democrats.

(BEGIN VIDEO CLIP)

REP. BENNIE THOMPSON (D), MISSISSIPPI: Ever since Charles Pickering was in law school, he's demonstrated an insensitivity to minorities and to women and to people of color. His nomination is an affront to the good people who make up the fifth circuit court of appeals. His record is replete with all the innuendos that we do not need in a court.

(END VIDEO CLIP)

INGRAHAM: Believe it or not, Judge Pickering is lucky. At least he's getting a hearing. Of the 90 judicial picks President Bush has sent to the Democrat-controlled Senate, only 32 have been confirmed. And only 8 of the 58 still awaiting consideration have even had hearings. Activists are vowing that candidates like Judge Pickering won't get through. Republicans are charging obstructionism.

Flashpoint: judicial gridlock.

Joining us to discuss the war over judgeships is Marcia Kuntz from the Alliance for Justice, and Congressman Chip Pickering, son of Judge Charles Pickering. And he is a Republican from

Mississippi.

Welcome to both of you.

MARCIA KUNTZ, ALLIANCE FOR JUSTICE: Thank you.

INGRAHAM: Marshal, let's start with you because I find what is happening to Judge Pickering to be kind of an outrage. Let's put that right on the table. First of all he has received the highest rating from the American Bar Association. Second of all, he's been a federal district judge for anout 12 years. Third, he testified against the KKK back in 1967. And it seems what's going on here is the beginning of a new Bourking season. Is that's what's happening?

KUNTZ: Absolutely not, Laura. The fact of the matter is that no nominee is presumptivelyy entitled to a seat on the federal bench. You mentioned his ABA rating. The ABA has undertaken a limited review of his record. Just as an example, the ABA did not get the opportunity to review Judge Pickering's some 1000 unpublished opinions out of 1,100 that he has issued. With regard to the KKK, a close examination of his record over the last 40 years indicates a very different person from the civil rights proponent that Judge Pickering supporters are attempting to invent. Judge Pickering's entire legal career is characterized by a hostility to progress made on civil rights...

INGRAHAM: What does that mean though, Marcia? What does that mean? People throw around these charges and I think they're dangerous charges. What specifically does that mean? What evidence do you have that Judge Pickering is not sensitive to issues of racial injustice.

KUNTZ: We can take a march through history, starting with his law school career. Unfortunately, his history is rather long in this regard. Starting in law school, he wrote an article recommending changes the Mississippi legislature called make to beef up its criminal prohibitions on interracial marges. Just an example.

Immediately after law school, he chose to join a three-person law partnership with a former Lieutenant Governor who ran for governor as an avowed segregationist. In the '70s, he appropriated money to the notorious sovereignty commission. He requested to be kept informed of the sovereignty's investigations of labor union activities in his home town.

INGRAHAM: We'll divide it up. We'll divide the time up here.

Congressman Pickering, those are tough words about your father, and obviously you are not an unbiased observer. He's your dad. Does it feel like, to you, guilt by association here, or is your father trying to hide something in this confirmation process?

REP. CHARLES PICKERING JR. (R), MISSISSIPPI: This is the worst case of character assassination and political McCarthyism you can see in Washington. It's really a sad example. If you look at my father's life -- the day I was born in August 1963, he was elected as county attorney in Jones County, Mississippi. This was a time, in our county, my community's history,

which was wracked by violence. The civil rights movement was coming and the KKK were in thousands of cases, trying to intimidate African-Americans who were trying to register to vote.

My father took a principled stand that risked his personal safety, his family's safety and his political career. He lost the next election because he worked to prosecute, break the Klan, testfied against the imperial wizard of the KKK in 1967.

Throughout his 40 (sic) decades in political, religious, community and civic roles and responsibilities, he's always worked to improve race relations, recial reconciliation. That's why the former governor of Mississippi, a Democrat William Winter, who headed up the president's race initiative, has strongly endorsed him. The ABA gave him the highest rating. African American and civil rights leaders from across the state have testified to his fairness, his decency and his sensitivity and his long-standing efforts to improve racial relations in my state.

INGRAHAM: Marcia, I don't think anyone wants to put anyone on a Federal court of appeals who is going to stand at the school house door and prevent black children from getting equal opportunity and education. But to listen to some of the criticism of Judge Pickering, despite the letters and there's a stack of them from African-Americans across the country, former board members of the NAACP, it just doesn't sound in sync with your descruptions of him. He is a conservative, but does that make him out of the judicial mainstream. That is the question poeple have.

KUNTZ: Laura, you have to look at his record. And I have to respond to a couple of things that Congressman Pickering said. First of all, with record to his testifying on against the KKK, he was subpoenaed to do that. Secondly, as I pointed out. All you have to do is look at his record in the '60s. He partnered with an avowed segregationist.

INGRAHAM: But that's guilt by association.

KUNTZ: That is incosistent. It is not guilt by association.

INGRAHAM: That's a dangerous road to go down, in politics or the law.

KUNTZ: It is indicative of where Judge Pickering was at the time in terms of the civil rights movement. But that's just the '60s. Let's move into...

INGRAHAM: Let's get into the last decade.

KUNTZ: Let's get into the last decade. He has issued decisions that demonstrate a hostility to civil rights plaintiffs.

INGRAHAM: Which one?

KUNTZ: Several of them. Both voting rights decisions and...

INGRAHAM: He is not a liberal on issues...

KUNTZ: Employment discrim -- I'm not talking...

INGRAHAM: He is not a liberal -- a judicial liberal. He's pro- life. He's a traditionalist. No doubt about it. But does that make him unqualified for the federal bench?

KUNTZ: Laura, it does make him unqualified for the Federal Bench, although I would not characterize his record in the way you have. His record is one of a demonstrated hostility to federal protections to progress made in the federal courts in furtherance of civil rights, of women's reproductive freedoms. He has expressed a hostility to federal government's involvement...

INGRAHAM: Congressman Pickering, is your father is the type of person who will enforce and see the administration of justice as it exists on the books today? Is he capable of doing that? Has he been doing that?

PICKERING: His record as a judge has been to administer the law, to follow the precedence, to follow the law, the constitution, even if he disagrees with it personally. And time after time there are cases -- one great example that the liberals would not like to talk about, he disagreed with Arissa (ph) and he talked about how we needed to make sure that we had accountability to ensure health care access and benefits.

And Senator Kennedy and Congressman Ganskey, many others that were pushing patient bill of rights to the Congress, sited my father's opinion in which he laid out what was wrong with the current state of our nation's health care laws. That is an example where he disagreed, but he upheld the current law, the precedent and there are numerous others.

Looking at my personal family background, in 1969 that was my first grade class. That was the first grade that was integrated in Mississippi. My father supported the integration of public schools. We had three sisters...

INGRAHAM: He was the first person in the Republican Party to actually hire a black staffer. Hadn't happened before. He left the Democrat Party at a time when an avowed racist, segregationist was a leading figure in Mississippi Democrat politics.

KUNTZ: He left Democratic Party explaining in a letter that he was doing so because the Democratic Party had become too socialistic. That is not consistent with your assertion that he left the Democratic party because it was headed by racists.

PICKERING: This is the reality. My father risked his personal life, his family's, his career to stand up for equal access and protection and he fought against the Klan, he prosecute worked with the FBI, testified against them. He has worked in bi-racial community coalitions to solve problems at the local level and at the state level.

He has tremendous support because of his commitment of seeing all of God's children as equal, and that any hostility or any type of effort to take away those rights had to be defended.

(CROSSTALK)

INGRAHAM: We got to leave it there, guys.

KUNTZ: Congressman Pickering mentions the broad support. Congressman Pickerman mentioned the broad support that his father has garnered. In fact, there is no institutional support and there is much institutional opposition. The local NAACP...

INGRAHAM: We'll see what happens. Tomorrow's hearings are going to be something.

PICKERING: This is a smear because he has a good record. They're afraid of a man who is compassionate and conservative, being progressive in this.

INGRAHAM: All right. We have got to get out of this. Marcia Kuntz, we appreciate you joining us. Congressman Chip Pickering, it's going to be a heated hearing tomorrow and more to come, no doubt.

And up next: bad boys and bad girls and the image doctors who bring them back from the brink.

(COMMERCIAL BREAK)

Judge Charles Pickering's Confirmation Hearing

All Things Considered, NPR
Wednesday, February 6, 2002

LIANE HANSEN, host:

With the economic stimulus debate barely over, another battle in the Senate is just beginning, this one over President Bush's most controversial judicial appointments. Tomorrow the Senate Judiciary Committee holds a hearing on the nomination of Judge Charles Pickering for a seat on the US Court of Appeals for the 5th Circuit. NPR's legal affairs correspondent Nina Totenberg reports.

NINA TOTENBERG reporting:

It is no accident that the Pickering nomination is the first in line. The politics of the Senate are the politics of clout, and Charles Pickering's patron and promoter is none other than Senate Minority Leader Trent Lott. In fact, the judge's first hearing was in October. Unanswered questions then, however, forced a second hearing now, and in the interim, civil rights, abortion rights, consumer and environmental groups have moved into high gear to oppose the nomination. Pro-choice activists have been at the forefront of the fight because of Pickering's undisputed

records against abortion rights before he became a trial judge in 1990. In his 10 years on the bench, he has not ruled on an abortion case, and he said in October that as a lower-court judge he would have to follow the law as laid down by the Supreme Court in Roe vs. Wade. But as a state senator, he sought to convene a federal constitutional convention to overrule Roe. And at the 1976 Republican Convention he played a key role in getting the national party to abandon its neutrality on the issue in favor of an anti-abortion platform.

Kate Michelman is president of the National Abortion Rights Action League.

Ms. KATE MICHELMAN (President, National Abortion Rights Action League): Pickering's career has been notable not for his record as a judge or as a legal scholar, but as a partisan political activist. Pickering has been at the front lines on some of the most divisive political issues of our time and repeatedly has pursued a far-right conservative agenda.

TOTENBERG: Race, too, will be on the agenda tomorrow, particularly what role Pickering played in the troubled racial history of Mississippi. Both the national and local NAACP organizations are strongly opposing his nomination. Wade Henderson is director of the Leadership Conference on Civil Rights.

Mr. WADE HENDERSON (Director, Leadership Conference on Civil Rights): Who are we to turn our back on the record of Charles Pickering, on what we know about his temperament, the actions that he took prior to coming to the court and since being on the court? It would be a betrayal of our responsibility and principles.

TOTENBERG: Pickering formally left the Democratic Party and joined the GOP in 1964, citing the Democratic National Convention's decision to seat a multiracial delegation instead of an all-white state party delegation. And his critics point to a record that they say moved from overt hostility to blacks when he was a state legislator to insensitivity to minorities as a judge. That's a characterization hotly disputed by his supporters, including some minorities at home and in Washington. Viet Dinh is an assistant attorney general in the Bush Justice Department.

Mr. VIET DINH (Assistant Attorney General): I think that Judge Pickering has expressed his commitment to civil rights through five consecutive decades of action. For example, he testified against an imperial wizard of the KKK for a fire bombing in a civil rights demonstration in 1967. He hired the first African-American political worker in Mississippi in 1976. He represented, in a personal capacity, an African-American gentleman falsely accused of robbing a young white woman.

TOTENBERG: But tracking Pickering's judicial record has been uncommonly difficult. At his October hearing, Pickering estimated he'd written 1,100 opinions. Of those, however, only 92 were published and initially available for the committee to review, prompting a second hearing and considerable exasperation from Senator Lott.

Senator TRENT LOTT (Minority Leader): He's a classic case of how the committee has kicked the can down the road. 'Oh, well, yes, we had one hearing. We may need another one. Oh, well,

we've got all his opinions. How about his unpublished opinions?' This is unnecessary and ridiculous harassment.

TOTENBERG: A word of explanation here. Everything a judge writes is public unless it's formally sealed. But only those opinions a judge deems of some legal importance are published online or in legal books, and this is the first time in memory that an appeals court nominee has had so much of his work unpublished. Pickering has testified that he made a concerted decision not to burden lawyers with excessive publication, and his defenders in the administration say the judge followed the rules for publication set down by the Judicial Conference, rules that give judges wide latitude.

The Senate Judiciary Committee as of this week, however, had still not received some 300 unpublished opinions. The judge has said he's having difficulty locating some because of a changeover in the court's computer system. But that answer may not appease the Democrats. NYU law professor Stephen Gillers, one of the nation's leading ethics experts, says it shouldn't. To have so many unpublished opinions, he says, is odd.

Professor STEPHEN GILLERS (NYU): I don't think the Senate or the Senate Judiciary Committee will do the job the Constitution assigns to it if it doesn't get to review, beforehand, nearly all of the judge's work as a judge. I think that's its task, its duty to the American people.

TOTENBERG: In the end, though, the fate of Charles Pickering could well be determined by back-room politics. His critics concede that their only chance of beating him is in the committee, with all the Democrats voting no. But Trent Lott is no ordinary senator and no ordinary opponent. To cite just one critical example, there's the case of Wisconsin Senator Herb Kohl, a Judiciary Committee member who's devoted much of his time in recent months haunting Trent Lott's office in an attempt to kill a New England dairy compact that is anathema to the dairy farmers in Wisconsin. It is in this way that Lott has leverage, and not just with Kohl. As the Republican leader put it in an interview with the Associated Press last month, quote, "In the end, he's going to get a vote and he's going to pass overwhelmingly, or else." Nina Totenberg, NPR News, Washington.

Interest Groups/Press Releases

Liberals Once Again See Ideology Instead of Credentials When Looking At Bush's Judicial Nominees; 'Conservative Judges Do Not Make Law. They Leave That Up to the Legislators,' Says FRC President Ken Connor

Family Research Council
Thursday, February 7, 2002

In yet another sign that the post- September 11th congeniality on Capitol Hill has come to a screeching halt, the Democrat-controlled Senate has once again resorted to attempting to block President Bush's judicial nominations based on politics instead of credentials.

In a hearing before the Senate Judiciary Committee today, liberal senators will seek to make Bush's nominee for the Fifth Circuit Court of Appeals, Charles Pickering, their latest example of how conservative nominees to the federal bench can expect to be treated. Pickering is now facing a second go- around with the committee, where he will likely be grilled on his conservative political beliefs rather than his many years of distinguished service to the legal community. Pickering's resume includes:

* Served as U.S. District Court Judge since 1990.
* Twice elected as Mississippi State Senator.
* Currently serves on the Board of Directors for the Institute for Racial Reconciliation, University of Mississippi.
* Served four years on the Board of Directors for the Federal Judges Association.

"Employing the 'politics of personal destruction' to block judicial nominees makes a mockery of the judiciary," FRC President Ken Connor said. "Judicial philosophy, not political ideology, ought to be a touchstone for confirmation."

"Conservative judges do not make law," Connor said. "Rather they construe the laws and Constitution in accordance with the intent of the Founders and Framers, resisting the temptation to graft their own philosophy into the law."

ACU's Keene on Pickering Nomination: "Left's Campaign of Character Assassination Twists Record of Qualified Candidates"

The American Conservative Union
Wednesday, February 6, 2002

American Conservative Union Chairman David A. Keene today released the following statement on the nomination of Judge Charles W. Pickering to the Fifth Circuit Court of Appeals:

"It seems to me that Senate Democrats, under the leadership of Majority Leader Tom Daschle (D-SD) and Judiciary Chairman Patrick Leahy (D-VT) are activating the usual cast of liberal characters in an attempt to cover up their unfair and bitterly partisan treatment of President Bush's judicial nominees. This time they are targeting Mississippi Federal District Court Judge Charles W. Pickering, Sr., who has been nominated by the President to fill a vacancy on the U. S. Court of Appeals for the Fifth Circuit.

"By all accounts Judge Pickering is more than qualified for a seat on the Court of Appeals. He graduated at the top of his class at the University of Mississippi in 1961, and has shown a commitment to public service by serving as a Municipal Court Judge, prosecuting attorney and two terms in the Mississippi State Senate. He has also served as the county head of the March of Dimes campaign and county chairman of the American Red Cross.

"Judge Pickering was unanimously confirmed by the United States Senate served with distinction as a U.S. District Court Judge in Mississippi, a position he has held since 1990;

additionally, he was the recipient of a "well qualified" rating from the American Bar Association.

"Judge Pickering is supported by numerous past Presidents of the Mississippi Bar Association, former Democratic Governor of Mississippi William Winter as well as prominent African Americans such as federal District Court Judge Henry Wingate, Sixth Circuit Court of Appeals Judge Damion Kieth, Deborah Gambrell, a civil rights attorney who has practiced before Judge Pickering and Reverened Nathan Jordan, a former President of an NAACP chapter in the Southern District of Mississippi.

"Although well-qualified for the position for which he has been nominated, he is being vilified by Democrats and liberal organizations such as the National Organization of Women, NARAL, People for the American Way and the National Women's Law Center because he is committed to following controlling precedent of the Supreme Court, even when he may not personally agree with it. The concept of a judge following precedent and interpreting law rather than interposing personal bias in the decision making process is contrary to the liberal philosophy. Therefore, the liberals
are out to get him.

"To accomplish this task the left has brought up issues addressed 11 years ago when he was confirmed by the Senate and have inappropriately twisted his record in an attempt to demonize him. It's clear that they are mischaracterizing his efforts on race relations and other issues as they mount their opposition: all because he understands the proper role of the judiciary under our Constitution.

"ACU supports the Nomination of Judge Pickering and demands that Democrats stop their unfair political posturing and campaign of character assassination," concluded Keene.

Oppose the Judicial Nominee Charles Pickering, Sr.

National Organization of Women
Wednesday, February 6, 2002

Please contact your U.S. Senators immediately to urge them to oppose the nomination of Charles Pickering, Sr. to the U.S. Court of Appeals for the Fifth Circuit.

Pickering is an avowed opponent of women's reproductive rights and civil rights for all. As a Republican party activist, he has long supported a constitutional amendment to ban abortion rights. His confirmation to the already very conservative Fifth Circuit (Louisiana, Texas, Mississippi) would
provide a direct pathway for anti-Roe cases to move up to the U.S. Supreme Court.

Please contact all senators -especially members of the Senate Judiciary Committee - as soon as possible. The hearing on Pickering is scheduled for Thursday, Feb. 7 at 2 p.m., but a committee

vote on this nomination has not been scheduled. So please send a message even if you read this alert after Feb. 7.

It is crucial to contact your senators if they are on the Senate Judiciary Committee as soon as possible. The Democratic members on the committee are Sen. Patrick Leahy, chair (Vt.), Sen. Ted Kennedy (Ma.), Sen. Joseph Biden, Jr. (De.), Sen. Herb Kohl (Wi.), Sen. Dianne Feinstein (Ca.), Sen. Russ Feingold (Wi.), Sen. Charles Schumer (NY), Sen. Richard Durbin (Il.), Sen. Maria Cantwell (Wa.) and Sen. John Edwards (NC). The Republican members on the committee are Sen.
Orrin Hatch, ranking (Ut.), Sen. Strom Thurmond (SC), Sen. Charles Grassley (Ia.), Sen. Arlen Specter (Pa.), Sen. Jon Kyl (Az.), Sen. Mike DeWine (Oh.), Sen. Jeff Sessions (Al.), Sen. Sam Brownback (Ks.) and Sen. Mitch McConnell (Ky.)

Background:

The nomination of Charles Pickering, a district court judge in the Southern District of Mississippi, to the U.S. Court of Appeals for the Fifth Circuit, is the most controversial yet to the federal courts. If confirmed, Pickering would be one of the most heinous of Bush's appointments because of his history of sustained activism against civil rights and women's reproductive rights.

A review of Pickering's four decades in public life shows that his career has been notable not for his record as a judge or legal scholar, but as a partisan political activist. Pickering's writings, votes and
record show repeated bias against women's rights, civil rights, civil liberties, the lesbian, gay, bisexual, transgender and intersex community, and people of color. He includes personal opinions,
biblical quotations and other extralegal materials in his judicial opinions and habitually disregards the separation of church and state by using his position to promote religious programs.

As an outspoken opponent of reproductive rights, Pickering helped the conservative wing of the Republican party add the first-ever anti-reproductive rights plank to the national party platform in 1976.

As president of the Mississippi Baptist Convention, Pickering presided over the passage of a resolution calling for legislation to ban abortion except to save the life of a woman. While serving as Mississippi state senator, Pickering voted for a resolution calling for a constitutional convention to propose an amendment to ban abortion. He also voted against state funding for family planning programs.

As a law student, Pickering wrote a law review article suggesting ways to amend the state's law criminalizing interracial marriage to ensure it would be found constitutional. Nine years later, the Mississippi legislature followed Pickering's recommendations and amended the statute. When given the opportunity at recent confirmation hearings to repudiate the article, Pickering chose not to do so.

There is no place for Pickering's narrow-mindedness and bigotry on the federal appellate courts.

Please enter your zip code in the box above to send a message to your senators. Tell them you will watch their votes on the nomination of Charles Pickering, Sr., and you will remember in November if they vote to confirm him.

New NARAL Report: Fifth Circuit States Among the Worst in Protecting Reproductive Rights, Pickering Likely to Hear Case on Abortion if Confirmed

NARAL
Tuesday, February 6, 2002

A new report released today by NARAL highlights the stakes involved in the nomination of Charles Pickering to the Fifth Circuit Court of Appeals by President Bush by illustrating the obstacles women already face to the exercise of reproductive rights in Louisiana, Texas and Mississippi. The state legislatures in Louisiana, Texas, and Mississippi are among the most aggressive in the country in seeking to restrict a woman's right to choose, greatly increasing the likelihood that Charles Pickering will hear cases challenging state restrictions on reproductive choice if confirmed to
the Fifth Circuit.

"The states of the Fifth Circuit have moved aggressively to restrict women's reproductive rights in recent years. In the face of this assault, the Fifth Circuit Court of Appeals is often the court of last
resort for women seeking to exercise their right to choose in Louisiana, Mississippi and Texas," said NARAL President Kate Michelman. "The confirmation of Charles Pickering, a longstanding and vocal opponent of the right to choose, to the Fifth Circuit by the U.S. Senate may mean the door of justice, first opened by Roe, will now slam shut for millions of women."

The report details how women in Louisiana, Mississippi, and Texas must navigate a patchwork of legal obstacles if they wish to exercise their right to choose. These include waiting periods, parental involvement laws, public funding bans, and informed consent regulations.

State legislatures in those states continue to push the envelope, adding layer upon layer of restrictions in an attempt to restrict access to abortion and curtail the right to choose for women of the Fifth Circuit women who are more likely than residents of any other circuit to live in poverty, and who, according the report, have limited access of abortion providers.

Momentum Builds Against Pickering

CivilRights.org
Wednesday, February 7, 2002

Opposition to judicial nominee, Charles Pickering, Sr., to the Fifth Circuit Court of Appeals

continues to mount as the second round of his Senate confirmation hearing begins Thursday, February 7th. In addition to the national civil rights organizations that voiced their protests to the nomination of Judge Pickering in a press conference January 24, over twenty organizations have joined the mounting opposition to this controversial nomination including the Human Rights Campaign, the National Association of Social Workers, and the National Council of Women's Organizations and the opposition continues to grow.

Full Story:
WASHINGTON, D.C., Feb. 6- Opposition to judicial nominee, Charles Pickering, Sr., to the Fifth Circuit Court of Appeals continues to mount as the second round of his Senate confirmation hearing begins Thursday, February 7th.

In addition to the national civil rights organizations that voiced their protests to the nomination of Judge Pickering in a press conference January 24, over twenty organizations have joined the mounting opposition to this controversial nomination including the Human Rights Campaign, the National Association of Social Workers, and the National Council of Women's Organizations and the opposition continues to grow.
Press all across the nation have been a major source of opposition to the nomination of Charles Pickering, Sr. The Los Angeles Times on February 6th included an editorial opposing the nomination of Pickering, calling for the nomination to be put down: "Pickering's decisions in voting rights, discrimination and prisoner rights cases display indifference if not hostility to those asking the courts to remedy injustice… the American people have the right to expect their judges, especially those on the powerful appeals court, to listen to each case with an open mind and judge it on the law and its merits. Pickering can't do that."

The Detroit Free Press, in a January 26 editorial against the nomination, vehemently opposed the nomination and pointedly called the Senate Judiciary Committee to reject the district court judge: "Pickering is an unreconstructed Dixiecrat whose writings, votes, and record over the course of a long legal and political career evince a disturbing degree of bias against civil rights, women's rights, civil liberties and black Americans in general."

Other major news organizations have also covered the opposition against Pickering, including ABC News, the Washington Post, and the New York Times. Pickering's home state of Mississippi has also covered the growing opposition to the judicial nominee, such as the Clarion-Ledger, the Laurel Leader, and the Picayune Item.

Grassroots activists across the nation are organizing and taking action to help the cause against Pickering as well. Activists from Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Kansas, Louisiana, Maine, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, Wisconsin, and even Pickering's home state Mississippi have all been active, and effective, on the grassroots level to oppose the nominee.

In addition, radio personalities Tavis Smiley and Tom Joyner voiced their opposition to the nomination of Charles Pickering on their syndicated morning talk show. Smiley had harsh words for the Pickering nomination and what he called the President's plan to pack the courts with

"judges that are hostile to civil rights." Moreover, he urged his listeners to contact their senators to voice their protests and to attend the Senate confirmation hearing February 7th.

Finally, the Congressional Black Caucus (CBC) scheduled a press conference on Capitol Hill to voice their opposition to the nomination of Judge Pickering. The CBC opposes Pickering's nomination based on his conservative record throughout his career. The CBC has raised concerns over Pickering's views on voting rights, equal pay, criminal rights, women's reproductive rights, and criminal penalties for interracial marriages.

Justice Held Hostage: Liberal Slurs Delay Nomination of Charles Pickering

Concerned Women for America
Thursday, February 7, 2002

Liberal groups are ratcheting up the distasteful tactic of "borking," using slurs to destroy a respected
nominee, Judge Charles Pickering. Sandy Rios, President of Concerned Women for America, spoke today at a press conference supporting Judge Pickering, President Bush's nominee to the U.S. Court of Appeals for the Fifth Circuit.

"Left-leaning groups are decrying the qualifications of Judge Charles Pickering. We feel it is absolutely essential for rational people of both genders and all colors to hear the truth about this man and his record on the issues. "The gauntlet thrown down by abortion proponents, that any judge chosen must be able to 'listen to each case with an open mind and judge it on the law and its merits,' is at odds with their stated intention to make sure that any nominee chosen by this president is an abortion enthusiast. In other words, any nominee chosen by the president must reflect their viewpoint and not his. Any feigned interest in an open mind on this issue is a folly of words, a game of semantics.

"The record is clear that Judge Pickering has never been called upon to rule on any case relating to the abortion issue. Any speculation that he would render a ruling that would not uphold the law is simply that, pure speculation.

"Feminists are raising the issue of the Equal Rights Amendment. CWA would not champion someone who did not believe in the principles of equal pay for equal work and equal treatment for women, but the fight over ERA was much deeper. Because the American people did not want women drafted into combat or sharing restrooms with men or losing some of their protections as mothers and wives, the amendment failed. Not only was Judge Charles Pickering opposed to it, so were the American people.

"We at CWA would passionately, fervently oppose any candidate for any office who did not understand that all men are created equal. We have examined Judge Pickering's record and are confident that thinking people of all colors will find it to show a champion of the advancement of blacks and reconciliation of both races in his own state."

Committee for Judicial Independence Opposes Confirmation of Charles Pickering, Sr., Nominee to Fifth Circuit U.S. Court of Appeals; Senate Judiciary Committee Should Reject Pickering Based on His Record on Civil Rights and Abortion Local Groups Say

PR Newswire
Thursday, February 7, 2002

The Committee for Judicial Independence today called on Senate Judiciary Committee members, including California Senator Dianne Feinstein, to reject the nomination of Charles Pickering, Jr. to the Fifth Circuit U.S. Circuit Court of Appeals. Pickering's nomination is the subject of an unprecedented second hearing before the Senate Judiciary Committee today. The Committee cites comments made by Pickering in judicial decisions criticizing and seeking to limit remedies for violations of the Voting Rights Act of 1965, condemning access to the federal courts by plaintiffs alleging gender, disability, and race discrimination, and his life-long opposition to abortion rights as important aspects of his record.

"Throughout his career as a leader of the Republican Party in Mississippi, a Mississippi State Senator, and a sitting U.S. District Court judge, Pickering has shown a marked hostility to civil, women's and reproductive rights," said Susan Lerner, founder and chair of the Committee for Judicial Independence. "I know that the Senators on the Judiciary Committee face tremendous pressure from Trent Lott and the Republican leaders in the Senate to report the nomination out of committee," said Lerner, "but Pickering's record, as today's hearing will show, does not warrant elevating him to the appellate court. To send a strong message to this Administration that the Senate will not confirm nominees who are hostile to civil, women's and reproductive rights to our federal appellate courts, we urge Senator Feinstein to be a leader in the Senate's 'advise and consent' role in closely questioning Charles Pickering at today's hearing, which she will chair, and in voting
against sending this nomination to the floor of the Senate. Senators should avoid a nasty and unnecessary floor fight, and the process should not be unduly extended, in fairness to Judge Pickering."

The Fifth Circuit has one of the highest percentages of minorities and the highest poverty rate of any
circuit court in the nation and is one of the nation's most conservative courts. "The Fifth Circuit needs balance, not another ultra-conservative judge," Lerner pointed out. Fifth Circuit rulings which impede progress in fighting racial and gender discrimination will set a damaging precedent that would have negative consequences here in California and throughout the nation.

The Committee for Judicial Independence seeks to educate and activate Americans to the threat posed by the Extreme Right's concerted effort to take over the judiciary. It is spearheading a coalition of environment, civil rights, feminist and minority groups to challenge the Extreme Right's control over the nomination of federal judges by the Bush administration.

Schauder, Andrew

From: Schauder, Andrew
Sent: Tuesday, February 12, 2002 6:38 PM
To: Schauder, Andrew; Newstead, Jennifer; Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw'; 'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; 'Heather_Wingate@who.eop.gov'; Long, Linda E; Benedi, Lizette D; McMahon, Lori; Day, Lori Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Suit, Neal; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw'; 'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; 'Ziad_S._Ojakli@who.eop.gov%inetgw'; O'Brien, Pat; Comstock, Barbara; Koebele, Steve; 'James_W._Carroll@who.eop.gov'; Ho, James
Subject: judicial media review
Attachments: Judicial Media Review 2-11-02.wpd

Please see attached review

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General Judicial Articles

Questions Still Surround Judicial Nomination; Controversy May Turn Into Partisan Battle as Senate Panel Considers Pick for Appeals Bench

By Joan Biskupic
USA Today
Monday, February 11, 2002

U.S. District Judge Charles Pickering's bid for a powerful appeals court post depends largely on how he addresses Democrats' lingering questions this week. Another key factor: how senators in both parties calculate the political stakes involved with a judicial nominee who is a friend of

Senate Minority Leader Trent Lott.

Senate Majority Leader Tom Daschle, D-S.D., told CNN on Sunday he probably would oppose Pickering, setting up what could be a fierce partisan battle over the nomination. One sticking point for the Mississippi judge concerns his effort in 1994 to obtain a lighter prison sentence for a man convicted of burning an 8-foot-high cross at the home of a mixed-race couple.

Civil rights groups have urged senators to reject the nominee. They say Pickering, 64, has been hostile to the concerns of blacks since his early days as a lawyer and state senator.

Senate Judiciary Committee members have until Thursday to send Pickering follow-up questions from his confirmation hearing last week. Pickering's responses will give him a chance to defend his record and try to save a bid that is embroiled in the remnants of a racially divided South and the larger politics of President Bush's nominations to the bench.

The administration has been carefully screening candidates for lifetime appointments, looking for influential conservatives who could affect the bench for years to come. People for the American Way, other liberal interest groups and some Democrats have been trying to derail this agenda. A defeat for Pickering would likely embolden these groups and make it harder on subsequent Bush nominees.

An overriding factor in this fight -- the first of Bush's tenure -- is Pickering's longtime friendship with Lott, R-Miss. "I think it's going to be close," Lott said Sunday on Fox News Sunday.

Activists on both sides agree that the tone and strategies of the Pickering fight could influence future, more consequential nominations. But the current controversy over a seat on the U.S. Court of Appeals for the 5th Circuit, covering Mississippi, Louisiana and Texas, presents a political dilemma for senators.

If a majority of the Senate Judiciary Committee is seriously troubled by Pickering's record, it could mean crossing Lott and, for individual senators, risking support for their own interests.

There are 10 Democrats and nine Republicans on the committee.

Democrats say that as a young lawyer, Pickering appeared to have resisted integration efforts in the South; that as a state senator he fought abortion rights and spearheaded the GOP plank opposing abortion in 1976; and that as a trial judge since 1990 he has been insensitive to claims of racial and other discrimination.

Pickering has responded by trying to emphasize the stands he took against racism, including testifying against a Ku Klux Klan leader in 1967. He said that as a judge he must follow the law on abortion rights.

The cross-burning case has become a focal point for protests over Pickering's attitudes as a judge. In 1994, he urged the Justice Department to reduce federal civil rights counts against

Daniel Swan, who helped erect a cross on the lawn of a mixed-race couple, douse it with gasoline and set it ablaze. Some senators say he violated judicial ethics by intervening.

Pickering said the two other men involved in burning the cross had struck plea agreements and gotten minimal sentences. He called Swan's situation "the worst case of disparate sentencing that had come before me."

Appeals Court Nominee Targeted; Groups Oppose Pick for 3rd Circuit Seat

By Ann McFeatters
Pittsburgh Post-Gazette
Saturday, February 9, 2002

A Washington-based coalition of 27 national environmental, women's, civil rights and disability rights groups is mounting a campaign against President Bush's nomination of Western Pennsylvania's Chief U.S. District Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals.

Smith, 50, of Altoona, who was nominated Sept. 10, is being criticized for past rulings and comments, for taking trips paid for by companies and interest groups, and for being overruled on appeal in a number of high-profile cases.

The coalition, called the Community Rights Counsel, has stated its concerns in letters to Senate Judiciary Committee members, who are preparing for a hearing on Smith's nomination.

The coalition represents groups such as The Wilderness Society, the American Association of People with Disabilities, People for the American Way, the Coal Alliance, the Alliance for Justice, the National Abortion Rights League, Defenders of Wildlife, Physicians for Social Responsibility, Friends of the Earth, the Feminist Majority, the Public Interest Law Center and the Natural Resources Defense Council. Smith's staff said he would not respond to the coalition's criticisms.

The coalition charged that between 1999 and 2000, he spent "nearly three months at luxury resorts and dude ranches on trips funded by corporations and special interests with a stake in federal court litigation."

It said Smith's trips were worth "well over $30,000" and permitted him to "play golf and take horseback rides through Yellowstone Park with corporate CEOs, right-wing ideologues and free-market legal theorists."

After studying federal judges' financial disclosure forms filed between 1992 and 2000, the coalition asserted that Smith "has attended more corporate-sponsored seminars than almost any other federal judge in America." It said he took 12 trips sponsored by the Foundation for Research on Economics and the Environment and George Mason's Law and Economics Center held at places such as Amelia Island, Fla., Westward Look Resort in Tucson, Ariz., and Gallatin

Gateway Inn in Bozeman, Mont.

Such trips are legal but controversial. Two Democratic senators, John Kerry of Massachusetts and Russ Feingold of Wisconsin, have introduced a bill to ban sponsored trips for federal judges. Supporting such legislation, The Washington Post editorialized that when judges take education vacations "on the dime of private groups, they do so at the expense of the Judiciary's reputation for impartiality, even if not the impartiality itself."

The coalition also criticized some of Smith's rulings.

In Metzgar vs. Playskool, Smith dismissed a lawsuit by parents of a 15-month-old child who died choking on a Playskool block. He noted that the toy carried a warning label and that other children had choked on similar toys, so there was no reason to fault Playskool. A 3rd Circuit appeal panel ruled that Smith was wrong on all counts and returned the case to him for trial.

The coalition also criticized Smith for accepting a plea bargain in U.S. vs. Action Mining that limited damages the company had to pay for sending mine waste through a pipe that polluted the Casselman River in Maryland. It said the $50,000 penalty accepted was too low, representing "one-tenth the maximum [fine] and just 1 percent of the profit realized by Action."

The coalition also cited a June 29, 1993, speech Smith made to the Pittsburgh Federalist Society, in which he denounced the so-called "principled federalism" expounded by Senate Judiciary Committee member Joe Biden, D-Del. Smith called Biden's theory on federal courts' jurisdictional limits "nothing more than another euphemism for the political expediency that has animated the politics of both liberals and conservatives, Republicans and Democrats, for the last two decades."

Smith criticized the then-pending Violence Against Women Act, passed in 1994, which bars anyone under a restraining order from owning a gun. Biden, a key sponsor, said on July 26, 2000, that "securing its passage had been my highest priority for three sessions of Congress."

But Smith argued that the law was beyond Congress' scope. "Domestic violence, of course, deserves our strongest reprehension, but what special quality makes it an important federal interest?" he asked.

In 2000, the U.S. Supreme Court, in a 5-4 decision, voided a provision of the law that had given women the right to sue their attackers in federal court. Biden called the high court's decision "wrongheaded" and part of a trend "in which this Supreme Court is seizing the power to make important social decisions that, under our constitutional system of government, are properly made by elected representatives who answer to the people, unlike the court."

The Senate Judiciary Committee is in the middle of several acrimonious debates over judicial nominees. Mississippi U.S. District Judge Charles Pickering, 64, a friend of Senate GOP leader Trent Lott of Mississippi who has been nominated for the 5th Circuit Court of Appeals, is drawing fire from some of the same civil rights and women's groups that are criticizing Smith.

Pickering's Fate Could Take Several Paths After Charged Senate Hearing

By Jason Straziuso
The Associated Press
Friday, February 8, 2002

Judge Charles Pickering's confirmation to the appellate court, shaken by renewed assaults on his civil rights record, may rest more with perceptions of his home state than his qualifications, a historian says.

The Hattiesburg-based U.S. District Court judge had a second hearing before the Senate Judiciary Committee Thursday to fill a vacancy on the 5th U.S. Circuit Court of Appeals in New Orleans - the first major test of a President Bush judicial nominee.

University of Mississippi history professor David Sansing says the treatment Pickering got during the Senate hearing says little about what Judiciary Committee members think of Pickering's record and a lot about how they view Mississippi's turbulent past. "William Faulkner said you can never really outlive your history, and this is a perfect example of it right now," Sansing said. "For all the great progress and advancement we've made - it's like Sen. Durbin (Dick Durbin, D-Ill.) said - this is a painful recollection of Mississippi's past."

Pickering answered questions on his 1960s relationship with a politician who ran on a segregationist platform and his efforts in a 1994 case to reduce the sentence of a man convicted for putting a burning cross on an interracial couple's lawn.

He was also questioned on his stances against abortion as a Republican politician in the 1970s.

Republican supporters tried during Thursday's hearing to highlight a case from 1967 when Pickering testified against the Ku Klux Klan, although his detractors attempted to portray even that in a negative light.

"People are saying Judge Pickering didn't fight the Klan until it started attacking white businessmen," Sansing said. "Well, listen, anytime you attacked the Klan for any reason in the 1950s and '60s you had to be a man of character and courage."

Pickering, through a spokeswoman, said Friday he could not comment on his testimony because his nomination is still in committee.

The judge's son, Rep. Chip Pickering, R-Miss., said Friday his father's treatment had little to do with his record.

"I'm afraid it's politics at its worst," Chip Pickering said.

Chip Pickering said that Mississippi has moved far ahead of its racist past.

"But sadly for the rest of the country who have not witnessed or seen the change, they in many ways continue to refight those issues," Pickering said.

The Judiciary Committee now has several options.

Senators can submit follow-up questions to Pickering, which he can respond to. If his answers satisfy their queries, an executive session of the Judiciary Committee would then likely vote to recommend Pickering favorably or unfavorably to the full Senate.

They could also send Pickering's nomination to the Senate floor with no recommendation.

Another scenario, though rarely used, would have the Senate make a motion to discharge the Judiciary Committee - bypass the committee - and bring Pickering to a full Senate vote.

Chip Pickering said he thinks senators will examine his father's record closely, taking into account the conditions that existed at that time.

Observers close to the nomination hearing say the Judiciary Committee's vote will likely take place in the next month.

Democrats Challenge Choice of Miss. Judge; Bush Appellate Nominee Stirs Senators' Concerns Over Verdicts on Rights Issues

By Amy Goldstein and Helen Dewar
The Washington Post
Friday, February 8, 2002

Senate Democrats yesterday challenged the record of a Mississippi judge on the rights of minorities, women, voters and workers, as the Senate Judiciary Committee broke into a partisan dispute over the most contentious nomination President Bush has made to a federal appeals court.

In a rare second hearing into a judicial nomination, committee Democrats said Charles W. Pickering displayed a troubling habit in his dozen years as a U.S. district judge of supplanting the law with his conservative views. Republicans disagreed. They said Pickering had, as a lawyer and a former politician, demonstrated "moral courage" in coaxing a southern state beyond its segregationist past. Democrats targeted Pickering's intervention as a judge in 1994 on behalf of a man convicted of burning a cross on the lawn of an interracial couple, resulting in a shorter sentence than federal guidelines require. Among other things, the judge contacted a high-level Justice Department official to say he was frustrated that the man would get a far longer sentence than co-defendants who had pleaded guilty.

Sen. John Edwards (D-N.C.) questioned whether Pickering had violated judicial ethics in the case. The judge replied he had been concerned about the "tremendous disparity" in the

punishments. Sen. Orrin G. Hatch (Utah), ranking committee Republican, said other judges had done the same kind of thing.

Pickering, the father of a sitting House member and a friend of Senate Minority Leader Trent Lott (R-Miss.), is the most controversial judicial nominee the committee has considered as the Bush administration seeks to give the federal bench a more conservative cast. His nomination to the 5th Circuit Court of Appeals poses the first test of how far Democrats, who control the Senate by a single vote, will go in weighing ideology as they consider Bush's nominations. The nomination has galvanized opposition from a large coalition of liberal advocacy groups.

Since taking over the Senate last June, Democrats have primarily taken up Bush nominations that drew little opposition -- many of them for the nation's lower, district courts. Earlier yesterday, the committee continued that pattern, endorsing another circuit court nominee and a half-dozen candidates for U.S. district judgeships. They included David Bunning, son of Sen. Jim Bunning (R-Ky.), who received an unfavorable rating from an American Bar Association committee.

Pickering's confirmation would make the 5th Circuit bench solidly conservative. The appeals court covers a large swath of the South that is home to more minority residents than any other federal circuit's territory. The committee, composed of 10 Democrats and nine Republicans, has not scheduled a confirmation vote. Pickering's confirmation would require at least two Democrats' votes if all Republicans back him.

Yesterday's hearing was a sequel to an October session. There, Democrats complained they could not understand Pickering's history because they had access to few of his roughly 1,000 rulings as a district judge.

Sen. Mitch McConnell (R-Ky.), one of several committee Republicans who praised Pickering, said the nominee's actions on race relations during the civil rights era and afterward showed "resounding virtue and moral courage."

Sen. Dianne Feinstein (D-Calif.) challenged Pickering's views on abortion, gun control and civil rights. The nominee replied, "I know the difference between a personal view and a political position and a judicial decision." He said he has demonstrated an ability to apply legal precedents, even if he disagreed with them.

Sen. Edward M. Kennedy (D-Mass.) said he was troubled that Pickering had "professed profound skepticism" about the merits of employment discrimination cases. The judge responded that most sound discrimination claims were resolved through mediation and that most cases that are filed in courts nationwide eventually are dismissed.

Hatch sought to discredit the organizations opposing Pickering. He called them "left-wing interest groups who have spent months hunting around for an excuse to use the Pickering nomination as a way to attempt to paint this administration's nominees as extremist."

Judge Defends Past in Appeals Court Bid

By Tom Brune
Newsday
Friday, February 8, 2002

In a bid to spend his future on the appeals court, federal Judge Charles Pickering yesterday had to defend his past actions as a prosecutor and politician in violent and segregated Jones County, Miss. of the 1960s and 1970s.

This hearing has become "a painful recollection of the past" of race relations in the segregated South, said Sen. Richard Durbin (D-Ill.) as the Senate Judiciary Committee held its second hearing on the nomination of Pickering to the Fifth Circuit Court of Appeals, and the first open partisan fight over a Bush administration judicial nominee.

In his opening statement, Pickering, 64, and a close friend of Senate Minority Leader Trent Lott (R-Miss.), recounted the violent, racist past of his hometown of Laurel in Jones County, but said he had always fought the racists. "I took a stand. I condemned Klan activity. I prosecuted Klansmen, and I testified against Sam Bowers, the Imperial Wizard of the White Knights of the Ku Klux Klan," Pickering said. Bowers was being tried for the murder of civil rights activist Vernon Dahmer.

Pickering said he received threats against his family and lost his re-election bid as Jones County prosecutor as a result.

But Pickering also had to distance himself from his old law partners, former Mississippi governors who had run for office on a platform of segregation and antagonism to federal efforts to break down the racial barriers of the 1960s.

And Pickering had to concede that he had misled senators in 1990 in his earlier Senate Judiciary Committee hearing on his nomination as a federal district court judge, in which he said he had never had contact with the Sovereignty Commission, a state agency dedicated to retaining segregation in Mississippi law and practice.

"I have a vague recollection of being introduced to an employee of the commission who advised me along with several others he had information about people doing some union organizing relative to Masonite Corporation," he said.

Pickering said it was because he feared the Klan had infiltrated the union, but Durbin pointed out a memo by the commission at the time, in 1972, which said the commission was concerned about infiltration by communists. If he were to make that decision to have contact with the commission over again, Pickering told the senators, "I would not make the same decision today."

The interest in Pickering's nomination is so great that the committee moved its hearing to a larger room to accommodate a standing-room-only crowd yesterday.

The committee set no date for a vote on Pickering.

Panel OKs Bunning for Judgeship; Confirmation By Senate Expected Despite ABA's Rejection

By Frank Lockwood
The Lexington Herald Leader
Friday, February 8 2002

The Senate Judiciary Committee voted unanimously yesterday to confirm the nomination of David Bunning as U.S. district judge for Kentucky's Eastern District, rejecting claims that the son of U.S. Sen. Jim Bunning is unfit for the job.

Bunning and a dozen other judicial nominees were quickly approved. Confirmation by the full Senate is expected.

U.S. Sen. Mitch McConnell, who voted for Bunning's nomination, said committee members were impressed with the long list of witnesses who vouched for the nominee's integrity, intelligence and work ethic.

The recommendations of a divided American Bar Association panel, which had rated Bunning "not qualified," carried less weight than three U.S. district court judges and a former U.S. district attorney who predicted Bunning would do a fine job.

"Obviously, I'm thoroughly convinced he'll be an outstanding judge and I'm confident the Senate will confirm him," said McConnell, R-Louisville.

The ABA recommends that district judges have minimum of 12 years legal experience. Bunning has been a lawyer for a decade.

Of President Bush's first 64 judicial nominees, Bunning was the only one to receive a "not qualified" rating from the ABA.

Bunning, 35, is an assistant U.S. attorney, working in Covington. A graduate of the University of Kentucky College of Law, he lives in Fort Thomas.

The only thing that threatened Bunning's confirmation yesterday was the lack of a quorum: the committee waited about 20 minutes for a majority of the lawmakers to straggle in.

Yesterday's vote pleased Bunning's father.

"I am gratified by the Judiciary Committee's confirmation of David today," said Sen. Bunning. "He is well-qualified and will make a fine federal judge for Kentucky."

Senate Democrats Balk at Mississippi Judge Trying to Get on U.S. Appeals Court

By Jesse Holland
The Associated Press
Friday, February 8, 2002

Senate Democrats challenged a Mississippi judge nominated to the U.S. Appeals Court, suggesting he is too far off center on minority and women's rights. A Republican said Democrats treated the judge like a criminal.
The grilling of U.S. District Judge Charles Pickering went on for more than four hours Thursday and was the most politically charged since John Ashcroft appeared for his nomination as attorney general. "This particular seat is as important to us as a Supreme Court seat," said Sen. Dianne Feinstein, D-Calif., who chaired the hearing. She called the 5th Circuit of the U.S. Appeals Court covering Mississippi, Louisiana and Texas a trailblazer on desegregation and voting rights in the past.

Feinstein said putting a judge on the bench "outside the mainstream" would set back those rights.

Pickering objected to the characterization.

"I do not think that my activities in all of the things I've done in my life are outside the mainstream," he said. "They indicate someone who has been concerned about these rights and I have taken actions to protect these rights."

Republicans brought forward character witnesses for Pickering, touted his records as a judge and his courage for testifying against the Ku Klux Klan in Mississippi in 1967.

Sen. Jon Kyl, R-Ariz., said Pickering was unanimously supported by the committee and the Senate when he became a federal district judge. Now, he is being "cross-examined here as if he is almost a criminal."

Liberal groups call Pickering undeserving because of his conservative votes as a Mississippi state lawmaker, his attempts to get a lighter sentence for a man convicted of cross-burning, and his record from the federal bench on voting rights and abortion.

"Pickering stands so far outside the basic standards we expect on our courts, he must be rejected forthwith," NAACP Chairman Julian Bond said Thursday.

The Congressional Black Caucus called Pickering hostile to minority and women's rights, but stopped short of alleging he was racist. "I don't want to paint that kind of brush on him, but we could do better," said Rep. Thompson, D-Miss.

Pickering talked about his work with the Institute of Racial Reconciliation at the University of Mississippi and his attempts to integrate the Mississippi Republican Party. He also recalled his son, Rep. Charles "Chip" Pickering, R-Miss., bringing home black friends in high school.

"We integrated the schools," he said. "And we integrated the dinner table."

Sen. Maria Cantwell, D-Wash., said Pickering tried to get abortion outlawed when he was a state senator.

"Senator, I know the difference between a political decision and a judicial decision," Pickering said. "I would follow the law,"

"Do you mean you would uphold Roe v. Wade?" Feinstein asked.

"I would have no choice but to uphold it," Pickering said. "The Supreme Court has decided it and that's the law."

While Pickering's fate remained unsettled, the Senate Judiciary Committee approved its first judges of 2002, sending the nomination of Michael Melloy of Iowa for the U.S. Court of Appeals for the 8th Circuit to the full Senate for approval. Melloy was approved on a 19-0 vote.

The committee also approved a block of U.S. District Court nominations by a 19-0 vote, including the nomination of David L. Bunning of Kentucky.

Bunning is the son of Sen. Jim Bunning, R-Ky., and was the only Bush judicial nomination so far rated unqualified by the American Bar Association.

Judicial Confirmation Hearing Evokes Civil Rights Struggle

By Neil Lewis
The New York Times
Friday, February 8, 2002

A Senate Judiciary Committee hearing on the nomination of Charles W. Pickering to be a federal appeals court judge turned quickly today into a pained retrospective of the turbulent civil rights era in Mississippi, his home state, and an examination of his behavior in those days.

Judge Pickering, who sits as a federal trial judge in Hattiesburg, Miss., has been nominated by President Bush to a seat on the United States Court of Appeals for the Fifth Circuit, which covers Mississippi, Texas and Louisiana. Civil rights groups and abortion rights advocates have lined up against the nomination, and the committee's Democrats today questioned the judge's record on the bench for the last 11 years and, with more reserve, his actions as a state senator and county attorney before then. Committee Republicans, energized at the beginning of the hearing by a visit from Senator Trent Lott, the Senate minority leader and Judge Pickering's principal patron, mounted a vigorous defense.

The Pickering confirmation fight is the first full-scale battle over a judicial nomination in the Bush administration. Many at today's hearing -- senators, liberal and conservative lobbyists and

even reporters -- took it as a warm-up for more serious confirmation fights to come. There is a wide expectation that one or more Supreme Court justices will retire while Mr. Bush is in office, and all the weapons that are deployed in such modern political combat were being hauled out, including negative research, arranging for sympathetic character witnesses and indignant statements.

Judge Pickering tried to pre-empt his critics with an opening statement in which he defended his behavior both on the bench and off. Because he had been criticized for a 1959 law review article seemingly encouraging strengthening the state antimiscegenation law, he said he had never opposed mixed-race marriages.

As a county attorney, he said, he testified in 1967 against Sam Bowers, a Klan leader who was being tried for the firebombing death of Vernon Dahmers, a civil rights leader, "who was doing nothing more than helping African-Americans obtain their constitutional right to vote."

He said the Federal Bureau of Investigation warned him he could be harmed by the Klan. "This was a sobering moment," he said, as he had two small children at the time.

Senator Mitch McConnell, Republican of Kentucky, repeated the story and depicted the young Pickering as one of the courageous figures of the civil rights era in Mississippi.

"The Klan threatened to have County Attorney Pickering whipped," Mr. McConnell said. "While it is easy in Washington, in 2002, to make a speech or sign a bill in favor of civil rights after decades have changed racial attitudes in schools, society and the press, who among us would have had the courage of Charles Pickering in Laurel, Mississippi in 1967?"

William Taylor, a civil rights lawyer in Washington who served on the Civil Rights Commission at the time, said, however, that the situation in Mississippi was not so clear-cut by 1967. Mr. Taylor, who opposes the Pickering nomination, said in an interview that by that time, the white establishment opposed the Klan for economic and other reasons.

Senator Russell D. Feingold, Democrat of Wisconsin, questioned Judge Pickering about his decision to quit the state Democratic Party in 1964 when the principal dispute was its insistence on fielding an all-white delegation to the national convention. Mr. Pickering said at the time that the national party had "humiliated " the state's delegation, the language used by segregationists then.

Judge Pickering defended his behavior by saying that "we're looking back to a time, back to 1964." He said his actions "had to do with the perspective of that time."

Asked if he regretted his remarks about the state's being humiliated, he said, "I certainly would not make them today."

"Do you regret them?" Mr. Feingold asked.

"I do," he replied.

Judge Pickering was also questioned by Senator Richard J. Durbin, Democrat of Illinois, about his contact with the Sovereignty Commission, which was devoted to retaining segregation and opposing civil rights organizers. Judge Pickering testified in 1990 that he had no contact with the commission but a document disclosed in 1998 showed that, as a state senator, he had asked a commission official in the 1970's to be informed of labor unrest in Jones County.

"It doesn't seem like the right place to turn," Mr. Durbin said.

"If I were making that decision today, I would not do it," the judge replied.

Judge Pickering seemed to wither visibly under the questioning of Senator John Edwards, Democrat of North Carolina, about a more recent issue.

Mr. Edwards asked about a 1994 trial Judge Pickering presided over in which a man was convicted of burning a cross on the lawn of an interracial couple with a 2-year-old child. Judge Pickering had opposed the Justice Department's efforts to have the man sentenced to five years as required by the law. He also called a senior official in the Justice Department to complain.

Senator Edwards read the canons of judicial ethics prohibiting a judge from making contact with one side and suggested that Judge Pickering had violated it. The judge, who seemed taken aback by the line of questioning, said, "I don't consider it to be a violation of judicial ethics" because he was not looking to achieve anything by his call. Asked why he had called, he said he was looking to express frustration.

The committee is expected to vote on the nomination later this month, and staff aides said the outcome was uncertain.

Controversial Nominee to Federal Bench Testifies Before Senate Committee

By Ben Bryant
The Sun Herald
Friday, February 8, 2002

Republicans and Democrats on the Senate Judiciary Committee sparred Thursday over the political record and personal history of Charles W. Pickering Sr., the federal judge from South Mississippi who President Bush has nominated to the U.S. Court of Appeals for the Fifth Circuit.

Sitting at the front of a hearing room packed with representatives of liberal groups that oppose the judge, several Democratic senators aired allegations that Pickering, 64, who was making his second appearance before the panel, has been insensitive to the rights of minorities and women throughout his career.

In response, Republicans on the 19-member committee pointed to Pickering's role in prosecuting

the Ku Klux Klan in Jones County in the late 1960s. One Republican senator, Orrin Hatch of Utah, accused his Democratic colleagues of working hand-in-hand with "leftist groups that want to inject political litmus tests into the confirmation process." "I don't mean to malign anyone here," Hatch said to Pickering, drawing guffaws from the liberal activists on hand, "but I don't want you to be maligned either. Frankly, I get a little sick of these things that seem to happen here every time we get a Republican president (making judicial nominations)."

The fight over Pickering is the first clash between Republicans and Democrats over a Bush nominee to the federal bench. Liberal groups that oppose Pickering issued a statement that said the judge has "a 40-year record of insensitivity to the rights of minorities and women" that disqualifies him for a seat on the 5th Circuit, which is based in New Orleans and covers Mississippi, Louisiana and Texas.

Sen. Russ Feingold, D-Wis., questioned Pickering about his switch to the Republican Party in 1964, a conversion that Pickering at the time said was motivated by the "humiliation and embarrassment that was heaped on (Mississippi) at the (1964 Democratic National Convention)."

The Mississippi delegation walked out of the 1964 convention when then-President Johnson asked the delegates to cede two of their seats to blacks from the Mississippi Freedom Democratic Party, an organization set up in 1963 as a rival to the all-white regular party.

"I said that in the context of 1964," Pickering said of his words. "I certainly would not have said that today." Asked by Feingold if he regretted making the statement, the judge softly said, "Yes."

Also drawing concern from Democratic senators were contacts Pickering made in the early 1970s with the Mississippi Sovereignty Commission, a state-funded agency set up to undermine the civil rights movement.

Pickering said in 1990 that he had never been involved with the commission, but records show that he asked the agency in 1972 to keep him informed of union activity in Jones County.

Pickering said Thursday that he had "a brief conversation" with a commission investigator and simply forgot about it. Besides, he said, he wanted to know about labor unions in Jones, the county he represented from 1970 to 1980 in the state Legislature, because some of them had been infiltrated by the KKK.

Democratic senators also questioned Pickering about his statement that federal civil rights legislation forces judges to play "obtrusive" roles in state redistricting processes.

"A lot of other judges have said similar things," Pickering said.

Pickering repeatedly told the Judiciary panel that he "knows the difference between personal and political feelings and the law," answering liberal critics who have called him too conservative on abortion. But Sen. Arlen Specter, R-Pa., said he detected a "curious ambivalence" in written

opinions Pickering has issued in cases that involved issues of abortion rights and sexual privacy.

Specter, one of the most liberal Republicans in the Senate, has been identified by Democratic staffers as a potential Pickering opponent. The rest of the Republicans present for the hearings defended Pickering as a champion of equal rights who risked his life in the 1960s to help drive Klansmen out of South Mississippi.

They highlighted his testimony in 1967 against KKK Imperial Wizard Sam Bowers in a murder trial, as well as the support Pickering has received from black Mississippians. Charles Evers, the brother of slain Mississippi civil rights leader Medgar Evers, sat behind Pickering at the hearing.

"He was standing up for blacks in Mississippi when no other white man would," said Evers, a former Fayette mayor who has run for office in the state as a Democrat, Republican and independent. U.S. Sen. Jeff Sessions, R-Ala., said the endorsements of Evers and other Mississippi blacks should override liberal groups' claims that he is a foe of civil rights.

The Judiciary Committee has received more than 100 letters of support for Pickering from a "diverse array of Mississippians," Sessions said.

"The people who know you from your home state are to be trusted over all these groups that are trying to make a show of this nomination," said Sessions, jerking his head toward the rows of representatives from People for the American Way, the National Abortion Rights Action League, the Alliance for Justice and other liberal organizations.

Sen. Mitch McConnell, R-Ky., called Pickering courageous. "It's pretty easy to make a statement for equal rights in Washington in 2002 before a crowd of people who will be pleased by it," McConnell said. "It's quite another thing to do that in Laurel, Miss., in 1967, when your life was on the line. Who who? among us would have done that?"

The Judiciary Committee is expected to vote on Pickering in about four weeks, a committee spokesman said.

Appeals Court Nominee Faces Trouble Over Cross-Burning Case; Senate: Mississippi Judge Lobbied Justice Dept. for a Lighter Sentence for One Defendant in the1994 incident, Panel Finds

By David Savage
The Los Angeles Times
Friday, February 8, 2002

President Bush's nomination of a Mississippi trial judge to the U.S. Court of Appeals ran into trouble Thursday when Senate Democrats revealed that the judge took unusual steps to win a lighter sentence for a man convicted of burning a cross at the home of a mixed-race couple.

It also was revealed that the nominee, U.S. District Judge Charles Pickering, an ally of Sen.

Trent Lott (R-Miss.), organized a letter-writing campaign on his own behalf in October.

The judge acknowledged that he asked local lawyers, including those who appeared before him, to write letters to the Senate in support of his nomination. The judge said he collected the letters in his chambers and faxed them to Washington. "I didn't tell them what to say," Pickering said when asked about the letters during a contentious hearing Thursday before the Senate Judiciary Committee.

"It's quite an impressive outpouring of support," said Sen. Russell D. Feingold (D-Wis.).

But it "creates an appearance of coercion," he added, to have a powerful trial judge solicit support from local lawyers.

In recent weeks, Pickering's nomination has emerged as the first judicial confirmation battle of the Bush administration. In a closely divided Senate, a series of ideological disagreements over judges is likely this year.

Pickering was nominated to move up to the U.S. 5th Circuit Court of Appeals in New Orleans.

Senate Democrats still are chafing over the makeup of that court, as Republicans had refused to hold hearings on three of President Clinton's nominees to the 5th Circuit. Two were prominent Latino lawyers and one was African American.

Civil rights and women's rights activists say Pickering, 64, is a staunch opponent of abortion and has made skeptical comments about federal laws concerning job discrimination.

In 1976, Pickering played a key role in getting the Republican National Convention to adopt a strong anti-abortion stand.

But Pickering said his personal and political views would not affect his judicial decisions.

Thursday's hearing focused instead on the issue of race. Sen. Mitch McConnell (R-Ky.) praised Pickering for his "moral courage" during the 1960s.

As a young lawyer, Pickering testified against an imperial wizard of the Ku Klux Klan and worked with the FBI to arrest Klansmen.

"In the mid-1960s, in rural Mississippi, this took courage," McConnell said.

James Charles Evers, the brother of slain civil rights leader Medgar Evers, appeared with several African American leaders from Mississippi to show their support for Pickering.

However, in a surprise development, committee Democrats turned their attention to the judge's handling of a 1994 cross-burning case.

Minutes before the hearing began, the Justice Department turned over files compiled during the Clinton administration. They showed that Pickering was upset about the seven-year sentence proposed for Daniel Swan, then 20, who drove his pickup to the home of a mixed-race couple and joined two other men in burning an 8-foot-tall cross. The men also shouted racial epithets and fired shots into the house. One of the bullets narrowly missed the couple's baby.

Pickering spoke of Swan's action as a "drunken prank," but he also called it a "despicable act" that deserved jail time. But the judge clashed with a Justice Department civil rights lawyer about whether Swan deserved the seven-year prison term called for by federal sentencing guidelines.

"I thought there was a tremendous disparity," the judge said, because Swan's co-defendant had pleaded guilty and obtained a minimal sentence.

But he did not stop with expressing his opinion in the courtroom. According to the files, Pickering met privately with the prosecutors and threatened to order a new trial unless they agreed to a lesser sentence.

When they refused, Pickering contacted a top Justice Department official in Washington and said that Atty. Gen. Janet Reno should intervene.

In pointed questioning, Sen. John Edwards (D-N.C.) suggested that the judge appeared to have violated the judicial code of conduct, first by meeting privately with one side of the case and then by intervening at the Justice Department.

"This is very much outside the ordinary," Edwards said, based on his 20 years in law practice.

Pickering admitted he had met privately with the lawyers in the case but said he "had no recollection" of threatening to order a new trial.

"I did not minimize the seriousness of cross-burning," the judge replied. He finally sentenced Swan to 27 months in prison.

Senator Aims New Charge at Pickering

By James Brosnan
The Commercial Appeal
Friday, February 8, 2002

U.S. Dist. Judge Charles Pickering was hit Thursday with a new charge of inappropriate conduct in a civil rights case even as he defended his record as a politician and judge in Mississippi for 40 years.

The charges raise new doubts about whether the Democrat-controlled Senate will approve President Bush's nomination of Pickering, 64, to the Fifth U.S. Circuit Court of Appeals, which handles appeals from Mississippi, Louisiana and Texas. Pickering hails from Laurel, Miss. At a

rare second hearing Thursday before the Senate Judiciary Committee, Sen. John Edwards (D-N.C.) said Pickering may have violated judicial ethics rules by trying to pressure the Justice Department to seek a lighter sentence for a defendant and dismissing the offense as a "drunken prank." The defendant was convicted with two others in 1995 of burning a cross on a the lawn of a mixed-race couple in Jones County, Miss.

Pickering admitted telephoning Frank Hunger, then assistant attorney general for the civil division, to express his frustration with the prosecutors, but noted that Hunger had no authority in the case. He denied telling the prosecutors he would order a new trial if they didn't lower the sentence.

The Justice Department sought a sentence of 7 ½ years, and Pickering gave the defendant 27 months.

Pickering said the requested sentence was too heavy because the most "racist" and "culpable" of the trio was let off with home confinement after he agreed to plead guilty.

"I thought it was the worst case of disparate sentencing I had ever seen. I would not say that in any way to diminish the act of cross-burning," said Pickering, adding that he described the defendant's action in court as "heinous."

Wade Henderson, executive director of the Leadership Conference on Civil Rights, said the cross-burning case confirms that while Pickering is "not a racist," his views have not evolved as far as Pickering suggests.

Liberal groups, including People for the American Way and the National Abortion Rights Action League (NARAL), have targeted the Pickering nomination in part because the Fifth Circuit has changed from a bastion of civil rights in the 1960s and '70s to one of the nation's most conservative courts.

Kate Michelman, president of NARAL, said the Fifth has been the "most aggressive of the circuits in trying to chip away at Roe vs. Wade," the Supreme Court ruling legalizing abortion in all states.

Sen. Orrin Hatch (R-Utah) charged that "intolerant left-wing special interest groups" are trying to use Pickering's nomination "as a way to paint this administration's nominees as extremist."

But Democratic senators noted that three of President Clinton's nominees to the Fifth Circuit - one African-American and two Latinos - never even got a hearing when Republicans controlled the Judiciary Committee.

Pickering had a shortened hearing in October, but Thursday's lasted more than four hours. His wife, Margaret, and son, Rep. Chip Pickering (R-Miss.), sat behind him throughout the afternoon.

Pickering said that as the attorney for Jones County in the 1960s, he prosecuted Klansmen and testified once against Klan leader Sam Bowers.

"I narrowly lost my next election. My stand against the Klan was one of the reasons," Pickering said.

But he conceded that he erred in his 1990 confirmation hearing for district judge when he said he had no contact with the infamous Mississippi Sovereignty Commission as a state senator. Commission documents released since then show he asked a commission employee to keep him informed on the activities of a pulpwood haulers' union in Jones County.

In his written opinions, Pickering has at times voiced discontent with the law in voting rights and discrimination cases, but Pickering said he has followed precedents no matter his personal opinion.

"I do not think all of my positions are out of the mainstream," he said.

Daschle Says He'd Likely Oppose Bush Judicial Pick

Reuters
Sunday, February 10, 2002

Senate Leader Tom Daschle on Sunday joined several of his Democratic colleagues in opposing a controversial judicial nomination put forth by President Bush.

Daschle said in an interview on CNN's "Late Edition" that if the nomination of Charles Pickering to the 5th U.S. Circuit Court of Appeals in New Orleans came before the full Senate, he would be inclined to vote against the candidate.

"If it reaches the Senate floor, in all likelihood I will oppose Mr. Pickering," Daschle said.

Pickering is opposed by many Democrats who see him as too far to the right on issues such as abortion and civil rights.

Daschle noted that before the Pickering nomination could ever reach the Senate floor, his selection would need to be approved by the Senate Judiciary Committee.

The Judiciary panel is now weighing the appointment. Pickering faced a tough grilling on Thursday, when he appeared in a second day of hearings on his nomination. Democrats challenged and attacked his record, both as a U.S.
district judge since 1990 in Jackson, Mississippi, and earlier as a Mississippi state senator.

Representatives of a number of largely liberal groups opposed to the nomination were at the hearing.

Republicans on the Judiciary Committee defended Pickering and cited his opposition to the Ku Klux Klan in Mississippi in the 1960s. They noted he has the support of many minorities in his home state, including James Evers, the brother of slain civil rights leader Medgar Evers.

In the CNN interview Daschle said: "There are some very serious questions about Mr. Pickering. Women's groups, civil rights organizations, a number of people have called attention to the facts that have been coming out in the last several days, and we're trying to make that judgement."

Judiciary Committee Chairman Patrick Leahy, a Vermont Democrat, has given no indication when his panel would vote on whether to send Pickering's nomination to the Senate. On Thursday, he gave committee members a week to submit further written questions to Pickering.

Judicial Nominee Accused of Ethics Violation

By Thomas Ferraro
Reuters
Friday, February 8, 2002

President Bush's most embattled judicial nominee was accused on Thursday of improper conduct in presiding over a 1994 cross-burning case in Mississippi.

Appearing at a Senate Judiciary Committee confirmation hearing, U.S. District Judge Charles Pickering was told by one Democratic lawmaker that his call to a Justice Department official complaining of what he called excessively harsh treatment for a defendant in the case amounted to a violation of the judicial code of ethics.

"I had not considered it a violation," Pickering replied, explaining he telephoned a high-ranking Justice Department official merely to "vent frustration."

Sen. John Edwards, a North Carolina Democrat, read the judicial code of ethics that he said showed such a one-on-one call between a judge and the Justice Department was forbidden.

"Did you call?" Edwards asked Pickering, nominated by Bush to serve on the 5th U.S. Circuit Court of Appeals in New Orleans.

"Yes, I called," replied Pickering. He added he had also condemned the cross burning as a "heinous act," but felt the government's recommended sentence of seven and a half years for one defendant was excessive.

Pickering ended up imposing a 27-month sentence after the government agreed to drop one of three charges.

During more than four hours of testimony on Thursday, Pickering endured the toughest grilling yet of any Bush's nearly 100 judicial nominees, only a third of whom have been confirmed so far by the Democratic-led Senate.

In fact, Pickering became the first judicial nominee to face a second day of hearings. He was first questioned by the panel in October.

Democrats challenged and attacked his record, primarily on civil rights and abortion rights, both as a U.S. District judge since 1990 in Jackson, Mississippi, and earlier as a Mississippi state senator.

Representatives of a number of largely liberal groups opposed to the nomination were at the hearing. They included People for the American Way, Alliance for Justice and the National Association for the Advancement of Colored People.

REPUBLICANS DEFEND RECORD

Republicans on the Judiciary Committee defended Pickering and noted he actively opposed the Ku Klux Klan in Mississippi in the 1960s and has the support of many minorities in his home state, including James Evers, the brother of slain civil rights leader Medgar Evers.

"I'm here to set the record straight," Pickering said in beginning his testimony. "I have a record of standing up for equal protection, respecting the rule of law and making efforts to promote racial harmony for more than four decades."

Sen. Orrin Hatch of Utah, the panel's ranking Republican, said, "I am troubled by what appears to be a national agenda by a coalition of left-wing interest groups who have spent months hunting around for an excuse to use the Pickering nomination as a way to attempt to paint the administration's nominees as extremist."

"Though I am concerned about the underlying agenda, I believe they have picked the wrong nominee," Hatch told the hearing.

During a brief recess, Hatch brushed off Edward's charge that Pickering had violated the judicial code of ethics, saying, "To be honest with you, judges make these calls all the time if they think attorneys are not acting properly," said Hatch, a former prosecutor.

Judiciary Committee Chairman Patrick Leahy, a Vermont Democrat, gave no indication when his panel would vote on whether to send the nomination to the Senate. He gave committee members a week to submit additional written questions to Pickering.

Senate Scrutinizes Pickering, Mississippi's Segregationist Past

By Ana Radelat
Gannett News Service
Friday, February 8, 2002

Judge Charles Pickering's career, and Mississippi's segregationist past, were under scrutiny

Thursday by a Senate panel in the most contentious hearing held on any of President Bush's judicial nominees.

Senate Judiciary Committee members reached back more than 40 years to try to determine whether Pickering is a fair judge who defended civil rights during some of Mississippi's darkest days -- placing himself and his family in danger -- or a willing associate of known racists who only battled the Ku Klux Klan when it threatened white businesses.

"This hearing is a painful recollection of America's civil rights history," said Sen. Dick Durbin, D-Ill., one of the Pickering's toughest questioners during the more than four-hour hearing.

Pickering said that during his 11 years as a judge, he had "done his best to be fair and impartial and follow the law."

Pickering told the panel that he sent his children to integrated schools and that his son, now Rep. Chip Pickering, R-3rd, regularly brought home a black friend after school.

"We integrated the schools and we integrated the dinner table," he said. "And my sons were part of the integrating process."

But Durbin grilled Pickering about his relationship with former Mississippi Lt. Gov. Carroll Gartin, who was the judge's law partner from 1961 to 1971.

Pickering initially decried descriptions of Gartin as a segregationist. But Pickering admitted his former law partner had made "racist statements" after Durbin waved copies of an old campaign ad that showed Gartin waving a pen that he said he had used to sign Mississippi's segregation laws.

"And with this pen I will veto any effort to weaken our defenses around our Southern way of life," the ad showed Gartin declaring.

Pickering said he believed Gartin was "trying to move the state forward and still stay in politics."

Perhaps more damaging to Pickering was the revelation of a much more recent incident: that he had called a former top Justice Department official in 1995 to seek a reduction in the sentence of Daniel Swan, who had been convicted of burning a cross in front of the Jones County home of an interracial couple in 1994.

According to a letter he wrote to the Judiciary Committee, Pickering said he didn't get help from Frank Hunger, a Mississippian who is the brother-in-law of former Vice President Al Gore. But federal prosecutors agreed to drop one charge against Swan that carried a five-year mandatory sentence.

Pickering said he sought a reduction in Swan's sentence because the two other men involved in

the crime pleaded guilty and received much lighter sentences. Pickering said he was convinced that one of them -- a minor who bragged about shooting into the couple's house -- was the group's real ringleader.

A U.S. District judge in Hattiesburg, Pickering was selected by Bush in May to fill an opening on the 5th Circuit Court of Appeals in New Orleans. But his candidacy has been under fire since October by a 60-member coalition of civil rights and other interest groups that include the National Association for the Advancement of Colored People, People for the American Way, the National Abortion and Reproductive Rights Action League and the Leadership Conference on Civil Rights.

The groups have been critical of Pickering's stance on women's issues and civil and workers rights and accuse him of violating the Constitution and imposing his personal beliefs in his rulings.

But most Republican members of the Judiciary Committee -- composed of nine Republicans and 10 Democrats -- strongly supported Pickering.

Sen. Orrin Hatch, R-Utah, said the effort to derail Pickering's nomination was part of "a national agenda of a coalition of leftist interest groups" who want to keep conservative judges off the federal bench.

Sen. Jon Kyl, R-Ariz., complained that Democrats had cross-examined Pickering "as if he's some sort of criminal."

"This is politics as usual," Kyl said.

Many Republicans, including Sen. Jeff Sessions of Alabama, pointed to Pickering's record in the 1960s as a Jones County prosecutor who went after the Klan as proof that the nominee "was on the right side."

But William Taylor, a former attorney with the U.S. Council of Civil Rights who attended the hearing, said that by 1965, many segregationists had become alarmed by Klan violence because it was harming white-owned businesses.

Taylor, who worked for the council in Mississippi, said Jones County was notorious for its racial violence 40 years ago.

"White people (in the county) were not often prosecuted for it, but a group of blacks were prosecuted when violence broke out when they were seeking service in a restaurant," Taylor said.

Several Mississippians who support Pickering's candidacy also attended the hearing, including James King, the first black organizer in the Mississippi Republican Party who was hired when

Pickering headed the organization in 1976.

Frank Montague, a former president of the Mississippi Bar Association from Hattiesburg, said he was there to show his respect for the "sincerity and dignity" of Pickering and his decisions.

A committee vote on Pickering's nomination may not occur right away. Many senators are likely to submit new questions in writing to the candidate who has become Bush's most controversial choice for the federal bench.

Behind the Democrats' Attack

By Byron York
National Review
Monday, February 11, 2002

Senate Republicans will likely learn this week whether Charles Pickering, the Mississippi judge nominated by President Bush to be on the Fifth Circuit Court of Appeals, will be able to survive the attacks leveled at him by Democrats who have made his case the first judicial nomination battle of the Bush administration.

Some of Pickering's supporters are becoming increasingly pessimistic, discouraged by the intensity of the Democratic attack and the uninspiring performance of both Senate Republicans and the White House in Pickering's defense. Democrats have based much of their anti-Pickering strategy on the issue of race, accusing him of being "insensitive" and "indifferent" to critical constitutional guarantees of equal rights. It's a plan that has worked in the past against Republican nominees - it was employed most recently against Attorney General John Ashcroft - in part because it places the nominee in the defensive posture of trying to prove he is not a racist, whether or not there is any evidence to suggest that he is. Indeed, while some in the GOP have rushed to Pickering's defense, others, perhaps sensing the difficulty of the situation and not wanting to get involved, have done little to help him. The dynamic was on full display late last Thursday afternoon when Democratic senator and presidential aspirant John Edwards, using the skills that made him a multimillionaire trial lawyer, subjected Pickering to a harsh cross-examination in which Edwards accused Pickering of being lenient on racist criminals and unethical as well. Edwards based his attack on a case which came before Pickering in 1994 in which three men were accused of burning a cross in the front yard of a mixed-race couple in southern Mississippi. While Edwards's charges sounded quite serious, a close examination of the case suggests that they were not only not accurate, but appeared designed to mislead listeners to the conclusion that Pickering is unqualified to sit on the federal bench.

Cross Purposes

The crime happened on January 9, 1994. Three men - 20-year-old Daniel Swan, 25-year-old Mickey Herbert Thomas, and a 17 year old whose name was not released because he was a juvenile - were drinking together when one of them came up with the idea that they should construct a cross and burn it in front of a house in which a white man and his black wife lived in

rural Walthall County. While it is not clear who originally suggested the plan, it is known that the 17 year old appeared to harbor some sort of hostility toward the couple; on an earlier occasion, he had fired a gun into the house (no one was hit). Neither Swan nor Thomas was involved in the shooting incident.

On January 9, the men got into Swan's pickup truck, went to his barn, and gathered wood to built an eight-foot cross. They then drove to the couple's house, put up the cross, doused it with gasoline, and set it on fire.

Because the case involved a cross burning covered under the federal hate-crimes statute, local authorities immediately brought in investigators from the Clinton Justice Department's Office of Civil Rights. After the three suspects were arrested in late February, 1994, lawyers for the civil-rights office made the major decisions in prosecuting the case.

In a move that baffled and later angered Judge Pickering, Civil Rights Division prosecutors early on decided to make a plea bargain with two of the three suspects. The first, Mickey Thomas, had an unusually low IQ, and prosecutors decided to reduce charges against him based on that fact. The second bargain was with the 17 year old. Civil Rights Division lawyers allowed both men to plead guilty to misdemeanors in the cross-burning case (the juvenile also pleaded guilty to felony charges in the shooting incident). The Civil Rights Division recommended no jail time for either man.

The situation was different for the third defendant, Daniel Swan, who, like the others, faced charges under the hate-crime statute. The law requires that the government prove the accused acted out of racial animus, and Swan, whose defense consisted mainly of the contention that he was very drunk on the night of the cross burning, maintained that he simply did not have the racial animus necessary to be guilty of a hate crime under federal law.

The case went to trial in Pickering's courtroom. During the course of testimony, it appears that Pickering came to suspect the Civil Rights Division had made a plea bargain with the wrong defendant. No one questioned the Justice Department's decision to go easy on the low-IQ Thomas, but the 17 year old was a different case. "It was established to the satisfaction of this court that although the juvenile was younger than the defendant Daniel Swan, that nevertheless the juvenile was the ring leader in the burning of the cross involved in this crime," Pickering wrote in a memorandum after the verdict. "It was clearly established that the juvenile had racial animus....The court expressed both to the government and to counsel for the juvenile serious reservations about not imposing time in the Bureau of Prisons for the juvenile defendant."

In addition to the 17 year old's role as leader, there was significant evidence, including the fact that he had shot into the mixed-race couple's home, suggesting that he had a history of violent hostility to blacks that far outweighed any racial animosity felt by Daniel Swan. Swan had no criminal record, and seven witnesses testified that they were not aware of any racial animus he might have held against black people. On the other hand, one witness testified that he believed Swan did not like blacks, and Swan admitted under questioning that he had used the "N" word in the past. In the end, Swan was found guilty - there was no doubt that he had taken an active role

in the cross burning - and the Justice Department recommended that he be sentenced to seven and a half years in jail.

At that point, the Justice Department had already made a no-jail deal with the 17 year old. When it came time to sentence Swan, Pickering questioned whether it made sense that the most guilty defendant got off with a misdemeanor and no jail time, while a less guilty defendant would be sentenced to seven and a half years in prison. "The recommendation of the government in this instance is clearly the most egregious instance of disproportionate sentencing recommended by the government in any case pending before this court," Pickering wrote. "The defendant [Swan] clearly had less racial animosity than the juvenile."

Compounding Pickering's concern was a conflict between two federal appeals court rulings over the applicability of a statutory mandatory minimum sentence to the case. The Justice Department insisted that Swan be sentenced to a minimum of five years under one statute and two and a half years under a separate law. Pickering doubted whether both were applicable to the case and asked Civil Rights Division lawyers whether the same sentencing standards were used in cases in other federal circuits. The prosecutors said they would check with Washington for an answer.

Pickering set a sentencing date of January 3, 1995. As the date approached, he waited for an answer from the Justice Department. He asked in November, 1994 and received no response. He asked again in December and received no response. He asked again on January 2, the day before the sentencing, and still received no response. He delayed sentencing, and on January 4 wrote a strongly-worded order to prosecutors demanding not only that they respond to his questions but that they take the issue up personally with Attorney General Janet Reno and report back within ten days.

Shortly after issuing the order, Pickering called assistant attorney general Frank Hunger, a Mississippian and friend of Pickering's who headed the Justice Department's Civil Division at the time (Hunger was also well known as the brother-in-law of vice president Al Gore). Pickering says he called Hunger to express "my frustration with the gross disparity in sentence recommended by the government, and my inability to get a response from the Justice Department in Washington." Hunger told Pickering that the case wasn't within his area of responsibility. It appears that Hunger took no action as a result of the call.

Finally, Pickering got word from Civil Rights Division prosecutors, who said they had decided to drop the demand that Swan be given the five-year minimum portion of the recommended sentence. Pickering then sentenced Swan to 27 months in jail. At the sentencing hearing, Pickering told Swan, "You're going to the penitentiary because of what you did. And it's an area that we've got to stamp out; that we've got to learn to live, races among each other. And the type of conduct that you exhibited cannot and will not be tolerated....You did that which does hinder good race relations and was a despicable act....I would suggest to you that during the time you're in the prison that you do some reading on race relations and maintaining good race relations and how that can be done."

So Swan went to jail, for a bit more than two years rather than seven. Every lawyer in the case -

the defense attorneys, the prosecutors, and the judge - faced the difficulty of dealing with an ugly situation and determining the appropriate punishment for a bad guy and a somewhat less-bad guy. Pickering, who believed the Civil Rights Division went too easy on the 17-year-old bad guy, worked out what he believed was the best sentence for Daniel Swan. It was a real-world solution to the kind of real-world problem that the justice system deals with every day. And it was the end of the cross-burning case - until now.

Edwards on the Attack

At Pickering's confirmation hearing last Thursday, Democratic questioning focused mostly on issues that had been raised in a report by the liberal interest group People for the American Way. Democratic senators questioned Pickering about a law review article he wrote in the 1950s about Mississippi's interracial-marriage ban. They questioned Pickering about statements he made in the 1960s when he left the Democratic Party. And they questioned Pickering about whether he had any contact with the racist Mississippi Sovereignty Commission in the 1970s. That's the way it went until the questioning came to John Edwards.

Edwards told Pickering he wasn't going to ask questions about events that happened decades ago. "This issue is something that happened in 1994, something that's not in the distant past," Edwards said, "a case involving a cross burning that you were the trial judge for. As I understand it there were three defendants in that case, two who pled guilty and one who went to trial before you?"

"Yes, that's correct," Pickering said.

"The two who pled guilty admitted their guilt and took responsibility for their actions, is that correct?"

"Yes."

"And it is customary in criminal cases in both federal and state court to provide some leniency to those who plead guilty, participate in a plea agreement, take responsibility for their actions, as opposed to someone who denies their guilt and goes to trial, is that fair?"

"Well, the guidelines provide, senator - "

Edwards did not want to discuss sentencing guidelines. First, he suggested that during the sentencing dispute, Pickering had told one of the lawyers involved that he, Pickering, would order a new trial based on the disparity of sentences. Pickering testified that he did not say that, and Edwards did not present any evidence to support his accusation. Instead, Edwards moved on to Pickering's call to Frank Hunger, suggesting that Pickering had gone to extraordinary and unethical lengths in an effort to win leniency for Swan.

"You made a telephone call to a high ranking Justice Department official, according to the information that we have, and you are familiar, are you not, judge, with the Code of Judicial

Ethics that applies to you? You are familiar with that, are you not?"

"I am," Pickering said.

"And are you familiar with Canon 3(a)(4) of that Code which says, 'except as authorized by law, a judge should neither initiate nor consider ex parte communications on the merits of a pending or impending proceeding.' [The ex parte rule forbids judges from having substantive one-party conversations with either side in a case in order to prevent judges from making secret deals or otherwise favoring one side over the other.] Did you make a phone call to a high ranking Justice Department official on your own initiative?"

"We had had - " Pickering began to answer.

"Not 'we,'" Edwards interrupted. "You. Did you make this phone call?"

"I've indicated I called Mr. Hunger and discussed the fact that I was frustrated I could not got a response back from the Justice Department, and I thought there was a tremendous amount of disparity in this sentence."

"Were the government prosecutors on the phone when you made that call?"

"No, they were not."

"So that would be what we lawyers and judges would call an ex parte communication, would it not?"

"Well, whether the government attorneys had been on the phone or not, it would have been a question of whether the defense counsel had been on the phone," Pickering said.

"Was the defense counselor on the phone?" Edwards asked.

"No, we had discussed that with them, and this was a follow-up conversation as to what we had discussed with defense counsel present," Pickering said.

"Were any of the lawyers in the case on the phone when you called Mr. Hunger?" Edwards asked.

"No, they were not."

"So that was an ex parte communication, was it not?"

"It was."

"In violation of the Code of Judicial Conduct."

Pickering paused. "I did not consider it to be in violation of the Code of Judicial Conduct."

"Well, could you explain that to me?" Edwards pressed. "The Code says you should 'neither initiate nor consider ex parte communications in a pending or impending proceeding.' The case was still pending at that time, was it not?"

"It was pending," Pickering said.

"You made an ex parte communication, did you not?"

"I talked with Mr. Hunger."

"Didn't you just tell me that was an ex parte communication?"

"Well, it was ex parte from the standpoint that I was talking to him. He did not have the responsibility to make decisions in this case."

"Did you also direct the Justice Department lawyers, the line prosecutors, to take your complaints personally to the Attorney General of the United States?"

"In the order, yes," Pickering said.

"Can you tell me, judge, in how many other cases, and if you can tell me the names of the cases, where you have, after a conviction and prior to sentencing, or subsequent to sentencing, told the lawyers in a private meeting that you would order a new trial on your own motion; contacted, on your own initiative, contrary to the Code of Judicial Conduct, a high ranking Justice Department official about a case pending before you; and third, directed line prosecutors to take your complaints personally to the Attorney General of the United States. Can I just ask you, have you ever done that in any other case?"

"May I explain my answer?" Pickering asked. "No, I have never had a case where the disparate treatment was so great as it was in this case." Pickering tried to explain the plea bargain, the 17-year-old ring leader, the seven-and-a-half-year sentence recommended for Swan, and the rest. But by that time the damage was done. As Edwards must have known, virtually no one in the audience knew the details of the cross burning case, and few, if any, would take the time to look into the matter. All they knew was that it looked like Pickering had violated the judicial code of ethics to protect a young cross-burner in Mississippi.

Lost Cause?

This week, some Republicans are making a belated effort to defend Pickering against Edwards's charges. They maintain, correctly, that Pickering's communications with the Justice Department were a normal effort to get an answer to a question which the judge wanted answered before sentencing. Similar calls - whether ex parte or not - are an everyday feature of the justice system, and not a violation of the Code of Judicial Conduct. In addition, Republicans have gathered more

testimonials to Pickering's ethical standards.

But Pickering's blood is in the water. Although no Democrat on the Judiciary Committee has said how he or she will vote on the nomination, on Sunday Senate Majority Leader Tom Daschle made it clear that Pickering is in trouble. "There are some very serious questions about Mr. Pickering," Daschle told CNN. "Women's groups, civil rights organizations, a number of people have called attention to the facts that have been coming out in the last several days, and we're trying to make that judgment."

Have you made up your mind? Daschle was asked. "This is a matter that first comes before the Judiciary Committee, and they will have to make their judgment," Daschle said. "If it reaches the Senate floor, in all likelihood, I will oppose Mr. Pickering."

Now that Daschle - whose party holds a 10 to 8 majority on the Judiciary Committee - has voiced his own opposition to Pickering, it is entirely possible that the Republican defense effort will run out of steam sooner rather than later. There may be no extended battle over Pickering because Republicans are simply not in the mood to fight. Pickering is, after all, a 64-year-old man who at most will serve a few years on the bench; some GOP senators, uncomfortable at being forced into the position of discussing racial issues, are simply not inclined to go to the mat to save him. In addition, the White House, which nominated Pickering not of its own initiative but rather at the insistence of Senate Minority Leader (and Pickering friend) Trent Lott, may not be willing to fight, either.

But not defending Pickering will have its costs. If the Pickering nomination goes down, GOP insiders fear, Democrats and their supporting groups like People for the American Way will not be satisfied with a victory but will rather become emboldened for future battles, which will almost certainly include a nomination to the Supreme Court. "If they beat Pickering, that will make them more aggressive the next time, when it counts more," says one GOP aide. "Their caucus is unified, and their interest groups are unified." At least for now, Republicans are not unified, which allows charges like those made by John Edwards to go unanswered

Momentum Building Against Bush Nomination of Charles Pickering, Sr., to U.S. Circuit Court of Appeals

AScribe Newswire
Monday, February 11, 2002

Following is an advisory from Wade Henderson, Executive Director of the Leadership Council on Civil Rights, and Nan Aron, Executive Director of the Alliance for Justice, on the nomination of Judge Charles Pickering, Sr., to the U.S. Circuit Court of Appeals:

On January 24th, a group of national organizations convened a press conference to announce their opposition to the nomination of Judge Charles Pickering, Sr., President Bush's nominee to the U.S. Circuit Court of Appeals for the Fifth District. In less than two weeks, opposition to

Judge Pickering's nomination has mounted from all across the nation. Among the most recent highlights are:

-- Editorial board statements, op-eds, and radio segments

-- Official opposition by additional national organizations and the Congressional Black Caucus

-- Grassroots events and activities

All of this momentum demonstrates that after a careful review of Judge Charles W. Pickering Sr.'s public record, the overwhelming majority of Americans are left with little alternative but to oppose this nomination because of his extreme views on important civil rights, women's rights and constitutional issues. The Senate should exercise its constitutional prerogative to reject this nominee. Editorial board statements, op-eds, and radio segments

A variety of editorial boards from all across the nation have voiced opposition to this nomination [see attached]. For instance:

-- On February 9th, The Boston Globe said, "Trace Pickering's legal roots to 1959 and one finds an article he wrote as a law student advising the Mississippi Legislature how to close a loophole so the state could better punish people in interracial marriages. Sadly, even if this article is dismissed as old or just an academic exercise, there are still decades of legal thinking that make Pickering the wrong choice for circuit court judge."

Text can be found at

http://www.boston.com/dailyglobe2/040/editorials/Judge Pickering s past+ .shtml .

-- On February 7th, The Atlanta Journal Constitution said, "In offering Pickering for the 5th Circuit Court of Appeals, the president is making a mockery of the bipartisan cooperation that he has touted since Sept. 11. Pickering has such a shameful record on civil rights that even moderate Republicans are having second thoughts about his nomination."

Text can be found at

http://www.accessatlanta.com/ajc/opinion/0202/0207judges.html .

-- On February 6th, The Los Angeles Times said, "Pickering's decisions in voting rights, discrimination and prisoner rights cases display indifference if not hostility to those asking the courts to remedy injustice... the American people have the right to expect their judges, especially those on the powerful appeals court, to listen to each case with an open mind and judge it on the law and its merits. Pickering can't do that."

Text can be found at

http://www.latimes.com/news/printedition/opinion/la-000009218feb06.story .

-- On January 26th, The Detroit Free Press said, "Pickering is an unreconstructed Dixiecrat whose writings, votes, and record over the course of a long legal and political career evince a disturbing degree of bias against civil rights, women's rights, civil liberties and black Americans in general."

Text can be found at

http://www.freep.com/voices/editorials/ejudge26 20020126.htm .

-- On February 7th, Bob Herbert wrote in The New York Times, "But when Mr. Pickering was selected by President George Bush the First to fill a District Court seat in 1990 he not only denied any contact with the commission, he said that when he was a state senator it "had, in effect, been abolished for a number of years." That certainly wasn't true."

Text can be found at

http://www.nytimes.com/2002/02/07/opinion/07HERB.html .

News about the Pickering nomination has spread to the airwaves as well.

-- On February 6th and 8th, National Public Radio aired segments on the Pickering nomination during the award-winning, All Things Considered program.

The program can be found at

http://www.npr.org/ramfiles/atc/20020206.atc.16.ram .

And on the nationally-syndicated and award-winning Tom Joyner Morning Show, radio personality Tavis Smiley issued a call to arms against the President's plan to pack the courts with "judges that are hostile to civil rights."

Text can be found at

http://play.rbn.com/?url=abcradio/joyner/g2demand/020502/TAVISSMILEY.rm& proto=rtsp [approximately 3 minutes into the clip].

Official opposition by national organizations and the Congressional Black Caucus

In the last two weeks, over twenty national organizations have officially opposed this controversial nomination. Among the new organizations are: the National Association of Social Workers, Planned Parenthood, National Council of Women's Organizations, and the Human Rights Campaign.

-- In noting the NAACP's opposition to this nomination, Julian Bond, Chairman of the NAACP, said, "A vote for Pickering is a vote against civil rights - and a vote that will not be forgotten."

-- In announcing their opposition to Judge Pickering, the Human Rights Campaign noted Pickering's handling of a 1994 Justice Department hate crime incident involving three men who burned an eight-foot tall cross on the lawn of an interracial family while using racial epithets. The family had been a frequent target of harassment in their small rural town, including having bullets fired into their home and "KKK" painted nearby on the street. Nonetheless, when sentencing one of the defendants, Pickering gave a "lenient" sentence for the cross-burning, in order to "make the punishment commensurate with the drunken prank that I think it was, even though it did have racial overtones." [Pickering's words].

-- On February 6th, the Congressional Black Caucus [CBC] held a press conference on Capitol Hill to voice their opposition to the nomination of Judge Pickering. The CBC raised concerns over Pickering's views on voting rights, equal pay, criminal rights, women's reproductive rights, and criminal penalties for interracial marriages.

Grassroots events and activities

Since the press conference less than two weeks ago, grassroots activists across the nation are organizing and taking action to oppose the Pickering nomination. Grassroots activity -- including press events, issue forums, call-in days -- have been held in Mississippi, Louisiana, Texas, and California. In addition, activists from California, Connecticut, Delaware, Florida, Georgia, Illinois, Kansas, Louisiana, Maine, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Dakota, Texas, Washington, Wisconsin, and especially Pickering's home state Mississippi, are actively opposing the nominee.

Democrats Blast Bush Judicial Nominee

By Susan Jones
CNSNews
Friday, February 8, 2002

Republicans accuse Democrats of demonizing another one of President Bush's judicial appointees - U.S. District Judge Charles Pickering, who's been asked by President Bush to serve on the 5th U.S. Circuit Court of Appeals in New Orleans.

In an unusual move, the Senate Judiciary Committee asked Pickering to appear for a second confirmation hearing on Thursday. His first hearing took place in October.

At Thursday's hearing, Democrats on the Senate Judiciary Committee accused Pickering of ethical lapses and questioned his record on civil rights and abortion.

Liberal interest groups strenuously oppose the nomination of Pickering because of his conservative positions, and one Republican Senator accused his fellow Democrats of serving as

the mud-flinging tools of those liberal groups.

Sen. Orrin Hatch of Utah, the ranking Republican on the Senate Judiciary Committee, said Thursday, "I am troubled by what appears to be a national agenda by a coalition of left-wing interest groups who have spent months hunting around for an excuse to use the Pickering nomination as a way to attempt to paint the administration's nominees as extremist."

Press reports note that representatives of those liberal interest groups - including People for the American Way, the Alliance for Justice, and the National Association for the Advancement of Colored People - were present at Thursday's hearing.

As Sen. Hatch indicated, the issue is larger than Pickering. Analysts say that by demonizing all of President Bush's judicial nominees as "conservative extremists," liberal groups are sharpening their claws for the real battle - the future direction of the U.S. Supreme Court.

Although there are no vacancies on the court, that could change at any time, giving President Bush the opportunity to appoint another conservative to the bench. In the meantime, Republicans accuse Democrats of foot-dragging in getting Bush's judicial nominees confirmed.

So far, the Democrat-led Senate has approved only one-third of President Bush's judicial nominees.

On Thursday, Pickering told the Judiciary Committee he was there to set the record straight: "I have a record of standing up for equal protection, respecting the rule of law and making efforts to promote racial harmony for more than four decades."

His supporters say Pickering's record speaks for itself, but they worry that liberal efforts to distort the facts will sully his "exemplary" record.

Sen. Patrick Leahy (D-Vt.), the chairman of the Judiciary Committee, did not say when his panel might vote on sending Pickering's nomination to the full Senate. However, he did give committee members another week to submit additional questions to Pickering - this time in writing.

New Line of Questioning at Pickering Hearing

By Jonathan Groner
Legal Times
Monday, February 11, 2002

Race and civil rights have emerged as the flashpoints in the nomination of Mississippi's Charles Pickering Sr. for a federal appeals judgeship, but they were not the only subjects of a grueling four-and-a-half hour Senate hearing last week.

On two occasions, senators raised issues of judicial ethics that may end up posing unexpected

difficulties for Pickering, even though the more volatile questions are what prompted senators to screen Pickering for a second time.

The first ethics issue arose more than halfway through the session in a packed Senate hearing room on Feb. 7. Judiciary Committee members and the 5th Circuit Court of Appeals nominee had been delving into the history of race relations in Mississippi in the 1960s and 1970s when Sen. John Edwards (D-N.C.) shifted the topic to a more recent event.

He brought up a 1994 case in which three young men were charged with burning a cross in the yard of a mixed-race couple. Pickering, the federal trial judge presiding over the case, went out of his way to seek a more lenient sentence for one of the three, even contacting Frank Hunger, a friend who then held a high post at Main Justice. Before trial, prosecutors reached plea agreements with two of the defendants, Mickey Herbert Thomas, 25, and a 17-year-old who was charged as a juvenile. Both received sentences of
supervised release without prison time.

Daniel Swan, 20, alone went to trial and was convicted on three counts. The government sought a prison term under the U.S. Sentencing Guidelines of 71/2 years.

Before he sentenced Swan, Pickering wrote a sharply worded order directing prosecutors to file a response detailing the sentence meted out in all cross-burning prosecutions across the nation and to call the case to the attention of then-Attorney General Janet Reno.

Many federal judges have bristled at the guidelines or questioned prosecutors' acceptance of plea bargains in order to secure the conviction of other, arguably less culpable, defendants. But Pickering did more than that.

Frustrated with the "gross disparity in sentence recommended by the government," he called Hunger, a Mississippian and a personal friend, to try to get the attention of Main Justice. Hunger was then assistant attorney general for the Civil Division.

At the hearing, Edwards questioned both Pickering's sensitivity to crimes of racial bias and the propriety of the judge's efforts to intervene.

"Why did you take this action?" the senator asked. "And what authority did you have to do it as a judge?"

Pickering replied that during the trial, he learned that the juvenile was the ringleader in the crime, had been known to harbor racist views, and had previously fired a shot into the couple's home.

Accordingly, the sentence facing Swan, Pickering believed, "was the most serious sentencing disparity I had ever seen."

In a Feb. 6, 2002, letter to Judiciary Chairman Patrick Leahy (D-Vt.), Pickering said Hunger

turned down his entreaty because he didn't supervise the Civil Rights Division, which brought the case. Prosecutors did end up dropping one count, and Pickering sentenced Swan to 27 months.

The incident triggered considerable discussion at the Senate hearing.

"Cross burning is very much of concern to all of us on this panel," said Sen. Charles Schumer (D-N.Y.). "It is a dagger at the heart of our nation. When someone burns a cross, it's aimed at all of America."

Pickering responded that he "did not minimize the significance of cross burning. It is a heinous crime." In fact, he said, he was "outraged" that the juvenile, who had taken the lead in the cross burning, had not gotten a single day in prison.

Edwards also asked Pickering whether the contact with Hunger, made without the knowledge of the line prosecutors or Swan's lawyer, was an improper ex parte communication.

Canon 3 (a) (4) of the Code of Conduct for United States Judges provides that a federal judge should "neither initiate nor consider ex parte communications on the merits . . . of a pending or impending proceeding."

Pickering said that he did not think his contact was ex parte since Hunger "was not a lawyer on the case, and my contact did not benefit either side."

However, judicial ethics expert Steven Lubet of Northwestern University School of Law says that while it is not necessarily a major infraction, a judge "just shouldn't talk to outside experts-witnesses, relatives, anyone."

Hunger, now a partner at Covington & Burling, did not respond to calls seeking comment.

Another ethics issue that arose at the hearing was brought up by Sen. Russ Feingold (D-Wis.)

"You have an impressive outpouring of support from Mississippians," Feingold told Pickering, pointing out that 18 supportive letters were faxed to the committee from Pickering's chambers on Oct. 25 or 26, 2001, just a week after the judiciary panel held its first hearing on Pickering's nomination.

Feingold asked whether Pickering had skirted an ethical line by soliciting endorsements from lawyers who had appeared before him or might do so in the future.

Pickering replied that he learned just before his first hearing of brewing opposition to his nomination. Afterward, he realized he needed support, so he quickly "contacted some people and asked them to write, if they were so inclined."

He said he put no pressure on anyone to boost his candidacy and "forwarded all the letters I

received."

Lubet says that although there's no direct precedent, this conduct could involve the problem of "unintentional coercion" that arises when judges solicit lawyers for charitable contributions.

Sovereign State

Much was said, before and during the hearing, about Pickering's contact in the early 1970s with the Mississippi State Sovereignty Commission, a notorious state government body set up in 1956 to preserve segregation and infiltrate civil rights groups.

The commission's files, which were opened to the public in 1998, include one document with one reference to Pickering. It is a three-page memorandum from investigator Edgar Fortenberry to W. Webb Burke, head of the commission.

Pickering, then a state senator, was quoted as saying he was "very interested" in alleged infiltration of a labor union at the Masonite Corp. plant in Laurel, Miss., in his district. Pickering "requested to be advised of developments" regarding the union.

Liberal groups have made much of the fact that Pickering is mentioned in the files of the racist group and that he was evidently seeking its cooperation in monitoring labor unrest.

Pickering's supporters have replied that in view of the nominee's known opposition to Ku Klux Klan involvement in union activity in Laurel, the KKK was presumably the subject of the memo.

The document itself tells a slightly different story.

The alleged infiltration that the Sovereignty Commission was concerned about was not from the Klan-that would be an unlikely subject of the commission's concern-but from the Southern Conference Educational Fund Inc. The SCEF was a pro-civil rights group that organized blacks and whites in the South from 1948 through 1974. It was viewed by some as a radical left group.

In his appearance before the Senate panel, Pickering did not mention the SCEF. He explained he contacted the commission because in view of the union's history of Klan involvement, "if anyone had mentioned the possibility of there being more union organizing which might bring violence . . . I would have requested to have been kept apprised of any information that would indicate that violence might erupt again."

In their written materials, the liberal groups did not mention the SCEF.

Bench Postures

The atmosphere at the Pickering hearings was in many ways reminiscent of a battle over a Supreme Court nomination. There was a line of citizens snaking out the door on the second floor of the Hart building, staffers for members and interest groups busily passing out documents, and

an unusually full complement of reporters.

The hearing also featured the sweeping rhetoric that senators use in framing a single legislative battle as a fight for the future of the country.

"The record of Charles Pickering can be expressed in two words: moral courage," Sen. Mitch McConnell of Kentucky said in his opening statement for the Republican minority. "When victims of racial injustice looked for justice, they found it in one man, Jones County Attorney Charles Pickering."

Sen. Orrin Hatch (R-Utah) accused liberal activists of "an apparent vicious strategy of Borking any judicial nominee who happens to disagree" with them.

Sen. Dianne Feinstein (D-Calif.) was not to be outdone.

"For many of us, this 5th Circuit seat is as important as a Supreme Court seat," Feinstein said. "The 5th Circuit once served as a trailblazer for the protection of individual rights-voting rights, employment discrimination. So this becomes a pivotal position for people who have fought for these rights for decades."

Until there is a Supreme Court nomination, which is not in the offing, that will have to do.

Senate Confirms Iowa Judge to 8th Circuit Court of Appeals

The Associated Press
Monday, February 11, 2002

The Senate on Monday approved the nomination of Michael Melloy to the 8th U.S. Circuit Court of Appeals, the chamber's first approval of a circuit judge this year.

Melloy was approved on a 91-0 vote.

The 11-member appeals court is based in St. Louis. The vacancy was created when Judge George Fagg of Des Moines, Iowa, took senior judge status.

Melloy, 53, a Republican, is a native of Dubuque, Iowa, who has served on the U.S. District Court for the Northern District of Iowa in Cedar Rapids since 1992. He previously served six years as a U.S. bankruptcy judge.

He received a bachelor's degree from Loras College in 1970 and graduated from the University of Iowa College of Law in 1974 before entering private practice in Dubuque.

The Senate also confirmed Jay Zainey of Louisiana to be a U.S. District Court judge in Louisiana. He was approved on a 92-0 vote.

Zainey received a bachelor's degree from the University of New Orleans in 1973 and a law degree from LSU in 1975. He served as president of the Louisiana state bar from 1995-96.

Zainey has served as an ad hoc judge in the first parish court and juvenile court in Jefferson Parish. He was also a campaign aide to ex-Gov. David Treen.

After his nomination, the Metairie lawyer withdrew his family's membership from a Jefferson Parish country club after questions were raised about whether it discriminates against blacks.

There are currently 97 vacancies in the federal judiciary. There are 56 nominations pending before the Senate.

Preview of the Court Fight

By Eleanor Clift
Newsweek
Monday, February 11, 2002

The fight over president George W. Bush's first high-profile court nomination is shaping up as a test run for future battles over likely Supreme Court nominees. Liberal groups have mounted an all-out campaign against conservative Mississippi trial Judge Charles Pickering, hoping to stop his bid for the federal appeals court in Senate committee. "We're looking to send a message to Bush," says Nan Aron of the Alliance for Justice. But Pickering is a favorite of fellow Mississippian Trent Lott, who says the judge will win confirmation "or else." Meaning what? "He leaves that to every senator's imagination," says an aide. Democrats have a single-seat majority on the committee. Opponents think all 10 Dems will oppose Pickering on the merits, but they worry that one or two might fold under the majority leader's pressure and forward the nomination to the floor. The White House says the fight is "Lott's to win or lose."

Borking Judge Pickering

By Terry Eastland
The Weekly Standard
Monday, February 11, 2002

WHEN JIM JEFFORDS left the Republican party last May and became an independent, Democrats gained control of the Senate. By a single vote, yes, but what a difference that margin makes, especially when it comes to appointing judges.

Consider the case of Charles Pickering, for twelve years a U.S. District Judge in Hattiesburg, Mississippi. Last year George W. Bush designated him for the Fifth U.S. Circuit Court of Appeals. On October 18, Pickering (rated "well qualified" by the American Bar Association) went before the Senate Judiciary Committee. Had Republicans still controlled the Senate, he would have been easily confirmed. But the one hearing wasn't enough for Judiciary Committee

Democrats. Pickering returned last week for a second hearing--more nearly an inquisition. Whether Pickering is ultimately confirmed or not, the Democrats made clear how they intend to deal with Bush nominees they target for possible defeat. Attack their life, attack their work, attack both if you can, and don't let evidence get in the way.

Last week's hearing moved back and forth between Pickering's career before he became a judge and his tenure on the bench. Pickering was in private practice before becoming a county prosecutor and then a state senator. The Democrats' inquiry into statements and actions of his during those distant days sought to paint him as unsympathetic to claims of black equality, even a segregationist at heart.

The Democrats read more into some events than the facts could reasonably bear. Yet Pickering found himself repenting of his 1964 statement that the national Democratic party had "humiliated" the people of Mississippi in the way it had treated the state party, then insistently segregationist. Asked whether he regretted saying that, Pickering, who became a Republican that year, replied, "I do." On another matter--a seemingly innocuous contact in 1973 with the pro-segregationist Mississippi Sovereignty Commission--Pickering also wished that it was not on his record: "If I were making that decision today, I would not do it," he said.

Those acts of repentance didn't seem to impress the Democrats. Nor did evidence portraying Pickering as an exemplary figure during Mississippi's stormy civil rights era. Republican senators reviewed how in 1967 Pickering, a locally elected prosecutor, testified in open court against Sam Bowers, the imperial wizard of the Ku Klux Klan, who was being tried for the firebombing death of civil rights leader Vernon Dahmers. Later, Pickering was turned out of office. During his testimony Pickering attributed that outcome at least in part to the fact he had taken the stand against Bowers. Citing Pickering's testimony against Bowers and other actions he had taken that
helped move Mississippi away from its discriminatory past, Sen. Mitch McConnell lauded Pickering for his "moral courage." But that was a point no Democrat was heard to second.

The Democrats expressed apparent interest in Pickering's approach to judging. Pickering distinguished between his personal and political views and the law, stating that as a judge he was duty-bound to follow the latter. He added that as a district judge he was bound by the decisions of the Fifth Circuit and the Supreme Court, whether he agreed with them or not. He further added that as an appellate judge he would be similarly bound.

These routine positions didn't satisfy the Democrats. Nor does it seem possible that they could have. At times the Democrats said they wanted judges who adhered to decisions by courts above. At other times they implied they wanted judges who would dissent from such decisions. Dianne Feinstein, for example, described the Fifth Circuit as "a trailblazer in protecting individual rights." But she lamented that it was no longer that, a point more bluntly made by Democratic colleagues who called it a "very conservative" court. Did she mean to say that the decisions of such a court shouldn't be followed? Likewise, Charles Schumer decried an "era of unprecedented judicial activism" wrought, though he did not say so, by Supreme Court appointees of Republican presidents. Did he mean to say that judges on the courts of appeals

should defy the Supreme Court's decisions? To his credit, Pickering declined to embrace the lawless approach to judging suggested by his Democratic interrogators.

During her turn, Maria Cantwell inquired about Pickering's views on the "right of privacy," by which she really meant the abortion right. Pickering said that he "would follow what the Court has said" about the privacy right, which was first announced in a 1965 case, Griswold v. Connecticut. Cantwell noted that he, Pickering, didn't say that he personally believed that. Pickering replied that he would follow the Court's precedents. To which Cantwell responded: "Do you recognize it in the Constitution?" Said Pickering, "I see it because the Court has said it is there." Cantwell was unsatisfied, as were other Democrats. It appears that they want judges who personally believe not merely that the Constitution contains an unenumerated right of privacy but that this right encompasses the abortion right declared by the Court in the 1973 case of Roe v. Wade. Judges nominated by a Democratic president would doubtless personally believe all of these things--and more.

Pickering's confirmation chances seemed slim at week's close. Thanks to Jeffords, the committee now has 10 Democrats and 9 Republicans, and it takes 10 votes to get out of committee. Herb Kohl was the one Democrat who failed to make it to the hearing, and there was some speculation after the hearing that Pickering's friend and sponsor, Trent Lott, had struck some sort of deal with Kohl in which the Wisconsin Democrat would vote for Pickering in committee and also on the floor. If so, Pickering just might make it onto the Fifth Circuit. In any case, his hearing is a reliable indicator of the nasty confirmation battles that lie ahead.

Op/Eds

The Left Roughs Up Pickering

By Thomas Jipping
The Washington Times
Monday, February 11, 2002

The far-left is flexing its muscles, roughing up a distinguished appeals court nominee just to show the Bush administration that they can. A year ago, left-wing senators savaged attorney general nominee John Ashcroft as a "shot across the bow" on a future Supreme Court vacancy. Today, by beating up Judge Charles Pickering, the shots are getting closer.

Judge Pickering has been a U.S. District judge since 1990 and his legal career spans more than four decades. Nearly 20 past presidents of the Mississippi Bar Association support his nomination to the U.S. Court of Appeals for the Fifth Circuit.

In their drive-by Borking, Judge Pickering's attackers insist that the nominee is "insensitive" to civil rights. On Feb. 6, Rep. Bennie Thompson said Judge Pickering is actually "hostile to minorities and women." These, of course, are the far-left's code words. Anyone who does not share their particular view of the world, their specific political agenda, anyone who is not like

them, is insensitive and hostile. So much for tolerance and diversity.

Yet this picture bears no resemblance to the nominee, who initiated and serves on the board of the University of Mississippi's Institute for Racial Reconciliation. He has chaired a county race-relations committee, helped establish a local program for at-risk black youth, and both testified against and prosecuted Ku Klux Klan members despite risk to himself and his family. He once lost a bid for re-election as county prosecutor because he defied the Klan.

James Evers, brother of slain civil-rights leader Medgar Evers, wrote in the Feb. 7 Wall Street Journal that "I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues."

The sensitivity cops in the judicial selection process are the liberal American Bar Association (ABA). Their published guidelines define the criterion of "judicial temperament" as including a nominee's "compassion . . . freedom from bias, and commitment to equal justice under the law." The ABA said Judge Pickering had those qualities in 1990 when first appointed to the federal bench. The Democrat-led Judiciary Committee and Senate unanimously approved him them, including current committee Chairman Patrick Leahy and Democrat members Ted Kennedy and Joe Biden. The ABA apparently believes Judge Pickering is even more committed to equal justice today, giving him their highest "well-qualified" rating for appointment to the appeals court.

Some of the attackers' tactics are really underhanded. The Alliance for Justice, for example, claims on its web site that Judge Pickering "decided not to publish" most of his 1,100 written opinions. The truth is that the Judicial Conference of the United States, which sets the rules for federal judges, since 1964 has said judges should limit publication of their opinion. Rule 47.5 of the U.S. Court of Appeals for the Fifth Circuit, which includes Judge Pickering's jurisdiction, echoes the same policy. The Federal Judicial Center's Judicial Writing Manual states that because
decisions of district judges (such as Judge Pickering) are "merely persuasive authority" and not "binding precedent . . . publication should be the exception." More than 80 percent of appeals-court decisions are unpublished, and district judges should publish even less. Turns out Judge Pickering was just following the rules.

But then, that's what the debate over the judiciary is all about, whether judges must just follow the law or can (and even should) make it up to achieve particular results. It's about whether judges or the people should run the country and define the culture. The far-left finds it tough going in the ordinary political process, so they turn from the statehouse to the courthouse to force their agenda on us anyway. Our freedom, however, requires that judges follow the law and leave the politics to the people.

Judge Pickering knows the difference. At his Judiciary Committee hearing on Feb. 7, he repeatedly said that "I will follow the law even when I disagree with it." He told Sen. Dianne Feinstein that "I know the difference between a political decision and a judicial decision." That is precisely the kind of judge America needs. In fact, it's the oath judges take to be impartial.

In the completely political world of the far-left, even judges exist simply to further the revolution, to deliver the political goods. That world does not contain something called the rule of law that does not change and that can protect everyone's rights. It's their way or the highway. The ends justify the means. It's not how you play the game, but whether they win or lose.

The kind of judge America needs remains the primary issue in judicial selection. It's no wonder the far-left can't stand Judge Pickering. With more like him, especially on the Supreme Court, they would have to convince the American people instead of a few elitist judges. That's a debate they cannot win.

Stop the Payback; Senate Needs to Move on Judicial Nominees

The Dallas Morning News
Sunday, February 10, 2002

Same song, different verse.

Senate Republicans confirmed only 14 of President Bill Clinton's 34 appellate judge nominees in his last Congress. Now, with Democrats controlling the Senate, they have confirmed only six of President Bush's remaining 29 appellate judge nominees. (Nine appointees withdrew.) With an election year upon us, some believe Democratic feet will drag even slower.

What a shame. For both parties.

Politics always has surrounded presidential nominees. But the Senate seems to have increasingly moved away from the constitutional "advise and consent" role to outright power plays, especially with judicial nominees. If a court appointee doesn't fit one party's philosophy, then the traps come out. That's true for Republicans as well as Democrats.

One trap being laid now is for Priscilla Owen, a Texas Supreme Court justice whom Mr. Bush nominated for the Fifth Circuit Court of Appeals last year. Opponents raise questions about Justice Owen because she accepted a 1994 campaign contribution from Enron, today's leper colony of donors. Two years later, she authored a court opinion on an arcane tax matter that directly benefitted Enron.

But here's the other part of the equation. Every Texas Supreme Court justice agreed with her about the constitutionality of the law. The Texas House and Senate also passed the measure with only one dissenting vote. The position she took was in concert with her colleagues and the Legislature.

Besides, Justice Owen's lifelong record is one of accomplishment and integrity. She is one of the few judicial nominees to receive a unanimous "well qualified" rating from the American Bar Association.

If the Senate wants to have a debate about Ms. Owen's conservative philosophy, then say so. But even there, a president deserves the edge in getting his judges appointed.

The gamesmanship could go on forever. But enough with the traps. The Senate needs to move speedily in approving the president's judicial nominees. Stop the payback.

Chairman Neas

The Wall Street Journal
Friday, February 8, 2002

By all normal appearances Senate Democrats were in charge of yesterday's hearing before the Senate Judiciary Committee. But anyone who knows anything about modern legal politics knows that the real chairman was the talkative fellow holding court with the press corps in the hallway nearby.

That man is Ralph Neas, president of People for the American Way and ringleader of what promise to be years of attacks on President Bush's judicial nominees. Politically speaking, he's Edgar Bergen and Senate liberals are his Charlie McCarthys. He gives them their attack themes, and they then repeat them to skewer some hapless nominee who thinks a judgeship is going to be the capstone of his career. Yesterday Democrats sang Mr. Neas's tune while pounding appeals-court nominee Charles Pickering Sr. as some kind of 1950s racist.

For Mr. Neas, this is like old times. His main contribution to American politics is the verb "to bork," defined as vilifying a judicial nominee in order to block his confirmation. He orchestrated the original borking, against Robert Bork in the late Reagan era, but has also lent his expertise to the trashing of Clarence Thomas and a host of other conservative nominees.

Now, after eight years in hibernation, Mr. Neas is back, this time giving attack orders to Judiciary Chairman Pat Leahy. And he hasn't lost his touch. All the hallmarks of the Neas method are on display in the borking of Mr. Pickering, a federal district judge since 1990 and Mr. Bush's nominee for a seat on the Fifth Circuit: The phalanx of liberal interest groups, the press leaks and shameless appeals on race and abortion.

And, of course, the Senators themselves, all lip-synching lines from Mr. Neas's anti-Pickering position paper. The document is so full of half-truths and deliberate omissions that even Legal Times, no friend of conservatives, felt compelled to report that "You won't get the full story on Charles Pickering Sr. from liberals' portrayal of his life and record."

To play the race card, Mr. Neas dug back more than 40 years to condemn Judge Pickering for expressing "no moral outrage" in an article he wrote as a first- year law student about Mississippi's law against interracial marriage. Setting aside the fact that as a student Mr. Pickering was supposed to be presenting a neutral analysis of the law, if the new standard for judicial confirmation is to have perfect judgment at the age of 21, the nation will soon be bereft of judges.

The real Pickering record on race was reported on these pages yesterday by James Charles Evers, brother of slain civil rights leader Medgar Evers. He outlined Judge Pickering's courageous personal history on race, including taking a stand against the imperial wizard of the Ku Klux Klan in 1967, an action that cost him his re-election as county prosecutor.

Another Neas attack line is to portray him as a religious proselyte, not to say bigot. He scores the judge, a devout Baptist, for telling one defendant during a sentencing that "You can become involved in Chuck Colson's prison ministry or some other such ministry and be a benefit to your fellow inmates." Sounds like good, compassionate advice to us.

Mr. Neas's paper also condemns Judge Pickering for the sin of not publishing many of his judicial decisions. He neglects to mention that there is no requirement for district judges to publish their rulings, which are usually delivered orally. Some judges do so anyway, by sending in transcripts to Westlaw or Lexis; circuit court judges, who understand that lower court rulings are rarely significant doctrinally, jokingly call this the "vanity press." In other words, Judge Pickering is not hiding anything; he's simply a modest man, a concept apparently beyond Mr. Neas's experience.

In one political sense, of course, Mr. Pickering should consider himself fortunate. At least he's had a hearing, and he'll probably get a vote too, with Mr. Neas granting both because he figures he has the votes to bury him in committee. But of the 23 circuit court nominations pending before the Judiciary Committee, 21 have received no hearing at all. This includes every one of Mr. Bush's nominees for the half-empty Sixth Circuit.

Mr. Leahy keeps sending us letters telling us that he's a fair man, he's not stalling anything, we've got him all wrong. But he's blown away even the pretense of fairness by making the first big political hearing of 2002 his assault on Mr. Pickering. And all of this merely to defeat a circuit court nominee. Imagine the venom that will be on display the first time there's a Supreme Court vacancy.

In his hearing yesterday, Judge Pickering offered a dignified statement of his judicial philosophy: "I recognize and know the difference between a personal opinion or view, a political position or view and a judicial opinion. I will obey the Constitution." Too bad that's not a Constitution that Chairman Neas and his Democratic followers even recognize.

Smearing Bush's Nominees

By Thomas Jipping
World Net Daily
Thursday, February 7, 2002

Some smears are smearier than others, and the far-left has launched their smeariest so far against one of President Bush's best judicial nominees.

The president nominated Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit nearly 1 year ago. Mr. Estrada came to America from Honduras as a teenager speaking no English. In no time, he had graduated from Harvard Law School and has experience both in government as assistant to the solicitor general during the Clinton administration and now in a partnership in one of America's premier private law firms.

The far-left, however, cannot afford to let slip that individuals from anywhere can do anything they choose here in America. No, minorities must toe the liberal line or face the consequences. Mr. Estrada's number is apparently up because the attack has begun.

We now hear that Paul Bender, deputy solicitor general during the Clinton years, claims Mr. Estrada is an "ideologue" who cannot be counted on to be "fair and neutral" or provide a "neutral statement of the law" on legal issues. This smear is particularly outrageous for two reasons.

First, Mr. Bender is the real ideologue making legal arguments denounced by the U.S. Senate, his own boss Mr. Clinton, the U.S. House of Representatives, and the U.S. Court of Appeals.

In 1993, Mr. Bender engineered the Clinton Department Of Justice's effort to weaken enforcement of the federal child pornography statute. In a case titled United States vs. Knox, DOJ not only changed its predecessor's position in the same case, but repeatedly changed its own position in successive appearances before the U.S. Court of Appeals. In fact, DOJ's position would weaken the child porn statute more than even the convicted child pornographer in this case had sought.

Between Nov. 1993 and June 1994, the Senate voted 100-0 to denounce this move President Clinton wrote Attorney General Janet Reno to agree with the Senate; the House of Representatives voted 426-3 to reject this Bender-inspired stunt; and the U.S. Court of Appeals rejected his legal arguments.

Mr. Bender is the ideologue. He was chief counsel to the 1970 Commission on Obscenity and Pornography that recommended abolishing all state and federal obscenity laws. In this case, he tried to further that crusade by twisting the statute and replacing a "neutral statement of the law" with what he personally wanted the law to be.

Second, in some high-profile cases, Mr. Estrada was fair and neutral even when the result upset conservatives. In NOW vs. Scheidler, he argued that the federal racketeering statute could be used against pro-life protesters. He was right. The statute contains no limitation or exception to distinguish between social protesters and the Mafia. Maybe it should but it doesn't and a "neutral statement of the law" requires saying so. Mr. Estrada did and the Supreme Court unanimously agreed.

We've seen this before. Someone appearing to have credibility makes an accusation about a minority nominee. It's general enough to make checking the facts difficult and it's first spread behind the scenes to undermine the nomination. When that fails, the smear is released to spread wherever it will. Yes, you got it. That's exactly what these very same people People for the

American Way, the Alliance for Justice, and their ilk did to Clarence Thomas in 1991. And, now, it's Mr. Estrada's turn. Maybe they're afraid he too will end up on the Supreme Court one day.

Both the liberal American Bar Association and the National Hispanic Bar Association investigated Mr. Bender's smear and rejected it. They both endorsed Mr. Estrada's nomination and the U.S. Senate should immediately approve it.

Whether senators support the nomination or not, they should all insist on a fair and responsible confirmation process. And they should all denounce the unfair and irresponsible tactics being used against Mr. Estrada.

What's the Rush With Appointing Federal Judges

By Laura Dickinson
The Hartford Courant
Monday, February 11, 2002

Last week, the Senate Judiciary Committee held a confirmation hearing on Charles Pickering, whom President Bush has nominated for a seat on the U.S. 5th Circuit Court of Appeals. Like many of the administration's judicial appointees, Pickering is strongly partisan and far outside the American mainstream in his views. For example, he once wrote an article calling on the Mississippi legislature to strengthen its then-existing laws banning interracial marriage, and he repeatedly fought the enactment of the 1964 Voting Rights Act, which opened the door for African Americans to vote.

Senate Democrats must resist calls to expedite the confirmation process and instead make sure there is adequate time to review the record of Pickering and appointees like him, confirming only those who are truly qualified. Although administration officials and Republicans on Capitol Hill have trumpeted the need for bipartisanship in recent months, they have seriously flouted the spirit of bipartisanship in the appointment of federal judges. They have sought to exploit the terrorism crisis to push for speedy Senate confirmation of judicial nominees. And they claim that such appointments are desperately needed, even after they spent years blocking President Clinton's efforts to appoint judges to the federal bench.

The quality of the federal judiciary affects the everyday lives of Americans. The scope of civil rights, the extent to which the government may oversee environmental protection or food safety or drug labeling, even the appropriate role of the federal government in combating terrorism -- all of these issues (and many more) fall within the purview of the federal judiciary. Moreover, because these judges are appointed to lifetime tenure, they will influence the interpretation of the law for decades to come.

Especially given the closeness of the presidential election that brought President Bush to power (and of course, the judiciary played a role there as well), it is incumbent on the administration to appoint highly qualified judges whose views reflect those of mainstream American society. And

it is equally incumbent upon the Senate to ensure that the president acts within his limited electoral mandate.

Unfortunately, many of the nominations put forward so far fail this test. In addition to Pickering, one of Bush's appointments, Carolyn Kuhl, fought hard to grant tax-exempt status to Bob Jones University. She also advocated the total exclusion of women from the publicly funded Virginia Military Institute, a position ultimately rejected by all but one of the U.S. Supreme Court justices who addressed the question. Another nominee, Timothy Tymkovich, defended a state prohibition against using federal Medicaid funds for victims of rape and incest to obtain abortions. Whether one agrees with these positions or not, it is difficult to argue that they are mainstream positions within American society.

Ironically, though Republican leaders now call for expedited confirmations, Republicans spent the eight years of the Clinton administration repeatedly attempting to block appointments. Indeed, the Republican-controlled Senate went so far as to devise rules to prevent many appointees from even receiving a hearing. The result of this effort has been high vacancy rates in the federal courts.

Although some have argued that the Senate should now aim to block Bush nominees as aggressively as the Republicans blocked Clinton appointees, the Democratic-controlled Senate has wisely resisted this call. Instead, if the Senate Judiciary Committee keeps up its current pace, it will hold more hearings in this session alone than the committee held in any of the last 6 ½ years of Republican control.

It appears that Senate Democrats are fulfilling their constitutional obligation to scrutinize judicial nominees without resorting to the obstructionist policies of recent years. This is precisely as it should be. The shape of the federal judiciary is so important that the Senate must not rush to confirm unqualified or overly ideological judges simply out of the patriotic desire to support the president in a time of national crisis.

We Like Mike: An Open Letter to Senator Patrick Leahy in Support of Judicial Nominee Michael McConnell

By Akhil Reed Amar and Vikram David Amar
Find Law
Friday, February 8, 2002

Dear Senator Leahy,

We write this open letter in strong support of Professor Michael McConnell, who has been nominated by President Bush to sit on the U.S. Court of Appeals for the Tenth Circuit.

By way of introduction, we are registered Democrats who voted for Al Gore and Joe Lieberman. We have not hesitated to publicly oppose the Bush Administration where we think its policies endanger constitutional liberty. In a previous column, we sharply criticized Attorney General

Ashcroft for issuing a constitutionally troubling eavesdropping regulation. In that column, we directed our readers to your website, which raised similar questions about this regulation. (We have also worked with your staff on a variety of other post 9-11 issues.) This week, we have filed a pro bono amicus brief in the Supreme Court opposing an intrusive and ill-justified high school drug-testing policy in Tecumseh, Oklahoma; the Bush Administration has filed an amicus brief on the other side.

But on the subject of the McConnell nomination, we applaud the Bush Administration. Here is an issue where thoughtful Democrats and Republicans, liberals and conservatives, should come together.

A Uniter, Not a Divider

We begin with a few observations about Michael McConnell, the man. Character counts, and nowhere does it matter more than for judicial appointments for life. We know McConnell well, and admire him. He is soft-spoken, modest, and generous towards others, both personally and intellectually. These qualities are all the more striking because McConnell is a truly gifted legal scholar. (Brilliance and humility do not often coincide, especially in the legal academy.) McConnell is a man of moderation, balance, and judgment. In short, he has an ideal "judicial temperament."

We are hardly alone in this assessment. In early July, over 300 law professors sent you a letter "enthusiastically" endorsing McConnell's nomination. This letter included many of McConnell's past and current colleagues-men and women who have seen him up close over many years. Its signatories included the past and present deans of many distinguished law schools, including Yale, Harvard, Chicago, Stanford, Michigan, and Cal-Berkeley.

Perhaps most strikingly, the list was genuinely bipartisan and cross-sectional, featuring dozens of leading "liberal" as well as "conservative" scholars, including Al Alschuler, Jack Balkin, Randy Barnett, Robert W. Bennett, Lillian BeVier, Vince Blasi, Steve Calabresi, Evan Caminker, Stephen Carter, Ron Cass, Jesse Choper, Bob Clark, Michael Dorf, John Hart Ely, Richard Epstein, Sam Estreicher, Dan Farber, Charles Fried, John Garvey, Mary Ann Glendon, Carole Goldberg, Kent Greenawalt, Sam Issacharoff, Elena Kagan, Yale Kamisar, Doug Kmiec, Anthony Kronman, Doug Laycock, Jeff Lehman, Lawrence Lessig, Sanford Levinson, Saul Levmore, Dan Lowenstein, Cal Massey, Tracey Meares, Robert Nagel, Mike Paulsen, Scot Powe, H. Jefferson Powell, David Shapiro, Suzanna Sherry, Ann-Marie Slaughter, Kate Stith, David Strauss, Peter Strauss, Bill Stuntz, Cass Sunstein, and Jeremy Waldron, to name just a few.

Rarely do law professors-by nature a contentious lot, rewarded for strong opinions-come to such universal consensus. It is hard to imagine many other things that the above-named professors (to say nothing of the broader list of 300) could all agree on.

A Legal Eagle

Competence counts alongside character; and here too McConnell is off the charts. After clerking for Judge J. Skelly Wright and Justice William Brennan, McConnell has gone on to be a leading public servant, private lawyer, and legal academic. In an earlier column, we argued that courts should bring together lawyers with varied legal backgrounds and pre-judicial careers. McConnell brings this desired balance together in a single person, who has excelled at very different legal jobs, and who has synthesized the distinctive virtues of each.

McConnell is a scholar's scholar AND a lawyer's lawyer. Each side of his resume is dazzling, but what is most remarkable is that a single person has excelled at both. (Only Larry Tribe, Walter Dellinger and a few others may claim comparable achievements both as a constitutional scholar AND as a constitutional practitioner.)

As a scholar, McConnell has published over fifty law review articles, many of which appeared in leading law reviews and are now considered classics. As a practitioner, he has served in various high-level governmental positions and has practiced law on his own. All told, he has argued eleven cases before the U.S. Supreme Court.

Being an outstanding scholar has made McConnell a better lawyer, and being an outstanding lawyer has made him a better scholar. To overstate: great scholars sometimes lack judgment, and good lawyers sometimes lack ideas. But McConnell sees both the big picture and the details; he has both vision and prudence. In his scholarship and his briefs, he has deftly woven legal tapestries respectful both of constitutional text and of the sometimes competing considerations of tradition, precedent, and established practice.

We give McConnell special credit for the way he has pursued private practice. He has taken on many pro bono cases, rather than simply selling himself to the highest bidder. He has worked well in partnership with other lawyers on his cases, who praise his collegiality. Collegiality is a special requirement for appellate judges, who do their work in panels; and the lack of it is sometimes a weakness of pure academics, who do most of their work alone.

The Vision Thing

As we have explained in an earlier column, Senators may properly and openly consider nominees' overall legal philosophies and likely judicial rulings. Given McConnell's scholarly writings and practice experience, we highlight two areas that will likely be of particular interest in his hearings.

McConnell is perhaps America's pre-eminent scholar of religious liberty. Although we do not agree with everything he has written on the subject, we find his general views carefully argued and normatively congenial.

A couple of media pieces have misstated McConnell's general views, so it's useful to set the record straight. McConnell generally champions the idea of governmental "neutrality"- government ordinarily should not favor any specific religion or religion generally; but neither should government single out religion for unique disfavor and disadvantage. Government

shouldn't discriminate against religion. For example, if a veteran can use his GI loan to help finance his education at a nonreligious college, he should likewise be allowed to use the loan at Notre Dame or BYU-otherwise, the government is discriminating against religion.

This is a generally attractive vision, and it has real bite from a civil libertarian perspective, connecting the religion clauses to the Constitution's grand theme of equal citizenship. McConnell opposed state-sponsored graduation prayers at public school commencements even before the Supreme Court struck down this practice, 6-3, in the 1992 case of Lee v. Weisman. McConnell has likewise publicly endorsed the result of the more recent Santa Fe Independent School District v. Doe case, which invalidated (by a similar 6-3 vote) government-sponsored prayer at high school football games. In both situations, government flunked the neutrality/equality test.

McConnell has also championed the idea that courts should treat congressional statutes with deference, and should not lightly strike them down. This is a principled position of judicial restraint, and it stands in stark contrast to more virulent forms of conservative ideology now prominent in federal courts generally and in the Supreme Court in particular.

In the almost eighty years between the Founding and Reconstruction, the Supreme Court invalidated acts of Congress on only two occasions, Marbury v. Madison in 1803 and Dred Scott v. Sanford in 1857. By the mid 1920s, this number had risen to about fifty-less than one case a year. Overall, the Warren Court invalidated acts of Congress in about twenty cases over a sixteen year span. By contrast, the Rehnquist Court in the last six years alone has struck down congressional laws (most of them constitutionally sound laws, in our view) in almost 30 cases-far more than in any prior six-year period.

This is a trend that should disturb Congress-and the confirmation process is one place for Congress to begin to fight back for its rightful place in the Constitution's scheme-co-ordinate with courts rather than below them.

One of the worst trends on the current Supreme Court has been its willingness to invalidate Congressional civil rights laws enacted pursuant to congressional power under the Reconstruction Amendments, from the Religious Freedom Restoration Act to the Violence Against Women Act and the Americans With Disabilities Act. McConnell has been a leading critic of this trend toward judicial imperialism. Put differently, McConnell has been a principled champion of Congress's right to implement its broad vision of civil rights even when Congress seeks to protect rights more generously than the Supreme Court has chosen to do on its own.

If Not McConnell, Who?

McConnell's nomination to the Tenth Circuit draws additional support from the fact that he is strongly supported by his home-state Senators, one of whom, Orrin Hatch, is the ranking member and former chair of the Judiciary Committee. Indeed, McConnell is supported by virtually all the Senators from the entire circuit. And if the Senate is to play anything close to an equal role with the president in the appointments game, it is important-and consistent with Senate traditions of courtesy and deference-for the Senate as a whole to pay particular respect to

the views of Senators with a special stake in a given nomination.

We realize that in the mid 1990s, when the political situation was reversed-a Democratic President confronting a Republican Senate-some of President Clinton's judicial nominees were obliged to wait far too long to be confirmed. In particular, we were saddened that our friend Willy Fletcher, then a Professor at Cal-Berkeley, waited several years before finally winning confirmation to the Ninth Circuit. We strongly supported Fletcher then-for many of the same reasons we support McConnell now. Both are outstanding scholars with superb judicial temperaments.

It may be tempting to play tit for tat-Republicans stalled Fletcher so now Democrats obstruct McConnell. But we urge our fellow Democrats to resist this temptation.

At some point, someone needs to take a huge step away from an endless cycle of reprisal that works to the long-term disadvantage of both parties, and of the country. We were thus heartened to read your recent comments in the Congressional Record promising to hold hearings soon on McConnell's nomination.

But perhaps it's naive to think that moderate payback can be eliminated altogether from the appointments game. So here is a realpolitik point: President Bush is nominating and probably will continue to nominate several other judicial candidates who deserve very close scrutiny. Some of these candidates may have less prominent paper trails than McConnell. But many are likely inferior to McConnell in almost every way-less smart, less open, less humble, less lawyerly, less respectful of Congress, less knowledgeable about the Constitution. If there must be payback, please pick on someone else.

We like Mike-as does virtually everyone who knows him well-and we think that if you give him a chance, you will, too.

Pickering Represents A Civil Rights Setback

By Eugene Bryant
Legal Times
Monday, February 11, 2002

In his article "Judge's Record: What Was Left Out" on Feb. 4, 2002 [Page 1], Jonathan Groner went to great lengths to praise U.S. District Judge Charles Pickering for his apparent overtures to the African-American community in Mississippi. By doing so, Mr. Groner ignored the real and legitimate concerns that have led the 106 chartered membership units of the Mississippi State Conference of the National Association for the Advancement of Colored People (NAACP) to vigorously and unanimously oppose Judge Pickering's nomination to the U.S. Court of Appeals for the 5th Circuit. This is, in fact, the second time that the NAACP local branch in Laurel, Miss. - Judge Pickering's hometown-has opposed his nomination to a federal judgeship. In 1990, we opposed Judge Pickering's to the U.S. District Court for the Southern District of Mississippi.

It is not enough for a sitting judge to locate a few token African-Americans and local officials to vouch for his character and judicial temperament. It is almost understandable that such designees can be found, especially considering the fact that, even if Pickering's 5th Circuit nomination is unsuccessful, he will still continue to serve on the District Court.

Instead, Judge Pickering's words and actions over the stretch of 40-plus years, as raised by courageous NAACP members, should not be brushed aside. For example,

In 1959, as a law student, Judge Pickering wrote an article about how the Mississippi legislature could change state law to criminalize interracial marriage.

In the 1970s, as a state senator, Judge Pickering voted to deny full opportunity to African-Americans, fighting against the implementation of the 1965 Voting Rights Act and, as a result, keeping the Mississippi Legislature all white until the end of the decade.

In the 1970s, Judge Pickering also voted to support the Sovereignty Commission, a state-funded agency established to thwart desegregation efforts resulting from the landmark Brown v. Board of Education.

In the 1990s, Judge Pickering has continued his assault on voting rights, criticizing the fundamental "one-person, one-vote" principle as obtrusive. He has also criticized the creation of majority-black districts as "affirmative segregation."

Judge Pickering is unnecessarily hostile and abusive to plaintiffs in race discrimination cases. For example, he wrote, "plaintiffs fail to recognize that whatever your race-black, white or other-natural consequences flow from one's actions. The fact that one happens to be protected from discrimination does not give one insulation from one's own action."

To overlook this record is to maintain that a nominee for a lifetime judgeship should not be judged by his life's work. Specifically, to give Judge Pickering a "pass," despite his demonstrated record of hostility to civil and voting rights, is to maintain that he need not fully support equal rights and protections for all Americans and his past actions and present disposition will have no bearing on future conduct.

As Mississippians, we experienced the harsh realities of post-slavery and modern day Jim Crow and have vowed to never repeat it. Judge Pickering's elevation to the 5th Circuit Court of Appeals would represent a major setback to the hard-fought struggle of African-Americans and other racial and ethnic minority people in Mississippi-a state with a notorious record on civil rights.

Eugene Bryant

President

NAACP Mississippi State Conference

Judge Pickering's Past

The Boston Globe
Saturday, February 9, 2002

THE COUNTRY STUMBLES when a president points to a relic of a man and says he should be a high-court judge. Nonetheless, President Bush nominated US District Judge Charles Pickering of Mississippi to join the US Court of Appeals for the Fifth Circuit in New Orleans.

Trace Pickering's legal roots to 1959 and one finds an article he wrote as a law student advising the Mississippi Legislature how to close a loophole so the state could better punish people in interracial marriages. Sadly, even if this article is dismissed as old or just an academic exercise, there are still decades of legal thinking that make Pickering the wrong choice for circuit court judge.

In the 1970s, when the country was putting the Voting Rights Act to work to empower black voters, Pickering was a state senator who voted for redistricting plans that diluted the power of black votes.

During the 1990s, when he was a district court judge, Pickering seemed annoyed by the doctrine of one person, one vote, which calls for election districts to have roughly equal populations. One person, one vote helps groups of voters have all the political power to which they're entitled. The Supreme Court had ruled that deviations of more than 16.4 percent are unconstitutional. But when Pickering was faced with a deviation of 25 percent, he seemed unconcerned. Commenting in "dicta" - editorial comments from judges that set no legal precedent - Pickering called the high percentage "relatively minor."

Pickering's decisions were reversed 15 times by the Court of Appeals because he violated settled principles of law.

He has scolded plaintiffs, repeatedly saying that employees can be too quick to cry discrimination when they have simply failed to do their jobs well. This is a problem, but the caseload of the Equal Employment Opportunity Commission shows that workplace discrimination is the more corrosive issue.

Unfortunately, hundreds of Pickering's opinions are no longer available, so the Senate can only review an incomplete record.

Pickering does have supporters. Henry Naylor - a black city councilor in Hattiesburg, Miss. - wrote to Senator Patrick Leahy, chairman of the Judiciary Committee, and said: "Judge Pickering has received much praise from local and state African-American leaders who can attest to his commitment to being fair toward all citizens."

Pickering is also a member of the executive committee of the Institute for Racial Reconciliation

at the University of Mississippi.

It's nice to be reassured that Pickering and black people can get along. What's missing is reassurance that Pickering is the kind of judge who will move America's great progress on equality forward. That's why the Senate Judiciary Committee should not approve him.

Transcripts/Members of Congress

Confirmation Hearing of Judge Charles Pickering of Mississippi

Morning Edition
National Public Radio
Friday, February 8, 2002

BOB EDWARDS, host:

President Bush's most embattled judicial nominee made his second appearance before the Senate Judiciary Committee yesterday. Judge Charles Pickering of Mississippi first testified in October at the height of the anthrax crisis. At that time, he was unable to produce some 1,000 legal opinions he had written, and few members of the public were able to attend because of heightened security measures. That helped to set the stage for yesterday's showdown. NPR legal affairs correspondent Nina Totenberg was there. NINA TOTENBERG reporting:

This time the questioning took place in a large hearing room. This time the front rows were filled with Pickering's opponents, representatives of civil rights and women's groups. And this time those groups had spent week campaigning against the nominee, portraying him as a relic of the Old South, a man who'd started out in life overtly opposed to political and civil rights for blacks, and ended up as a judge insensitive to the rights of minorities. But Republicans were not cowed. They pointed to actions Pickering had taken throughout his life that they said show he was a man of courage, conviction and dedication to racial reconciliation. He had sent his children to public schools in Mississippi at a time when most whites were abandoning those schools. He had worked with the FBI to quell racial violence. And as Kentucky Senator Mitch McConnell put it, he had 'demonstrated uncommon moral courage' in the 1960s in agreeing to testify against the grand wizard of the Ku Klux Klan in a racial killing case.

Senator MITCH McCONNELL (Kentucky): A 27-year-old Charles Pickering stared in the face his political future, and chose to do his duty of enforcing the law against the men who committed such violence.

TOTENBERG: Democrats pressed Pickering, though, about other actions he took in the 1960s. Yes, he said, he had quit the Democratic Party in 1964 right after the national convention had decided to seat a multi-racial delegation instead of the all-white delegation the state party wanted. At the time, Pickering said, the national party's decision was so embarrassing and

humiliating he was going to jump to the GOP. But yesterday, for the first time, he said he now regrets making that statement.

Democrats then moved on to Pickering's law partner and close friend in the '60s, a man who'd openly
campaigned in newspaper ads as an ardent segregationist. Pickering seemed surprised when confronted with the ad, but continued to maintain his partner was a progressive. That prompted this exchange with Senator Richard Durbin of Illinois.

Senator RICHARD DURBIN (Democrat, Illinois): I don't doubt the fact that life had changed in America and life has changed in Mississippi, but can you sit there today and tell us that these are the words of a man that would you characterize either as not a racist or as a progressive leader.

Judge CHARLES PICKERING: There was no politician in the South during the '50s and the early '60s that held office. It's not right, no, but it recognizes the reality of where they were at that particular time.

TOTENBERG: The judge fielded all such questions with quiet, if somewhat grudging, aplomb, until Senator John Edwards of North Carolina began questioning him about a cross-burning case he handled as a trial judgein 1994. In that case, a juvenile and a mentally challenged defendant had both agreed to plead guilty and gotten lenient sentences in exchange for their testimony. But the third defendant, an adult, had refused a guilty plea and a 15-month sentence. He'd gone to trial and been convicted, whereupon the Justice Department asked for the longer mandatory minimum. Justice Department memoranda written by prosecutors in the case at the time report that Pickering threatened to order a new trial if the Justice Department did not reduce the sentence it was asking for. Pickering at first denied making any such threat, but then softened his denial.

Senator JOHN EDWARDS (North Carolina): You deny having said that.

Judge PICKERING: No, I did not say that.

Sen. EDWARDS: If the lawyers who were involved in that have said that that's the statement that you made to them, that would be a lie?

Judge PICKERING: Senator, on the record...

Sen. EDWARDS: According to the documents that we were provided, this took place in a private meeting that you had with the lawyers where you told the lawyers you would order a new trial on your own motion, and when they ask you, and I'm quoting now, "what would be the basis for such a motion for a new trial, you said that any basis you choose." Do you deny having said that?

Judge PICKERING: Senator, I have no recollection of having said that.

TOTENBERG: Senator Edwards then moved on to questions about whether Pickering had violated the judicial code of conduct, which forbids a judge to engage in what's called ex parte contact, that is contact with either side in the case without the lawyers being present.

Sen. EDWARDS: Did you make a phone call to a high-ranking Justice Department official on your own initiative?

Judge PICKERING: We had...

Sen. EDWARDS: Not 'we,' you. Did you make such a phone call?

Judge PICKERING: I've indicated I called Mr. Unger(ph) and discussed the fact I was frustrated that I could not get a response back from the Justice Department and I thought there was a tremendous amount of disparity in this sentence.

Sen. EDWARDS: Were any of the lawyers in the case on the phone when you called Mr. Unger.

Judge PICKERING: No, they were not.

Sen. EDWARDS: So that was an ex parte communication, was it not?

Judge PICKERING: It was.

Sen. EDWARDS: OK. In violation of the Code of Judicial Conduct.

Judge PICKERING: I do not consider it to be a violation of the code of conduct.

TOTENBERG: And finally Edwards asked Pickering if he'd issued an order forcing the matter to go directly to the attorney general.

Sen. EDWARDS: Did you also direct the Justice Department lawyers, the line prosecutors, to take your complaints personally to the attorney general of the United States?

Judge PICKERING: In the order, yes, sir.

TOTENBERG: The reason he'd taken such extraordinary steps to get the sentence reduced in the cross-burning case, said Pickering, was that he thought seven and a half years was unjust compared with the home confinement doled out to the other two defendants.

Judge PICKERING: I have never had a case where the disparate treatment was so great as it was in this case.

TOTENBERG: That explanation, said Senator Chuck Schumer of New York, simply did not wash with him.

Senator CHUCK SCHUMER (Democrat, New York): But I know case after case where someone is the state's evidence and gets a year or two in a murder case, and someone else gets life in prison. This happens regularly.

TOTENBERG: Senator Durbin chimed in as well.

Sen. DURBIN: The thing that I find troubling here, the lengths that you went to try to protect this
defendant.

TOTENBERG: But Pickering noted in the end he'd sentenced the defendant to two years in prison.

Judge PICKERING: I described the cross burning as a despicable act. I observed that the act was drunk, young men doing a dastardly deed that they should not have had in their heart. I further stated, 'Cross burning is a heinous crime, so I don't have any feeling what you did should be swept under the rug, or what you did that you are an innocent person.'

TOTENBERG: Pickering ended a grueling afternoon of testimony after more than four hours on the witness stand. He has the strongest of allies in his fight for conformation, Senate Minority Leader Trent Lott. And Democrats have only a one-vote majority on the Judiciary Committee. Whether they are unanimously willing to shed blood to defeat Lott's personal choice remains to be seen. The Mississippi senator has said that Pickering will be confirmed, quote, "or else." On the other hand, the Democrats are still smarting from the way Lott and the GOP treated President Clinton's nominees to the same appeals court. Three out of four never came to a vote. Nina Totenberg, NPR News, Washington.

Fox News Sunday with Tony Snow

Fox News
Sunday, February 10, 2002

EXCERPT

SNOW: Charles Pickering has been nominated to a judgeship on the fifth U.S. circuit court of appeals. He's had hearings. Democrats are saying they think that he has -- his background, especially on issues of race, is going to disqualify him. The White House says it's now up to you, Trent Lott, to make sure.

Do you think the White House is washing its hands of its nominee?

LOTT: I don't think they are. Judge Pickering is eminently qualified. He's a sitting district court judge, formerly approved by the Senate. Has been moderate on racial issues all his life. In fact was active in efforts to try, you know, get the Klu Klux Klan under control in the area that he lived in.

It's not about, you know, him really. It's about the administration's judges. It's a pattern of circuit judges. They picked him to take a shot at because he's one of the first ones that really was going to be moving through.

I think they have considered maybe two or three circuit judges out of 23, so it's bigger than this one
individual, who, by the way, who has an excellent, highly qualified rating by ABA.

SNOW: So...

LOTT: It's just that he was the first one where they thought, well, we'll show the administration, we'll show the Republicans what we're going to do to their conservative nominees.

And this is really about the Supreme Court. This is a shot at the president saying, you know, if you come up with a basically a conservative Republican who is pro-life, we're going to take him down.

SNOW: Will he make it or not?

LOTT: I think it's going to be close, but I certainly hope he does. He deserves it. This is a very unfair
besmirching of a good man's record.

Interest Groups/Press Releases

Planned Parenthood Opposes Judicial Nominee Charles Pickering, Urges Administration to Select Fair-Minded Candidates Who Share America's Values

Planned Parenthood Federation of America
Thursday, February 7, 2002

Planned Parenthood Federation of America (PPFA) today announced its vehement opposition to the Bush Administration's nomination of Charles F. Pickering, Sr., for appointment to the Fifth Circuit Court of Appeals. The announcement followed the Mississippi federal district court judge's second hearing in front of the Senate Judiciary Committee.

"President Bush's judicial nominees should come with a warning label: 'Beware...May Be Hazardous to Women's Health and Civil Rights.' Judge Pickering is no exception," PPFA President Gloria Feldt said.

"Judge Pickering's testimony today failed to assure the American people that he will protect their basic freedoms," Feldt said. "His record reveals deep-rooted opposition to reproductive rights and
hostility toward other civil rights. Judge Pickering poses a clear and present danger to all

people's participation in the economic, social and political life of our nation. The Senate Judiciary Committee should vote down his nomination. Further, we urge the Bush Administration to select fair-minded nominees who respect the rights of women and share America's values about reproductive freedom."

Because the overwhelming majority of cases are decided by the lower federal courts, PPFA is concerned that judges appointed to these courts be committed to safeguarding the rights to privacy and reproductive choice as set forth in Roe v. Wade and the earlier Supreme Court decisions upon which Roe rests.

Judge Pickering's history in this regard reveals deep disagreement with those principles:

In 1984, when Judge Pickering was the president of the Mississippi Baptist Convention, he presided over a meeting where the Convention adopted a resolution calling for legislation to outlaw abortion except when necessary to preserve a woman's life.

In 1979, as Mississippi state senator, Judge Pickering voted for a resolution calling for a constitutional convention to propose an amendment that would have banned abortion.

In 1976, Judge Pickering chaired the subcommittee of the Republican Party's Platform Committee that adopted a plank calling for a constitutional amendment that would have overruled Roe v. Wade. Judge Pickering spoke in support of that plank on the floor of the Republican convention that year.

A new Planned Parenthood Web site, www.saveROE.com, outlines the substantial threat facing Roe v. Wade and enables America's pro-choice majority to show support for the court decision and take action to protect reproductive freedom.

Charles Pickering's Record on Civil Rights, Other Key Issues Calls for Rejection by Senate Judiciary Committee

People for the American Way
Thursday, February 7, 2002

People For the American Way President Ralph G. Neas urged Senate Judiciary Committee members to carefully consider the public record of Judge Charles Pickering and to reject his nomination to the U.S. Court of Appeals for the 5th Circuit.

"Judge Charles Pickering should not be elevated to the appeals court and the Senate Judiciary Committee should reject his nomination," said Neas. "His actions over the past decade as a federal judge and his long public record before that reflect a troubling lack of commitment to fundamental civil and constitutional rights principles."

Neas noted that Pickering's public record has generated opposition to his confirmation from a broad range of civil rights and other public interest organizations, including the NAACP chapter

in Pickering's home state of Mississippi and the Magnolia Bar Association, the state's predominantly African American bar group. People For the American Way has published a review of Pickering's record, as have a number of other public interest organizations.

Because many opponents of Pickering's confirmation have focused on his troubling civil rights record, said Neas, some Pickering supporters have claimed that his opponents are smearing him as a racist. Neas said People For the American Way has clearly documented that its opposition to Pickering's elevation to the appeals court is grounded solidly in his public record. "We cannot know what is in Pickering's heart," said Neas. "But we do know what is in his record. And that is why we are opposing his confirmation to the federal appeals court."

Among the concerns raised by PFAW and other opponents of Pickering's confirmation:

His record demonstrates insensitivity and hostility toward key principles and remedies that safeguard civil rights, and indifference toward the problems caused by laws and institutions that have previously created and perpetuated discrimination.

Even conservative appellate court judges have reversed Judge Pickering on a number of occasions for violating "well-settled principles of law" involving constitutional rights and other matters, and for improperly denying people access to the courts. Another Bush nominee to the 5th Circuit, the recently confirmed Edith Brown Clement, had no such reversals during her tenure
as a district judge.

As a state senator, Pickering co-sponsored and voted for measures harmful to minority voting rights, including a resolution calling on Congress to repeal or weaken key provisions of the federal Voting Rights Act. And as a federal judge, Pickering has gone out of his way to criticize key civil rights principles like "one person-one vote" and to repeatedly disparage plaintiffs in civil rights cases.

Pickering testified before the Senate Judiciary Committee that he had had no contact with the infamous Mississippi State Sovereignty Commission, which opposed desegregation and infiltrated civil rights organizations to disrupt their efforts. In fact, Pickering went into law practice with a well-known defiant segregationist who served as a member of the Commission for part of the time he was Pickering's law partner. In the state legislature, Pickering twice voted to fund the Commission.

In addition, a recently unsealed Commission document states that "Senator Charles Pickering" and two other state legislators were "very interested" in a Commission investigation into union activity that had resulted in a strike against a large employer in Laurel, Pickering's home town. Some Pickering supporters have suggested that he was concerned about Ku Klux Klan involvement in union violence. The Commission memorandum, however, contains no foundation
for such speculation. To the contrary, it states that the request from Pickering and the other legislators was to be "advised of developments in connection with SCEF [Southern Conference

Educational Fund] infiltration of GPA [Gulfcoast Pulpwood Association] and full background on James Simmons [President of the GPA]."

As a law student, Pickering wrote a law review article advising the Mississippi legislature how it could fix a loophole in its law penalizing interracial marriage in order to make the law enforceable. The next year, legislators enacted his recommendations. Although Pickering now says he does not think there should be legal obstacles to interracial marriage, when questioned about the article by the Senate Judiciary Committee he did not repudiate it and tried to brush it aside as an "academic exercise."

Pickering has opposed Roe v. Wade and the Equal Rights Amendment. He was chair of the Republican Party platform committee that first added an anti-Roe plank to the party platform. His
strident anti-choice position is especially troubling in the 5th Circuit, where women's reproductive rights have already been eroded.

He has inappropriately used his position on the bench to promote involvement in religious programs by people before him for sentencing.

Neas said Pickering's record makes him an especially problematic choice for the 5th Circuit, which presides over a three-state area with the largest and most diverse minority population in any Circuit in the country, and which has already decided a number of cases restricting civil and reproductive rights.

Neas said the grassroots effort to defeat Pickering's nomination would be the first of many unless
President Bush engages in genuine bipartisan dialogue with members of the Senate. Neas urged senators, especially members of the Judiciary Committee, to fulfill their constitutional responsibilities to carefully scrutinize judicial nominees and reject those who have not demonstrated a commitment to upholding civil rights.

"Right-wing senators perpetuated dozens of appeals court vacancies by carrying out an unprecedented ideological blockade against judges nominated by President Clinton," said Neas. "Now they hope President Bush will take advantage of those vacancies to fill the appeals courts with right-wing nominees like Charles Pickering."

Neas noted that 35 percent of President Clinton's appellate court nominees were blocked from 1995-2000; 45 percent failed to receive a vote in the Congress during which they were nominated. Republican-nominated judges currently hold a majority on seven of the 13 circuit courts. 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.

"A federal judiciary completely dominated by right-wing judges would be a disaster for Americans' rights and freedoms," said Neas. "Senators must be willing to say no to Judge

Pickering and they must be willing to say no to right-wing efforts to pack the federal judiciary."

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Subject: judicial media review
Attachments: Judicial Media Review 2-14-02.wpd

Please see attached review

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General Judicial Articles

Race Issues Stir Debate Over Bush's Judicial Pick; Mississippian's Past Scrutinized

By Naftali Bendavid
The Chicago Tribune
Wednesday, February 13, 2002

Despite the turbulence that inevitably surrounds judicial nominees, President Bush's selections have generally fared well, with none generating the level of controversy raised over nominees such as Robert Bork or Clarence Thomas.

That may be about to change. Bush's attempt to elevate Mississippi federal Judge Charles Pickering to the 5th Circuit Court of Appeals is generating serious resistance. In the process, the

nomination has awakened some long-dormant issues from the bitter fights of the civil rights era. Pickering, 64, came of age in Mississippi's racially explosive 1950s and 1960s, and opponents say his career shows a history of racial insensitivity. He wrote an article in law school explaining how to strengthen a state statute against interracial marriage, he voted as a state senator to fund the notoriously segregationist Sovereignty Commission and he intervened to reduce the sentence of a cross-burner.

The Congressional Black Caucus and the Mississippi NAACP oppose Pickering's nomination. Asked if the judge is a racist, L.A. Warren, an official with the Mississippi NAACP, responded: "If it walks like a duck and it quacks like a duck, it appears to be a duck."

But supporters, including some of the state's black leaders, describe Pickering as an entirely different person. They say he has helped the state shed its racist past by, for example, testifying against a grand wizard of the Ku Klux Klan in the 1960s at great peril to himself.

W.O. "Chet" Dillard, a lifelong friend of Pickering, said he and Pickering fought for such causes as putting blacks on juries when the two were local prosecutors in the 1960s.

"We almost had to stand back-to-back to protect each other in Jones County," Dillard said. "He was from Jones County, and it was difficult for him to take a stand that was unpopular among his friends and neighbors and tell them, 'This is the law.'"

The Senate Judiciary Committee may vote by the end of the month on the nomination of Pickering, who is extraordinarily well-connected. He is a close friend of Senate Minority Leader Trent Lott (R-Miss.) and the father of Rep. Charles "Chip" Pickering Jr. (R-Miss.).

The debate is sharpened because Pickering is a candidate for the 5th Circuit Court of Appeals, which covers Mississippi, Texas and Louisiana, an area that is a historic civil rights battleground. In the 1960s, 5th Circuit judges such as John Minor Wisdom surprised the nation with decisions ordering the desegregation of the University of Mississippi and other institutions.

But the court has swung to the conservative side in recent years. It covers an area with a high poverty rate and many minorities, and liberals are anxious to prevent it from becoming more conservative.

This helps explain why the Pickering nomination is shaping up as Bush's first real judicial battle.

Pickering's opponents reel off a litany of questionable actions: As a law student in 1959, Pickering wrote a law review article suggesting ways for the state to close a loophole in its law against interracial marriage. The Legislature acted on his suggestions the following year, passing an amendment to close the loophole.

Critics also fault Pickering for going into private practice with Carroll Gartin, an avowed segregationist. Pickering's supporters say Gartin was a prominent Mississippi figure and that his positions were hardly unusual.

The Sovereignty Commission represents another bleak chapter in Mississippi's past, and critics say Pickering was associated with that group. The commission was created by the state to fight the U.S. Supreme Court's desegregation orders, and Pickering voted to fund it twice when he was in the state Legislature.

Pickering has denied any substantial association with the commission. "I never had any contact with that agency, and I had disagreement with the purposes and the methods and some of the approaches that they took," Pickering told the Senate in 1990. His opponents dispute this, saying he had more contact than he admits, such as seeking information on a commission investigation.

More broadly, some of Pickering's defenders argue that these events took place 35 years ago or more and belong to a distant past. But a more recent episode could prove the most controversial for Pickering.

In 1994, the judge presided over a trial of three people accused of burning a cross on the lawn of an interracial couple. Two pleaded guilty and received relatively light penalties; the third went to trial and was convicted, receiving a 5-year mandatory sentence.

Saying he was disturbed by the 5-year sentence and the disparity in the punishments, Pickering personally contacted the Justice Department to express his frustration, possibly violating judicial ethics rules. He made his displeasure clear to prosecutors, who dropped a key charge against the cross-burner--a virtually unheard-of action, because the man already had been convicted.

At a recent Senate Judiciary Committee hearing, Pickering defended his action, saying he had made clear his disapproval of the defendants' actions in court. "I described the cross-burning as a despicable act," Pickering told the senators. "I observed that the act was drunk young men doing a dastardly deed that they should not have had in their heart."

Pickering's opponents were not mollified. "He is a throwback to a pretty shameful episode in our nation's history," said Nan Aron, president of the Alliance for Justice, adding that Pickering's rulings have been hostile to civil rights.

But his friends say they do not recognize Pickering in this portrait. Among the judge's backers are prominent African-Americans including James Charles Evers, brother of slain civil rights leader Medgar Evers, and Henry Wingate, the first black federal judge in Mississippi.

Pickering showed flashes of courage during the civil rights era, supporters say, and in his recent career he has shown sensitivity to minority concerns.

Pickering sent his children to public schools when many whites were abandoning them for all-white private schools, these supporters say. In 1967, Pickering testified against Ku Klux Klan imperial wizard Samuel Bowers in a case involving the murder of civil rights worker Vernon Dahmer.

The judge's backers cite other actions: He hired the first black staffer in the Mississippi Republican Party, for example, and he helped establish an Institute for Racial Reconciliation at the University of Mississippi.

"He does happen to be white and he does happen to be a Baptist," said Dillard, his old friend. "But you couldn't find any person that I think is more morally conscientious about following the laws as set forth by the United States Supreme Court."

The Senate Judiciary Committee's vote on Pickering could be close, and the rhetoric has become fierce.

"We hope to God that he doesn't make it," Warren said. "We know his past."

Bush Puts Abortion Card Back Into Play; President Starts Preparing for 2004

By Tom Teepen
Dayton Daily News
Tuesday, February 12, 2002

Abortion is back. not that it ever exactly disappeared as a political issue, but it did lapse into an extended period of blessed quiet, like a bear hibernating. Alas, a grizzly.

Anti-abortion leaders, aware that he was on their side, let George W. Bush campaign for the presidency without having to make the repeated and histrionic obeisance to them that they had demanded of previous Republican candidates, to the detriment, on balance, of their campaigns. The silence gave Al Gore little to make hay of and, in kind with the rest of his flailing campaign, he never figured out how to work the issue to his advantage without seeming to cry fire where there were no flames. (Democrats must be groaning at the recent indications that Gore is ramping up for 2004.)

Bush was smart enough not to characterize his new administration right off with a lot of anti-abortion maneuvering. Now, however, the administration is slipping firmly into anti-abortion gear.

The president recently favored abortion opponents, rallying on the anniversary of the Supreme Court ruling that established women's abortion rights, with a Reaganesque, go-get-'em statement of support.

The White House has put forward judicial nominees who are committed opponents of lawful abortion, such as federal district Judge Charles Pickering, the recovering (one hopes) racist who Bush wants to jump up to the U.S. Fifth Circuit Court of Appeals.

The Justice Department has intervened in an Ohio case to argue for a state ban on so-called partial-birth abortions - a term without medical meaning invented by anti-abortion groups to demonize procedures that are rare and usually resorted to only in medically desperate

circumstances.

Anti-abortion groups have been trying for years to use this side issue as an oblique way to get at all abortions. A federal district court, following the lead of other courts in reviewing similar laws, ruled that the Ohio statute was overly restrictive. The administration wants the law upheld on appeal.

And Secretary Tommy Thompson of the Department of Health and Human Services recently ruled that, for the purposes of the Children's Health Insurance Program, enacted in 1997, fetuses are 'children.' The program provides medical coverage to children whose families are needy but not poor enough to qualify for Medicaid.

The change was necessary, Thompson said, to provide prenatal care to women.

Bunk.

The goal is worthy, but there were a variety of other ways - from similar fiat to legislation - to accomplish it without pouring a little bureaucratic acid on the foundation of the 1973 Roe v. Wade decision.

Thompson announced the move - to cheers - at the annual Conservative Political Action Conference. If you think the delegates were actually cheering the expansion of a federal program, welcome to Oz.

White House analysts have concluded that the usual Christian fundamentalist turnout for Republicans wasn't as strong for Bush as it should have been, and the president has opportunities, as well, to significantly increase support among Catholics.

Gore isn't the only player from 2002 already revving up for '04.

Pennsylvania Republican's Vote May Be Key

By Ana Radelat
Gannett News Service
Tuesday, February 12, 2002

With Democrats likely to vote against the candidacy of Judge Charles Pickering for a seat on the 5th U.S. Circuit Court of Appeals, a Republican from Pennsylvania may hold the swing vote on the nomination.

While most of the nine Republican members of the Senate Judiciary Committee lauded 64-year-old Pickering's record as a U.S. District judge, state senator, and a prosecuting attorney in Jones County, Sen. Arlen Specter, was skeptical of the judge's defense of some of his rulings.

"I don't think its schizophrenia, but it's a little ambivalent at least," Specter said.

The Pennsylvania lawmaker also rebuked Pickering for criticisms he had made of the Voting Rights Act, a key federal civil rights law. "It's curious to me that you want to be a federal judge because here you are saying the courts have no business in these cases," Specter said.

Specter's vote may not be needed to defeat Pickering if all 10 Democrats on the Judiciary Committee decide to vote against the judge's nomination.

None of the panel's members, no Democrat or Republican, has revealed how they will vote when the committee meets again to decide Pickering's future, an event that probably will occur at the end of this month at the earliest.

But speculation over Specter's vote is keenest among those who oppose and support Pickering's candidacy.

A former prosecutor known for his tough stance on crime and his strong defense of civil and women's rights, Specter may muster the courage to defy Senate Republican Leader Trent Lott. The Mississippi senator, a friend and political ally of the judge, pressed the White House to nominate Pickering for a seat on the appeals court that hears cases from Mississippi, Louisiana and Texas.

But in the aftermath of last week's contentious Senate hearing on his candidacy, Lott couldn't predict whether Pickering would win confirmation.

"I think it's going to be close, but I certainly hope he does. He deserves it," Lott said on "Fox News Sunday." "This is a very unfair besmirching of a good man's record."

Lott also said he did not think the White House was abandoning Pickering's candidacy.

Kate Michelman, president of the National Abortion & Reproductive Rights Action League said she thinks Lott is under a lot of pressure to try to sway at least a couple of Democratic members of the panel and keep Specter from crossing the line. Her organization is one of dozens opposing Pickering's nomination.

"I think he underestimated the difficulty Pickering's record presents," Michelman said.

A report to be released Tuesday from the Citizens' Commission on Civil Rights, a bipartisan group of former government officials and civic leaders, called the Bush administration's selection of judicial nominees -- especially Pickering -- part of a continuous erosion of the nation's civil rights laws.

The groups lined up against Pickering, which run the gamut from the National Association for the Advancement of Colored People to the American Association of University Women, hope Pickering's nomination is buried by an unfavorable vote in the Judiciary Committee and the full Senate never has a chance to consider his candidacy.

"I'd be very difficult to defeat him on the Senate floor given Lott's power," Michelman said.

On Feb. 4, in his second appearance before the panel, Specter and Democratic members of the Senate Judiciary Committee grilled Pickering for more than four hours.

The embattled nominee was accused of improper conduct in presiding over a 1994 cross-burning case in Jones County, of writing an article in 1959 on Mississippi's law on interracial marriages that provided a blueprint for correcting a flaw in the statute and of voting in the Mississippi Senate in favor of spending bills that financed the anti-segregationist Sovereignty Commission.

Pickering also was criticized for becoming the law partner of a former state official who was an avowed segregationist and for calling lawyers in Mississippi asking them to write letters in support of his candidacy. Sen. Russ Feingold, D-Wis., said Pickering's request for recommendation letters -- which the judge collected in his chambers and faxed to Washington -- "creates an appearance of coercion" among the lawyers who bring cases before him.

In addition, several Democrats, including Sen. Dianne Feinstein, D-Calif., accused Pickering of being "outside the mainstream" of legal though on civil and women's rights.

Pickering objected to the characterization.

"I do not think that my activities in all of the things I've done in my life are outside the mainstream," Pickering told the panel. "They indicate someone who has been concerned about these rights, and I have taken action to protect these rights."

Pickering's Republican supporters say the judge had demonstrated "moral courage" in prosecuting Ku Klux Klan members and prodding Mississippi to abandon its segregationist past.

Pickering Expected to Lose Judiciary Committee Vote

By Paul Kane
Roll Call
Thursday, February 14, 2002

Despite increasing threats of retaliation from Republicans, Senate Democrats have dug in their heels to fight a controversial judicial nomination that has further poisoned the already strained relations between the two sides.

Resistance to U.S. District Judge Charles Pickering's elevation to the Fifth Circuit Court of Appeals has only grown among Democrats on the Judiciary Committee since his unusual second hearing last week, according to interviews with activists, aides and Senators.

With a one-vote edge on the panel, the 10 Judiciary Democrats have the power to sink the Pickering nomination, which has become a top priority for Minority Leader Trent Lott (R-Miss.),

a close Pickering friend for 30 years.

Written follow-up questions to the Mississippi judge are due to be sent off today, but one Judiciary Democrat said his side is "ready to vote" and doesn't need any more information.

Asked if Pickering could do more to help his cause, Sen. Dick Durbin (D-Ill.) said, "Idon't think so. ... He had ample opportunity to express himself."

Sen. Maria Cantwell (D-Wash.), expressing concerns about his rulings on privacy, said she is "not likely" to vote for Pickering.

Sen. Russ Feingold (D-Wis.) said he had grave concerns about Pickering's efforts to round up letters of support from home-state interests, questioning whether it was improper because some of those same people may have cases before his federal court.

And Sen. Joseph Biden (D-Del.) said he was not certain of Pickering's "veracity" in responding to questions posed by Sen. John Edwards (D-N.C.) about a 1994 case in which the judge contacted Justice Department officials about sentencing.

Although no Democrat would officially declare Pickering's nomination dead, aides and Senators privately said it was unlikely Pickering would receive the single Democratic vote he needs to get out of committee. That sentiment was backed up by Majority Leader Thomas Daschle's (D-S.D.) decision to take the unusual step of announcing his opposition to Pickering in two nationally televised interviews Sunday and Monday before Judiciary had rendered its verdict.

GOP sources said Lott is personally incensed about the opposition to Pickering, which has been laced with racially tinged allegations regarding Mississippi's civil rights era. Lott is particularly irate at Daschle for taking such a public stance against his home-state friend.

"Senate Democrats haven't really thought through the consequences of opposing this nominee. This is a political boomerang that's going to come back at them very hard," said one senior GOP aide.

Lott has declined to spell out what retribution he will mete out for knocking down Pickering's appellate court bid, but he's made clear he will seek revenge. "It certainly will not be a positive thing for relations around here," he said this week.

Another senior GOP aide said Republicans have grown so irate over Pickering's treatment and the perceived lack of response from Judiciary Chairman Patrick Leahy (D-Vt.) to take up more circuit court nominees that many Senators want to shut down all legislative activity on the floor.

"There has been serious talk of just shutting down the whole damn Senate for however long it takes," the aide said.

Republican Policy Committee Chairman Larry Craig (Idaho) said that Democrats, at the behest

of left-wing interest groups, have acted in a "strident, openly partisan" manner that will result in a shot back at them. "That's a game played that does have repercussions in the end," he said, predicting that Pickering's defeat could lead to "the inability of the Senate to function."

"You have to operate with 60-plus votes,"he said, an indirect threat to block any moves to legislation on the Senate floor, which requires at least 60 votes. Last fall, in an attempt to confirm more GOP-nominated judges, Republicans blocked all appropriations bills for several weeks.

Unbowed by the threats, Democrats are ready for the fights. "We'll be reminding them that this is better treatment than many Democratic nominees who never got a hearing, who never got a vote," said one Democratic aide.

Echoing statements by Leahy and Daschle, Durbin said that Democrats have every intention of holding hearings and votes on controversial nominees. They will not take a "death-through-inaction" approach to nominees, he said, something Democrats accused Senate Republicans of doing with Clinton administration nominees in the 1990s.

If all 10 Judiciary Democrats oppose a nominee, Durbin said the message will be sent to the White House and the nominee, giving him or her the chance to back out before actually being rejected. "We should make every effort to be sensitive to the nominees. If we are not going to support them, then they should be given every opportunity to make a final decision," he said.

Republicans are particularly bitter about a potential committee defeat on Pickering, and any future judicial battles, because they know they can win a floor vote on the Mississippi judge. They expect to hold all 49 of their votes, and at least two Senate Democrats, Zell Miller (Ga.) and Fritz Hollings (S.C.), are willing to vote for Pickering if his nomination ever gets out of Judiciary and onto the floor.

Miller said his main standard for a judge would be if the two home-state Senators support the nominee, which in this case both Lott and Sen. Thad Cochran (R-Miss.) do.

Hollings, meanwhile, noted that the most salacious charges concern the judge's activities in the 1960s. "Iknow all of these charges they bring up, but I'll still vote for him. They haven't brought up anything recent. On the contrary, I think he's a fine judge," he said.

Hollings dismissed allegations that Pickering had ties to segregationists in Mississippi in the civil rights era and suggested that a high standard such as that might disqualify a few people from serving in the Senate.

"We've got leaders in the Senate that used to be members of the Klan," Hollings said, an apparent shot at Appropriations Chairman Robert Byrd's (D-W.Va.) past membership in the Ku Klux Klan more than 50 years ago.

Republicans are particularly concerned about what a potential defeat in committee for Pickering

will mean for future appellate court nominees, such as Miguel Estrada and Jeffrey Sutton, who are younger, more ideologically conservative and potential Supreme Court nominees in the future.

All 10 Judiciary Democrats fall within the liberal wing of the party on social issues. At least three - Biden, Edwards and Feingold - are considering presidential bids and would need the support of interest groups such as the NAACP and the National Abortion and Reproductive Rights Action League, both of which oppose Pickering.

Biden said he was surprised to receive calls from his friends to put in good words for Pickering, who has been supported by Dicky Scruggs, the nation's leading anti-tobacco trial lawyer (and Lott's brother-in-law), and Charles Evers, the brother of slain civil rights activist Medgar Evers, among others.

"A lot of people I Respect - people that aren't in politics - have called to say this guy's a good guy. I still have an open mind on this," Biden said.

But Republicans are taking a believe-it-when-we-see-it approach, doubtful that any Democrat will cross the key liberal constituencies opposed to Pickering.

"Unless there's going to be some Democrat that's going to look beyond the rhetoric that's being put out by the civil rights lobby, it's going to be pretty tough to get [Pickering] out of committee," said Sen. Chuck Grassley (R-Iowa), a senior Judiciary member.

Hawaii's Two U.S. Senators Approve Clifton Nomination

The Associated Press
Wednesday, February 13, 2002

Hawaii's two Democratic U.S. senators have approved the nomination of Honolulu attorney Richard Clifton to the 9th U.S. Circuit Court of Appeals.

Sen. Daniel Inouye officially notified the Senate Judiciary Committee last week that he would allow the nomination of Clifton, counsel for the Hawaii Republican Party, to proceed, The Honolulu Advertiser reported from Washington. Sen. Daniel Akaka notified the committee on Monday. The committee has yet to schedule a hearing on the Clifton nomination.

President Bush nominated Clifton in June, but the nomination stalled after the two Hawaii senators refused to approve Bush's choice because they were not involved in the selection.

The Clinton administration had nominated Honolulu attorney James Duffy for the position, but the Senate, then led by Republicans, never acted on it.

Courts: Enviros Question Appellate Court Nominee's Background

By Brian Stempeck
Greenwire
Thursday, February 14, 2002

With the zeal normally reserved for Supreme Court nominations, environmental and other activist groups are attacking the records of appellate court nominees. Though a great deal of attention has been paid to the civil rights-related furor surrounding Judge Charles Pickering, the Bush administration's pick for the Fifth Circuit Court of Appeals, conservation groups are trying to shift the spotlight to controversial environmental decisions made by another nominee, Judge D. Brooks Smith, nominated to the Third Circuit.

In a letter sent at the beginning of the month, a coalition of 27 environmental groups including the Earthjustice Legal Defense Fund, Defenders of Wildlife, the Alliance for Justice and the Community Rights Counsel called for the Judiciary Committee to investigate the track record of Smith. The groups say the Pennsylvania District Court judge has a history of ruling in favor of polluters and that Smith took all-expenses paid trips courtesy of corporations and special interests. But one of the groups that sponsored the judge's trips -- and some environmentalists themselves -- say the trips were in fact legitimate judicial seminars.

SMITH'S ENVIRONMENTAL RECORD

In the letter to the Judiciary Committee dated Feb. 1, the coalition identified four "anti-environmental rulings" authored by Judge Smith, including decisions related to pollution settlements, the takings clause and toxic dumping.

The groups claim Smith accepted a biased plea bargain from Action Coal, Inc., a Pennsylvania coal mining company that illegally dumped acid mine drainage into a nearby stream. "Smith penalized the company only $50,000 for dumping, just one percent of the profit realized," the groups said, referring to the $5 million the company saved by not treating the waste instead. Action Coal has since disputed the amount it saved, however, said Glenn Sugameli of Earthjustice.

But Smith's decision was only the federal side of the case, said Ted Kopas, a spokesman for the Pennsylvania Department of Environmental Quality. At the state level, Action Coal was forced to pay the "largest civil penalty in the history of Pennsylvania mining," said Kopas, setting up a trust fund to "ensure perpetual treatment of discharges on Action mining sites." Action Coal was forced to pay $625,000 to the state, he said. "Certainly we were satisfied with how we settled the situation. The watershed is in better health today than it has been in years."

The environmental groups also mentioned a district court case, Wicker v. Conrail in which they say Smith unlawfully dismissed claims from railroad employees who had been exposed to toxic waste. "A three-judge Third Circuit panel that included two Reagan appointees unanimously reversed Judge Smith," the groups said in the letter.

Other cases cited included: o Unity Real Estate v. Hudson, which the groups say "strongly

suggests that these property rights extremists would find a sympathetic ear in Judge Smith."

* A case related to Wicker where Smith excluded testimony from a pathologist who felt toxic waste was responsible for one employee's death.

Land and property rights advocates contacted had no comment regarding Smith's background or the cases involved. Justice Department officials did not return phone calls.

"Environmental groups don't usually weigh in with judicial concerns," said Sugameli of Earthjustice. Of 34 judges confirmed under this administration, and 56 pending nominations, environmental groups have only raised concerns with Smith, Pickering and one other judge, he said. "Unfortunately the current crop seems to include a number of judges outside the mainstream." Smith's positions in particular are "much more extreme than anything the Supreme Court or any court has ever said." The letter is "technically not a position of opposition," he added, but is a call to investigate Smith's background further.

The groups are also trying to stress that "lower court nominations can be as important as Supreme Court nominations," said Sugameli. Because the high court typically takes less than 80 cases a year, "the vast majority of decisions are made by circuit courts," he said.

JUDICIAL JUNKETS

The environmental coalition was also critical of the trips it says Smith took, trips sponsored by corporations and special interest groups. According to the Community Rights Counsel, Smith took 12 trips between 1992 and 2000. Doug Kendell of CRC called him "one of the most junketed federal judges in America," and the groups cite trips to "luxury resorts and dude ranches."

But the Foundation for Research on Economics and the Environment (FREE), one of the groups sponsoring the trips for federal judges says CRC has misrepresented what are valuable seminars on environmental economics. Smith attended three FREE seminars in Montana between 1996 and 1998, said Doug Geddes, FREE program director, but "for those folks to imply that this is some sort of opportunity for the far right to come talk to judges is just nonsense."

"We are accused of holding conferences at 'luxury' resorts," FREE said on its website in response to CRC criticisms. "Have you ever been to or spoken with representatives of our $110 a night conference facility, the Gallatin Gateway Inn?" CRC publicizes "a distorted and indeed dishonest caricature of FREE's environmental economics and risk analysis seminar series for federal judges," FREE says.

In fact, members of some of the environmental groups criticizing Smith's nomination have even attended FREE seminars themselves. "Over the last twenty years I have attended several FREE programs, including a seminar for federal judges where I made a presentation," said Hank Fischer, former Northern Rockies Representative for Defenders of Wildlife, in a letter to FREE. "I have never attended a FREE program that didn't feature a full array of viewpoints," he said.

"For instance, at the judges seminar where I gave my presentation, the judges also heard from Michael Bean of Environmental Defense (one of the nations most respected endangered species experts) and Doug Honnold of Earth Justice (one of the nations leading environmental litigants)."

Nevertheless, with Sen. Russ Feingold (D-Wis.) -- who co-sponsored a bill outlawing judicial junkets with Sen. John Kerry (D-Mass.) -- on the Judiciary Committee, there will likely be plenty of interest in Smith's background, said Sugameli. A committee source said that although no date has yet been set for a hearing on Smith, "it's likely that his record on environmental issues and all-expense paid trips will come up." No senators in particular have yet expressed interest in probing Smith's background, the source said, but Sen. Maria Cantwell (D-Wash.) may take an interest.

Supporters of Smith's nomination, including Sen. Rick Santorum (R-Penn.) had no comment on the environmental groups' allegations.

Pickering's Fate in Hands of 'Undecideds'

By James Brosnan
The Commercial Appeal
Wednesday, February 13, 2002

A majority of Democrats on the Senate Judiciary Committee said Tuesday they remain undecided about whether to confirm U.S. Dist. Judge Charles Pickering of Mississippi to the Fifth U.S. Circuit Court of Appeals.

Committee chairman Patrick Leahy (D-Vt.) said Pickering probably added to their concerns during his four-plus hours of testimony before the committee Thursday, but he has not polled the members and has not decided when to schedule a vote. Pickering, 65, of Laurel, Miss., has come under fire from civil rights, pro-choice and African-American groups. Pickering needs one of the 10 Democrats on the committee to support his confirmation if he can get all nine Republicans.

"Obviously they (the Democrats) control the committee," said Sen. Thad Cochran (R-Miss.). I don't know the extent to which they're going to enforce discipline on all their members."

Senate Majority Leader Tom Daschle (D-S.D.) closed one door Tuesday when he said he would not allow a full Senate vote on Pickering if he doesn't clear the Judiciary Committee. He will extend that privilege only on the President's Supreme Court nominees.

One committee Democrat, Maria Cantwell of Washington, said she is "not likely to support Pickering" because he would not say whether he personally believes there is a right of privacy implicit in the Constitution. That right of privacy was the basis of the Roe vs. Wade ruling striking down state laws prohibiting abortion.

Sen. Diane Feinstein (D-Calif.) also expressed concern about whether Pickering would follow

precedent in abortion cases.

Senate Minority Leader Trent Lott (R-Miss.) said he believes Pickering still has a chance, even though he has been "unfairly besmirched."

"This is not about Charles Pickering. It's not even about me," said Lott.

"It's about, 'OK, we'll teach you that if you nominate any conservatives, people who are personally pro-life, even though they comply with what the Supreme Court has ruled, we're going to give you a hard time.'"

Leahy responded, "I don't care what someone's personal view on abortion is. That was only one question."

Sen. John Edwards (D-N.C.) said he has "very serious reservations" about Pickering's actions in a
cross-burning case to pressure the Department of Justice to drop one charge against a defendant.

Democrats Ted Kennedy of Massachusetts and Russ Feingold and Herbert Kohl of Wisconsin also said they have concerns, but have not reached a conclusion.

Sen. Specter May Hold Judge's Fate; The Moderate Republican is Mum About His Vote on Charles Pickering's Appeal Court Nomination

By Ben Bryant
The Philadelphia Inquirer
Wednesday, February 13, 2002

Sen. Arlen Specter's support was key to the confirmations of Supreme Court Justice Clarence Thomas in 1991 and Attorney General John Ashcroft last year.

Now, the Pennsylvania Republican may be able to determine the fate of Charles W. Pickering Sr., the federal judge from Mississippi whom President Bush wants to fill a seat on the U.S. Court of Appeals for the Fifth Circuit.

And Specter is not tipping his hand.

Specter, one of the most liberal Republicans in the Senate, is the only Republican on the Judiciary Committee not to endorse the nomination of Pickering, who is a U.S. District Court judge for the Southern District of Mississippi. "He'll make up his mind when he makes up his mind," said Bill Reynolds, Specter's press secretary.

If Specter does not support Pickering, Republicans will need to attract two of the committee's 10 Democrats to send the nomination to the floor.

The situation indicates how much power Republicans lost last year when Sen. James M. Jeffords of Vermont left the party, swinging control of the upper house to the Democrats. Deprived of majorities on committees, Republicans are facing significant delays in moving Bush nominees through the Senate.

Adding to their problems is the high-stakes nature of appeals court nominations.

"A lot of the matters that don't make it to the Supreme Court get held up in the appeals courts," said Norm Ornstein, a congressional expert with the American Enterprise Institute in Washington. "Democrats want to have their say on who gets to sit on those benches."

Sen. Orrin G. Hatch of Utah, the ranking Republican on the Judiciary Committee, said Democrats were working hand in hand with "leftist groups" to scuttle all Bush nominees.

Thomas Mann, a Brookings Institution scholar in Washington, said there was a definite element of partisan warfare to the hearings, an aspect present since the 1987 scuttling of Robert Bork's nomination to the Supreme Court.

"This is about more than Charles Pickering," Mann said. "This is about Bush and the Democrats."

Specter's role is more complex. He has supported conservative nominees over his four terms in the Senate, drawing criticism from feminists over his skeptical questioning of Anita Hill, the law professor whose sexual-harassment allegations almost sank Thomas' appointment to the Supreme Court in 1991.

Specter's support was key in holding other moderate Republicans in line for Thomas. His seal of approval on Ashcroft had similar power last year, when liberal Democrats were assailing Bush's nominee for attorney general on issues of abortion rights and race. Ashcroft eventually prevailed with the support of all Republicans and several Democrats.

So what's holding Specter back from endorsing Pickering?

"Abortion is a very important issue to him," a Democratic staffer on the Judiciary Committee said. "He wants to be sure to preserve a woman's right to choose."

At Pickering's second confirmation hearing Thursday, Specter said he noticed a "curious ambivalence" toward reproductive rights and questions of sexual privacy in several of the judge's opinions.

At the hearing, Democrats suggested Pickering was too far off-center on minority and women's rights. A Republican said the Democrats treated the judge as if he were a criminal.

Thanks to their slim majority, Judiciary's 10 Democrats have enough votes to kill the Pickering nomination if all of them vote no.

But Republicans may have a Plan B, said a Republican Judiciary staffer who asked not to be identified. Although the staffer did not name Democratic senators being pursued by the GOP to support Pickering, an aide to a House Democrat said Sens. Dianne Feinstein (D., Calif.) and Russell D. Feingold (D., Wis.) were possible votes for the judge.

The vote will take place "probably in four to five weeks," a Judiciary spokesman said.

The committee can vote to send the nomination to the full Senate with a favorable or unfavorable recommendation. It can also report Pickering to the floor with no recommendation.

Or the full Senate can bring Pickering up for a vote by itself, discharging his nomination from Judiciary with a majority vote. To do that, Republicans would have to attract support across the aisle from conservative Democrats such as Zell Miller of Georgia and Ben Nelson of Nebraska.

And, in what may be a harder task, they would have to hold onto the moderate-to-liberal members of their own caucus - Specter and several other Northeastern senators.

Metairie Lawyer OK'd as U.S. District Judge

The Advocate
Tuesday, February 12, 2002

The U.S. Senate unanimously approved Jay Zainey of Metairie to be a U.S. District Court judge of the Eastern District of Louisiana on Monday.

After his nomination, Zainey withdrew his family's membership from a Jefferson Parish country club after questions were raised about whether it discriminates against black people. U.S. Rep. Billy Tauzin, R-Chackbay, and former Gov. Dave Treen supported Zainey's nomination. Zainey was Treen's campaign spokesman in 1999, when the former governor ran and lost against David Vitter to succeed Rep. Robert Livingston in Congress.

Zainey received a bachelor's degree from the University of New Orleans in 1973 and a law degree from LSU in 1975.

He served as president of the state bar from 1995-96. While he was president, the bar voted to changes its rules of conduct and bar lawyers from sending targeted solicitation letters for 30 days after an accident or disaster.

Zainey has served as an ad hoc judge in the First Parish Court and Juvenile Court in Jefferson Parish.

As a defense attorney, Zainey represented Frank Bedell, the bus driver implicated after his death in a bus crash on Mother's Day, 1999, which killed 22 people.

Louisiana's federal Eastern District court is in New Orleans.

Civil Rights Panel Assails Bush Record

CNN.com
Tuesday, February 12, 2002

The Bush administration, backed by a conservative judiciary, is pursuing policies that will increasingly resegregate the United States, according to a new report issued by the Citizens' Commission on Civil Rights.

The commission, founded as a bipartisan body in 1982 to monitor federal policies, said in a 350-page report issued Tuesday that the country was witnessing a "judicial assault on civil rights," partly under cover of the war against terrorism.

"The Bush administration seems determined to pursue policies that will widen the gap between the haves and have-nots," said William Taylor, acting chair of the panel.

"We may awaken from our current preoccupation with national security to find ourselves a nation more divided, less equal, and therefore less secure, than before," he said.

Although President Bush has only been in office slightly more than a year, the report said the direction of his administration seemed "ominous," especially on the issue of judicial appointments.

"Fueled by an economic slowdown and the nation's ongoing war on terrorism, attention to civil rights issues, particularly those involving regulation and enforcement, has been almost nonexistent at a time when events demand just the opposite," the commission said.

It was particularly critical of what it called the judicial dismantling of affirmative action programs that had sought to give women and minorities more opportunities in employment and education to make up for past inequities.

"These decisions have reversed the progress of earlier years and led to a trend towards resegregating America," the report said.

It said this trend was reinforced by failures to apply fair housing laws and the collapse of federal programs designed to give poor people access to affordable housing outside of inner-city ghettos.

The Bush administration was spurring these developments by nominating conservatives opposed to using federal authority to protect civil rights to key positions, the report said.

While the federal government and state and local authorities have poured billions of dollars into urban sprawl, helping construct the infrastructure for expanding suburban developments, it has allowed inner cities to decay while failing to invest in mass transportation, it charged.

"The president came to office trumpeting a concept that he called 'compassionate conservatism.' In practice, after a year, we can see that it amounts to practical and policy tokenism. ... Compassionate conservatism is a sham," said Roger Wilkins, a professor of history and culture at George Mason University and a member of the commission.

Wilkins said Bush's budget, delivered to Congress last week, crippled job training and community development programs that were needed to help poor parents provide a stable environment in which their children could succeed.

In the criminal justice system, racial inequality was pervasive at all levels and growing, the report said.

"Our criminal laws, while facially neutral, are enforced in a manner that is massively and pervasively biased," it said.

"Blacks, Hispanics and other minorities are victimized by disproportionate targeting and unfair treatment by police and other front-line law enforcement officials; by racially skewed charging and plea bargaining decisions of prosecutors; by discriminatory sentencing practices; and by the failure of judges, elected officials and other criminal justice policy-makers to redress the inequities that become more glaring every day," the report said.

Op/Eds

So Much for the Truth; Democrats Distort Nominee's Record

The Daily Oklahoman
Wednesday, February 13, 2002

LIBERALS' scorched-earth strategy in dealing with President Bush's judicial nominations is well illustrated by the distortion job currently being done on U.S. District Judge Charles Pickering, Bush's choice to move up to the 5th U.S. Circuit Court of Appeals in New Orleans.

Pickering, 64, who has served as a district judge in Hattiesburg, Miss., for 11 years, is being attacked by civil rights and women's rights activists in a style more typical of the assaults made on nominees of presidents in their seventh or eighth year in office, not their second.

Detractors imply that Pickering is a racist because he worked to reduce the sentence of a man in a 1994 cross-burning case. They also don't like his opposition to abortion or his skeptical view of federal job-discrimination laws. For Democrats in the Senate who have slowed confirmations of Bush appointees to a trickle, this is red meat. And grossly unfair.

In fact, as a young lawyer Pickering testified against the imperial wizard of the Ku Klux Klan and worked with federal law enforcement to arrest klansmen. He also worked to heal racial wounds in his community. As for abortion, he's never had to rule on the issue and has steadfastly

maintained that a judge's role is to uphold the law.

Concerning the 1994 cross-burning case, Pickering intervened because of a huge disparity he saw in the sentences recommended for the various defendants.

He called the actions of one of the men a "drunken prank," but he also called it a "despicable act" deserving jail time. Still, he disagreed with a Justice Department civil rights lawyer about whether the man deserved a seven-year term when another defendant was recommended for only a minimal sentence.

Democrats claim Pickering acted improperly by meeting with prosecutors in the case and by going over their heads to the Justice Department. All we know is that Pickering is praised by people who know him and his work in Mississippi. Among his supporters is James Charles Evers, brother of slain civil rights leader Medgar Evers, who would know a racist if he saw one.

It seems to matter little to Democrats, who run the Senate by a one-vote margin. Pickering's nomination is just one of a bundle they have put into the deep freeze, mostly for purely partisan reasons. Last year they confirmed just 43 percent of Bush's judicial nominees, which trailed the confirmation rates of Ronald Reagan (91 percent), George H.W. Bush (62 percent) and Bill Clinton (57 percent) in their first years in office.

Pickering, who received a "well qualified" recommendation from the American Bar Association, doesn't deserve this kind of treatment. He and other Bush nominees are entitled to more timely consideration by the Senate Judiciary Committee and up-or-down votes by the full Senate.

The country deserves an end to the partisanship on Bush's judicial appointments.

Passing Judgement

Intelligencer Journal
Tuesday, February 12, 2002

Sen. Orrin Hatch's selective memory is showing once again.

As chairman of the Senate Judiciary Committee during the Clinton administration, Hatch and his colleagues held up hundreds of judicial appointments.

Last week, in defense of Charles W. Pickering Sr., a Mississippi judge whose actions and decisions in the arena of race and the law have raised questions about his fitness to serve on the U.S. Court of Appeals for the 5th Circuit, Hatch accused Democrats colleagues of working hand-in-hand with "leftist groups that want to inject political litmus tests into the confirmation process. "Frankly," he said, "I get a little sick of these things that seem to happen here every time we get a Republican president (making judicial nominations)."

His remark evoked the appropriate guffaws from Pickering critics in the gallery, as they should.

In a thinly veiled reference to Hatch and Senate Republicans, Judiciary Committee Chairman Sen. Patrick Leahy, D-Vt., said he will schedule confirmation hearings "at a pace that will exceed the pace of the past six years."

In fact, Hatch told The Washington Post that the real test for Leahy's committee will be if they can match the 100 confirmations that occurred during Clinton's second year in office. To that end, he said, the committee is off to a good start.

That list, however, should exclude Pickering. As a young attorney in 1959, he offered legal advice on ways to enable Mississippi to criminalize interracial marriage. He also has been linked with Mississippi's Sovereignty Commission, which spied on civil rights and labor groups. While Pickering has maintained he had no ties to the group, he did vote to fund the organization in 1972 and 1973, and a 1972 commission memo lists his name as one of the state lawmakers who wanted to be kept informed of the group's activities.

To counter those accusations, his supporters point out that in the late 1960s he helped prosecute the Ku Klux Klan in Mississippi, and that his views at that time, were not unique in the South.

But during an unusual second hearing last week, evidence was presented suggesting that his past continues to color his present. In a 1994 case involving a cross-burning, Pickering was upset about the stiff, 7-year sentence proposed for Daniel Swan, a 20-year-old who joined two accomplices.

According to Justice Department files, the judge met privately with prosecutors and threatened to order a new trial unless they agreed to a lesser sentence. When they refused, documents show, he contacted a Justice Department official in Washington. The defendant eventually received a 27-month sentence.

Pickerings' actions, said some senators, appear to have violated the judge's code of conduct.

This is not, as some have claimed, a witch hunt into Pickering's past, but a compilation of the sum and total of his actions.

The 5th Circuit of the U.S. Appeals Court covering Mississippi, Louisiana and Texas has been called a trailblazer on desegregation and voting rights in the past. Little wonder Pickering faces opposition. He should not be confirmed.

Appeals Court Nominee Has Earned Our Support

Women’s Bar Association of Western Pennsylvania
Pittsburgh Post-Gazette
Thursday, February 14, 2002

We are writing in response to the Feb. 9 article reporting that a group called the Feminist Majority is among a coalition that is "mounting a campaign against President Bush's nomination of Western Pennsylvania's Chief U.S. District Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals" ("Appeals Court Nominee Targeted"). We feel compelled to respond.

On behalf of the executive board of the Women's Bar Association of Western Pennsylvania, we support, without reservation, the nomination of the Honorable D. Brooks Smith to the 3rd Circuit Court of Appeals. Since his appointment to the U.S. District Court for the Western District of Pennsylvania, we have had the pleasure of appearing before Judge Smith as federal prosecutors, defense attorneys and sole practitioners, as well as members of large national law firms. He has always treated each of us and our clients, both individuals and corporations, with dignity and respect. We have found Judge Smith to be a person of high integrity. He is exceptionally intelligent, thoughtful, hard-working and conscientious. When appearing before Judge Smith, you can be assured your case and issues will receive fair and thorough consideration. The public should be aware that the American Bar Association rated Judge Smith as well qualified for the 3rd Circuit Court of Appeals and the Allegheny County Bar Association gave Judge Smith its highest rating, highly recommended.

Judge Smith has consistently attended and supported events sponsored by the Women's Bar Association. This year, we asked him to speak at our annual Susan B. Anthony Award presentation, which is in honor of Mary Beth Buchanan, Western Pennsylvania's first appointed female U.S. attorney. Judge Smith was chosen to speak because of his contributions in creating a good working relationship between attorneys and the judiciary, and because of his commitment to eradicating gender bias in the court system.

Last year, our organization prepared and presented a report to the Supreme Court of Pennsylvania
committee on racial and gender bias in the justice system. In interviewing attorneys to prepare the report, we did not receive a single complaint concerning Judge Smith. Based on our personal experience, as well as this study (through which a complaint could be made anonymously), any suggestion or insinuation that Judge Smith is sexist or gender-biased is simply not true.

SHELLY R. PAGAC

Co-President

CYNTHIA REED EDDY

Co-Chair of Judiciary Committee

Women's Bar Association of Western Pennsylvania

Living in a State of Constitutional Denial

By Jonathan Turley

The Chicago Tribune
Sunday, February 10, 2002

Liberal Democrats appear these days to be slowly moving through the stages of loss first defined by psychiatrist Elizabeth Kubler- Ross: denial, anger, bargaining, depression and acceptance. A recent proposal by University of Chicago law professor Abner Mikva would suggest that some Democrats remain mired somewhere between denial and bargaining.

Mikva recently put forward a theory that has the hearts of many die-hard Democrats racing with anticipation: President Bush should be barred from filling any vacancies to the U.S. Supreme Court during his current term. Cloaked in constitutional and historical arguments, Mikva insists that any Supreme Court appointments should be delayed until the next presidential election in two years.

With Bush's popularity at a historic high, Mikva appears to be moving from denial to anger to bargaining. Mikva grudgingly accepts that Bush is president, though in a Washington Post commentary he emphasizes that Al Gore won the popular vote. This is suggested as somehow significant despite the facts that the popular vote margin was statistically razor thin; that previous presidents have been elected on the electoral but not the popular vote; and that, in our constitutional electoral system, popular vote is legally meaningless. Yet this image of an election stolen creates a useful appearance of victimization for Mikva and others in advancing this proposal. It is not that we are trying to subvert the constitutional process, we have been injured and deserve recourse. Otherwise, Mikva's proposal is nothing more than a raw partisan shutdown of the president's prerogative to fill Supreme Court vacancies.

The real motivation for this proposal, however, lies elsewhere. Mikva notes that the Supreme Court could easily have as many as three vacancies during Bush's term and he asks menacingly: "What kind of person would President Bush nominate?" Clearly, not a person to Mikva's liking.

The solution for Mikva is simply to divvy up powers with Bush like hostile roommates locked into a multiyear lease: Bush can continue to wage war and enjoy the trappings of office but the Supreme Court would be off-limits. His reasons are many but few withstand serious review. First, Mikva argues that nothing in the Constitution requires nine justices and that historically there have been long periods of delay in the confirmation of nominees. This ignores that modern delays in confirmation have been due to concern of an individual's qualifications, not some categorical denial of the right of a president to place qualified people on the court.

Mikva also argues that it would be unseemly to allow the president to add to a court that "itself made the final decision as to who should be president."

Mikva again chooses to ignore that voters chose this president through our constitutional electoral system. As it turns out, the people of Florida and the rest of the country made the final decision as to who should be president. Mikva simply notes that "there is still unhappiness" about the court's decision, an empirical observation apparently based on his conversations with other

unrequited Gore supporters.

Mikva labels the current Supreme Court as an "activist" court that only needs a couple of new votes to reshape laws in an image that Mikva finds unacceptable. He apparently prefers his own image. For years, conservatives criticized Mikva as one of the most liberal members of Congress when he represented the 10th Congressional District and later as one of the nation's most liberal judges in Washington D.C. Long accused of continuing his legislative career from the bench after leaving Congress, Mikva's labeling of any court as activist is rather disorienting.

Mikva's suggestion would seriously weaken our constitutional system by creating ambiguities in authority or questions of legitimacy. Mikva would create a precedent for members of Congress to
categorically refuse nominees by presidents under certain undefined circumstances. It is not simply a bad idea, it is a dangerous one. The sooner this bizarre theory is put to rest the sooner Mikva and others may reach the stage of Kubler-Ross that most voters reached last January: acceptance.

Judge Pickering's Past

By Marcia Greenberger
The Washington Post
Thursday, February 14, 2002

In the Feb. 8 news story "Democrats Challenge Choice of Mississippi Judge," District Court Judge Charles W. Pickering reportedly said that the reason he repeatedly rules against people with employment discrimination claims is because most claims of merit are resolved by the federal Equal Employment Opportunity Commission (EEOC).

Judge Pickering is wrong.

The EEOC has a backlog of nearly 35,000 cases, so those needing a timely resolution of their claims can hardly depend on the commission to provide it.

In those cases where the EEOC does offer mediation as an option, both parties must agree. Although most employees who file discrimination complaints with the agency agree to mediation, almost two-thirds of employers decline -- thus giving victims of discrimination little choice but to pursue their claims in court.

Finally, given its resource constraints, the EEOC typically litigates only 3.5 percent of the charges in which it finds reason to believe that discrimination has occurred.

A judge who approaches the employment discrimination cases that come before him with the misguided preconception that they must be without merit -- because otherwise they would have been resolved by the EEOC cannot be counted on to uphold the laws and the constitutional protections that guarantee civil rights and equal opportunities for all citizens.

Judge Pickering should not be elevated to the 5th Circuit.

MARCIA D. GREENBERGER

Co-President

National Women's Law Center

Fight Over Judge Replay our Bitter History

By Clarence Page
The Atlanta Journal-Constitution
Wednesday, February 13, 2002

Supporters of U.S. District Judge Charles W. Pickering Sr. compare his confirmation hearings to the McCarthy era. That critique misses the point. I'd compare it to the Nuremberg Trials--or, better yet, to South Africa's Truth and Reconciliation Commission.

Are those comparisons too harsh? Not for those of us who were on the receiving end of the racial apartheid that Pickering once helped to uphold. Questions about his past explain why his nomination to the U.S. 5th Circuit Court of Appeals in New Orleans has become President Bush's first big judicial confirmation fight.

Pickering's Feb. 7 hearing went all the way back to his college days to dig up tidbits like the article he penned in 1959 as a 21- year-old law student in the University of Mississippi Law Journal. Without expressing a hint of moral reservation, it suggested how the state could salvage its overturned ban on interracial marriages to "serve the purpose that the legislature undoubtedly intended it to serve."

It was just an "academic exercise," Pickering says now. But some observers were not impressed, especially those of us who remember how disregarding the "white" and "colored" signs on restrooms, water fountains and restaurants in the South could get you killed.

"This hearing is a painful recollection of America's civil rights history," said Sen. Dick Durbin (D-Ill.), who was one of Pickering's toughest interrogators during his hearing. (The committee probably will vote by the end of the month on Pickering's confirmation.)

Yes, such recollections apparently are so painful that Pickering had some trouble recalling all that he was doing at the time. Take, for example, his alleged associations with his state's notorious Sovereignty Commission.

From 1956 to 1973, that supersecretive body devoted itself to protecting the state's "sovereignty," meaning its racial segregation laws and traditions, against the U.S. Supreme Court and other pesky Washington intrusions.

It spied on civil rights groups and targeted civil rights sympathizers for firings, beatings and maybe even killings. Leaked documents revealed that the commission secretly helped the defense
team of avowed racist Byron de la Beckwith, who escaped punishment in two trials for the 1963 murder of civil rights leader Medgar Evers. He finally was convicted in 1994 after the documents leaked out.

Pickering testified in 1990, when appointed by the first President Bush, that he had no contact with the commission. He further denied that it was still in business in the 1970s when Pickering was a state senator. Yet a document that was unearthed when the commission's files were opened to the public in 1998 showed Pickering's response to be less than truthful. As a state senator, the document indicated, he had "requested to be advised of developments" in a labor dispute in Laurel, Miss., in the early 1970s.

"If I were making that decision today, I would not do it," Pickering replied to Durbin's questioning.

Pickering also denied that former Mississippi Lt. Gov. Carroll Gartin, who was Pickering's law partner from 1961 to 1971, was a segregationist. But Pickering changed that tune when Durbin waved copies of an old campaign ad. It showed Gartin waving a pen with
which, he declares in the ad, he "will veto any effort to weaken our
defenses around our Southern way of life."

Pickering said he believed Gartin was "trying to move the state forward and still stay in politics." Right. Sometimes you have to go along to get ahead.

With that in mind, Pickering deserves praise for courageously testifying in 1967 against Sam Bowers, a Ku Klux Klan leader who was being tried for the firebombing death of Vernon Dahmer Sr., a civil rights leader who was helping blacks register to vote.

Pickering's testimony against Bowers cost Pickering his re- election as the local prosecutor, Medgar Evers' brother Charles Evers wrote in a Wall Street Journal piece in support of Pickering.

On the other hand, William Taylor, a Washington lawyer who served on the Washington, D-C.-based Citizens' Commission on Civil Rights at that time, pointed out that, by that time, even the white establishment of Mississippi had begun to decide that Klan violence was bad for business.

And Charles Evers, who went on to become a civil rights leader and a small-town mayor before switching from the Democratic to the Republican Party, was listed in the Sovereignty Commission's documents among the 5,000 tipsters, black and white, who informed on their neighbors. When Time magazine asked him about it in 1998, he was quoted as saying, "If

you don't know who your enemies are and talk to them, how are you going to deal with them."

Yes, if Charles Evers sees the value in going along to get ahead, he probably learned it from the masters of the game.

Bush should withdraw this nomination to spare the nation and his administration any more pain.

Do the Crime, Do the Time

By Thomas Jipping
WorldNetDaily
Thursday, February 14, 2002

Senate Democrats say Republicans blocked President Clinton's judicial nominees when they ran the Senate. It's odd, though, that Republican "obstruction" still resulted in confirmation of a lot of radical judges.

Two of Mr. Clinton's most radical nominees were Richard Paez and Marsha Berzon. Republicans
resisted for a time, and then-Majority Leader Trent Lott promised in September 1999 not to bring up the nominations "unless we have the votes to defeat them." Yet the obstructionist Republican Senate confirmed them both on March 9, 2000, and today they are among Mr. Clinton's 14 appointments to the activist U.S. Court of Appeals for the Ninth Circuit. Three cheers for Republican obstruction.

In 1994, nearly three-fourths of California voters said habitual criminals were not first-time offenders, enacting the "Three Strikes" law requiring at least 25 years behind bars for a third serious or violent felony. The legislature determines, and can always change, the definition of a serious felony, but the people decided that multiple serious felonies deserve more serious punishment.

Californians may have been what one reporter called the "world's largest legislature" when they enacted this law, but last November they met the world's smallest legislature. And Judge Richard Paez won, ruling that using it exactly as Californians intended results in unconstitutional cruel and unusual punishment. The people said to look at the last felony in light of the others; Judge Paez looked at the last felony by itself, concluding that a 25-year sentence was "grossly disproportionate" to the crime.

Judge Marsha Berzon, confirmed on that same fateful day by that same obstructionist Republican
Senate, has now had a crack at it. Earnest Bray had been convicted of four counts of robbery, Richard Brown of at least five serious or violent felonies including second degree murder, assault with a deadly weapon, and robbery. They had chosen a life of crime and those prior crimes converted a subsequent offense from a misdemeanor petty theft into a felony petty theft "with a prior." Conviction of this third (actually, fifth for Bray and sixth for Brown) felony

required a minimum sentence of 25 years. They kept doing the crime so they were finally to do some time.

Opponents of "Three Strikes," however, did not stop when they lost at the polls in 1994. Leftist law professor Erwin Chemerinsky looked for cases in which, no matter what the rap sheet, the latest felony looked relatively minor. Though under "Three Strikes" the rap sheet helped determine the sentence, if a judge looked only at the small tip of the criminal iceberg, he might say the sentence did not fit the crime. Bingo Mr. Chemerinsky hit pay-dirt with Mr. Clinton's liberal activists out there on the left coast.

(Mr. Chemerinsky, by the way, is now helping bring the lawsuit alleging mistreatment of foreign terrorists in Guantanamo Bay, Cuba. Yes, that Chemerinsky.)

Joined by liberal activist poster boy Stephen Reinhardt and fellow Clinton appointee A. Wallace Tashima, Judge Berzon did her part. Going to prison for 25 years for petty theft or shoplifting would, by itself, strike most people as a little much or, in legalese, "grossly disproportionate." The point is, of course, that neither of these career criminals had received that sentence for that crime. That's not, however, how it works in judicial activist-land. There, reality is whatever the judge says it is.

Judge Berzon looked at petty theft itself what she called the "core conduct" of the crime for which Bray was convicted. But then homicide is the "core conduct" of both involuntary manslaughter and first-degree murder. It's the other circumstances that define the actual crime and resulting sentence. Bray chose to commit the "prior" that turned his petty theft from a misdemeanor into a felony. Never mind, Judge Berzon's version of the law is what matters and that's what she struck down.

Democrats planned all along to block President Bush's judges. In May 2000, six months before the election, Sen. Joe Biden said: "If Bush is elected … we will see most of the judges stopped who are Republican." Even after Sept. 11, Sen. Biden said: "We are not united on the makeup of the Supreme Court." Democrats planned to justify their obstruction by accusing Republicans of it, whether it had actually happened or not.

If Republicans had only lived up to their billing, perhaps judges like these would not be overturning the people's decisions and dismantling the criminal justice system. Instead, the accusation of fake obstruction is keeping Bush judges from balancing the activism of judges that some real obstruction could have prevented.

Don’t Confirm Pickering: Appeals Court Nominee Carries Too Much Baggage

The Register-Guard
Tuesday, February 12, 2002

Charles Pickering, a federal trial judge in Mississippi and now President Bush's nominee for the 5th U.S. Circuit Court of Appeals, has become something of a political lightning rod.

Civil rights and pro-choice advocates strongly oppose his nomination. Some Democrats are raising questions about a possible violation of the judicial canon of ethics because of a phone call Pickering made to one party in a 1994 trial over a cross-burning incident. Conservatives and, most particularly, U.S. Senate Minority Leader Trent Lott, R-Miss., strongly support the nominee as a principled, courageous judge.

On the civil rights front, Pickering's opponents have reached back to 1959, when Pickering was a law student and wrote a three-page note for the school's law review, pointing out flaws in Mississippi's anti-miscegenation law prohibiting marriages between blacks and whites. The note said that the law was vulnerable unless the state legislature made changes. The suggested changes were made.

Questions have also been raised about an alleged connection in the 1960s to the notorious Mississippi Sovereignty Commission, which sought to maintain segregation in the state. Pickering has said he had no contact with the commission, but a document disclosed in 1998 showed that, as a state senator, he asked a commission official to inform him of labor unrest in his home county. And, finally, Sen. John Edwards, D-N.C., raised the ethics issue relating to the phone call.

Pickering's supporters told the Senate Judiciary Committee that Pickering was not and had never been a racist and that it was unfair to reach back 40 years to find fault. Others said the judge had helped, not hindered, the recruitment of black Mississippians to run for public office. And Pickering himself testified at the committee's confirmation hearing that he didn't consider his phone call to the U.S. Justice Department to complain about a mandatory five-year sentence for the cross-burner to be a violation of judicial ethics.

The Pickering nomination is seen as a precursor to later Bush nominees to the federal bench. With Democrats in control of the Senate, the president would do well - for himself and for the country - to choose middle-of-the-road nominees and not conservative ideologues. Lott's support for Pickering will certainly help the nominee on the political front, but what's at stake here is the judiciary, not hometown buddies and political cronies.

Charles Pickering's background suggests a mixed view on race, a strong opposition to women's right to choose an abortion, a possible fib about his connection to the Mississippi Sovereignty Commission and a relaxed view of judicial ethics. None of that adds up to a good reason to put him on the appeals court that covers Mississippi, Louisiana and Texas. If anything, it adds up to a reason to reject his nomination. The Senate should do just that.

Transcripts/Members of Congress

Newsmaker: Sen. Tom Dashchle

PBS Newshour with Jim Lehrer
Tuesday, February 11, 2002

EXCERPT

JIM LEHRER: Finally Senator, yesterday you said you were going to oppose the nomination of Federal District Judge Charles Pickering--nominated to go to the Circuit Court of Appeals in New Orleans.

He's from Mississippi; he's a close friend of Senator Lott (R-Miss.) that you're going to oppose the nomination. Why?

SEN. TOM DASCHLE: Well, because I don't think that Mr. Pickering is qualified at this point. I think that there are some very serious questions about his ability as well as his background and it causes me concern.

So while I certainly believe he has every right to be - to have his case heard, for a vote to be taken, unlike our Republican colleagues, who would sit on nominations for years, we're going to have a vote in committee, and if it reaches the floor on the floor, but when that vote is cast, I've made the decision to oppose his nomination.

JIM LEHRER: It has to do with what he has done as a federal district judge or what he did earlier as a state senator, or what?

SEN. TOM DASCHLE: Well, I think a combination of things, Jim. I'll have a lot more to say about it as the nomination comes to the floor, if it does, but I believe that we can do better than that, and I've expressed myself in that regard.

JIM LEHRER: Senator Daschle, thank you very much.

Interest Groups/Press Releases

Letter to the Wall Street Journal Editorial Board

People for the American Way
Tuesday, February 12, 2002

Having been attacked some two dozen times over the years on the editorial page of the Wall Street Journal, I was not surprised by the February 8 editorial regarding the opposition of People For the American Way to the confirmation of Charles Pickering to the United States Court of Appeals for the Fifth Circuit. The Journal's editorial page, of course, has long been known as the national chat room of right wing conservatism. Far too often that page has been characterized by vitriolic, shoddy, and irresponsible journalism. For these reasons, I rarely respond to Journal
diatribes. However, given what is at stake with the Pickering nomination specifically, and the broader right-wing campaign for ideological domination of the federal judiciary, I am compelled this time to respond.

Your editorial fails to note the opposition to Pickering's confirmation from the Mississippi NAACP and the Magnolia Bar Association, a predominantly African American bar association in Mississippi. His confirmation is also opposed by the Congressional Black Caucus and by a large and diverse coalition of national organizations, including People For the American Way. After carefully reviewing Judge Pickering's record, these organizations have come to the conclusion that Pickering's confirmation to the Fifth Circuit would pose a significant threat to the rights and freedoms that Americans hold dear.

With respect to the Journal's attack on the Democratic members of the Senate Judiciary Committee, particularly Committee Chair Patrick Leahy, the very thought that anyone could control the members of the Senate is absurd. Indeed, the editorial is a transparent attempt to intimidate the Judiciary Committee Democrats, and is sadly typical of the tactics employed throughout the years by the Journal's editorial page.

Rather than deal with Judge Pickering's record, the editorial calls me a "race-card specialist" for having the temerity to address Pickering's disturbing record on civil rights. It is a sad day in America when legitimate concerns about a judicial nominee's record on civil rights cannot be raised without those expressing such concerns being attacked in this manner. It is the obvious aim of such mud-slinging not only to discourage the careful scrutiny required of any judicial nominee but to deflect attention from the nominee's actual record.

People For the American Way has carefully examined Judge Pickering's long public record, focusing particularly on his record as a Mississippi state Senator and later as a federal district court judge. That record is one of insensitivity and hostility to key principles and laws protecting the civil rights of minorities, women, and all Americans. For example, ignored by the Journal editorial is the fact that Pickering, as a judge, has criticized the fundamental "one-person one-vote" principle recognized by the Supreme Court under the 14th Amendment. Also, he has suggested that large deviations from equality in drawing legislative district lines, which the Supreme Court has held presumptively unconstitutional, were "relatively minor" and "de minimis." And, as a judge, Pickering has also criticized or sought to limit important remedies provided by the Voting Rights Act. In addition, in a number of cases involving claims of employment discrimination, Pickering has inserted severe criticisms of civil rights plaintiffs and the use of civil rights statutes, disparagingly stating that the courts "are not super personnel managers charged with second guessing every employment decision made regarding minorities." (See Report of People For the American Way Opposing the Confirmation of Charles W. Pickering, Sr. to the U.S. Court of Appeals for the Fifth Circuit ["PFAW Report"], pgs. 4-7.)

As a Mississippi state Senator, Pickering supported voting-related measures that helped perpetuate discrimination against African Americans. For example, in 1973, Pickering voted for a partial Senate redistricting plan that harmed minority voting rights by continuing to provide for county-wide voting in a populous county rather than creating single-member districts. In 1975, Pickering voted for a broader Senate-passed measure that similarly provided for county-wide district voting. Also in 1975, when Congress was to renew Section 5 of the Voting Rights Act mandating pre-clearance of voting changes in jurisdictions with a history of discrimination like

Mississippi, some legislators opposed it. Pickering co-sponsored a Mississippi Senate resolution calling on Congress to repeal the provision or apply it to all states, regardless of their discrimination history. (See PFAW Report, pgs. 7-9.)

In addition, Pickering voted twice as a Senator (in 1972 and 1973) to appropriate state monies to fund the notorious Mississippi Sovereignty Commission, created by the state after Brown v. Board of Education to resist desegregation. At Pickering's first confirmation hearing, in 1990, he told the Judiciary Committee that "I know very little about what is in those [Commission] records. In fact, the only thing I know is what I read in the newspapers." And while Pickering denied under oath, at his 1990 hearing, having had any contact with the Sovereignty Commission, a subsequently released Commission memorandum dated January 5, 1972 stated that "Senator Charles Pickering" and two other state legislators were "very interested" in a Commission investigation into union activity that had resulted in a strike against a large employer in Laurel, Pickering's home town. Also according to this memorandum, Pickering and the other legislators had "requested to be advised of developments" concerning the union investigation, and had requested background information on the union leader. (See PFAW Report, pgs. 7-10.)

Confronted with this Commission document that conflicts not only with Pickering's 1990 denial of contact with the Sovereignty Commission but also with his professed lack of knowledge about the Commission, Pickering suggested at his February 7, 2002 hearing that he was worried about Ku Klux Klan attempts to infiltrate the union. The Sovereignty Commission, however, worked to infiltrate and spy on civil rights organizations and to obstruct desegregation, hardly the group to which one would turn if concerned about the Klan, as Senator Durbin observed at the February 7 hearing. Moreover, the Commission memorandum itself contains no foundation for the suggestion that Pickering's request had anything to do with the Klan. To the contrary, it states that the request from Pickering and the other legislators was to be "advised of developments in connection with SCEF [Southern Conference Educational Fund] infiltration of GPA [Gulfcoast Pulpwood Association] and full background on James Simmons [President of the GPA]." None of these troubling facts is even mentioned in the Journal editorial.

Completely ignoring Pickering's record in the state Senate, the editorial goes back farther in time and attempts to minimize Pickering's role in Mississippi's shameful history of prohibiting and penalizing interracial marriage. As a law student, Pickering wrote an article advising the Mississippi legislature how to fix a loophole in the state's law making interracial marriage a felony punishable by up to ten years in prison. The loophole had rendered the law unenforceable; Pickering's advice, which the legislature promptly took, enabled the law to be enforced. (See PFAW Report, pgs. 10-12.)

Defending Pickering, the Journal claims that Pickering's article "was supposed to be presenting a neutral analysis of the law," as though neutrality in the face of such an utterly repugnant law was somehow praiseworthy. Moreover, the article was not neutral at all, but rather a prescription for curing the legal defect in the law. And while Pickering has testified at his confirmation hearings to a current belief that who one marries is a personal choice that should not be regulated, at none of his confirmation hearings has he even expressed regret over having written the article. To the

contrary, as recently as last week at his confirmation hearing, Pickering has tried to characterize the article as an "academic exercise." But there was nothing "academic" at all about these laws, which harmed real people, or about Pickering's advice to the legislature that the law "should" be amended, or about the fact that the legislature did amend the law as he had suggested, making it enforceable. The Journal falsely accuses us of being concerned only about Pickering's article, which your editorial excuses as youthful indiscretion, conveniently ignoring the concerns specifically expressed in our report about Pickering's far more recent efforts to minimize the article at his confirmation hearings. (See PFAW Report, pgs. 9-11.)

Instead, the Journal editorial rests its entire view of Pickering's civil rights record on Pickering's brief testimony given in a 1967 trial against a leader of the Klan. It is true that this was a courageous and commendable act. But the act itself does not mean, as the Journal suggests, that Pickering has been a champion of civil rights, or even that the testimony was motivated by opposition to the Klan's racist activities. Neither we nor the Journal's editorial writers can know Pickering's motivations. In fact, it appears from a book written by Chet Dillard, one of Judge Pickering's supporters, that Klan violence at that time in Mississippi was hurting the white business establishment in Laurel, Pickering's home town. Dillard's book also includes the following portion of a public statement regarding Klan violence issued in the mid-1960s by the local District Attorney (Dillard), the sheriff of Jones County, the Mayor of the City of Laurel, the county attorney (identified elsewhere in Dillard's book as Charles Pickering) and the Laurel Chief of Police:

We, the undersigned elected officials and public officers charged with the responsibility of protecting you and your property, wish to publicly state and make known our position and intentions concerning certain acts of violence which have recently taken place in Jones County. While we believe in continuing our Southern way of life and realize that outside agitators have cause [sic] much turmoil and racial hatred, let there be no misunderstanding, we oppose such activities, but law and order must prevail.

W.O. Dillard, Clear Burning, at 119 (emphasis added).

In any event, the charge against Judge Pickering is not that he is a racist, which is nothing more than a straw person set up by the Journal for debunking by reference to his 1967 testimony. In evaluating Pickering's commitment to progress on civil rights and hence his qualifications for a lifetime appointment to the court of appeals, of far greater relevance than one act taken 35 years ago is how he subsequently handled broader civil rights issues as a state Senator and then as a federal trial judge. In those important and influential public positions, Pickering has been sorely wanting, as his record reveals. (See PFAW Report, pgs. 4-12.)

Ignoring that record, the Journal moves on to a different subject and criticizes us for our concern about Judge Pickering's use of his official judicial position to promote religion and religious practices. In a speech made in 1984, before he became a judge, Pickering stated that the Bible should be "recognized as the absolute authority by which all conduct of man is judged . . . ." He was asked about this by the Senate Judiciary Committee at his 1990 confirmation hearing, and whether he would have any problem separating his religious beliefs from his role as a

judge. He assured the Committee he would not. But his record since becoming a judge indicates that he has had such difficulty. Indeed, the Almanac of the Federal Judiciary, an independent publication that profiles all federal judges, contains this statement from one lawyer who has practiced before Judge Pickering: "He is the judge who concerns me the most. He's a fine person, but he's almost so pious that it interferes with his assignment as a judge." As we stressed in our report, our concern does not relate to Judge Pickering's personal religious beliefs. Judge Pickering, like every American, is entitled to hold and to practice his religious beliefs. But it is inappropriate for a federal judge, acting in that capacity, to attempt to promote those beliefs or suggest to those appearing before him that they should undertake particular religious practices or bring religion into their own lives. As the Supreme Court has recognized, "a union of government and religion tends to destroy government and to degrade religion." (See PFAW Report, pgs. 20-24.)

The Journal editorial wrongly accuses us of criticizing Judge Pickering because he has published fewer than 100 of the approximately 1,100 written decisions he estimates he has issued in his 11 years on the bench. The editorial misses the point entirely, which is that it would have been premature for the Senate Judiciary Committee to consider Judge Pickering's nomination without having copies of his unpublished decisions, decisions that form the bulk of his record as a district court judge and are unquestionably relevant to his qualification to sit on the court of appeals. Nonetheless, Senator Trent Lott, a friend of Pickering's and his Senate patron, pushed for Pickering's consideration by the Senate Judiciary Committee last fall even though Pickering's unpublished decisions were not available. The efforts by Senator Lott to bring about this irresponsible act was political maneuvering at its worst. Fortunately, Senator Leahy takes seriously the Senate's constitutional role in examining and consenting to judicial nominees, and insisted that Judge Pickering provide his unpublished decisions to the Judiciary Committee. Even then, scores of those decisions were not provided to the Committee until the eve of Pickering's hearing on February 7, and more than 100 still have not been produced, additional points overlooked by the Journal.

Another critical point about Judge Pickering's decisions is the record of his reversals by the Fifth Circuit, also ignored by the Journal. In 15 of the 26 cases that Pickering has been reversed by the Fifth Circuit, it has been through unpublished decisions by the court of appeals. According to Fifth Circuit rules, unpublished decisions are used to decide "particular cases on the basis of well-settled principles of law." Eleven of those 15 cases in which Pickering, according to the Fifth Circuit, violated "well-settled principles of law" involved constitutional, civil rights, criminal procedure, or labor issues, further raising troubling concerns about Pickering. Moreover, Pickering is one of two district court judges within the Fifth Circuit nominated by President Bush to that court of appeals. The other, Edith Brown Clement, who was recently elevated to the Fifth Circuit after serving as a district court judge for a slightly shorter period than Pickering, was never reversed in an unpublished opinion by the Fifth Circuit, according to the information that she provided to the Senate. (See PFAW Report, pgs. 11-16.)

The Journal editorial next moves to an attack on the Judiciary Committee for failing to hold hearings on 21 of 23 pending appellate court nominations. In fact, since June, when the Senator Leahy became chair of the Committee, the Committee has held hearings on eight of President

Bush's appellate nominees. Also since June, the Senate has confirmed a total of 34 of President Bush's judicial nominees. Indeed, despite the tragedies of September 11 and the disruptions caused by the anthrax attacks, the Committee is acting far more responsibly under Senator Leahy's leadership than the past six-and-one-half years when Republicans controlled the Committee.

While your editorial appears to minimize the importance of appellate court nominations, senators like Trent Lott, John Ashcroft, and Orrin Hatch thought the appeals courts were so important that they created an unprecedented ideological blockade against President Clinton's appellate court nominees. Between 1995-2000, 35 percent of Clinton's appeals court nominees were blocked without even getting a vote; 45 percent failed to receive a vote in the Congress during which they were nominated. The record was even worse with regard to the Fifth Circuit, to which Judge Pickering has been nominated. During the last five years of the Clinton administration, only one of the four Clinton nominees to that court was confirmed; the three others were not even allowed to come up for a vote.

This was not politics as usual. Progressive organizations opposed only a handful of lower court nominees during the 12 years that Ronald Reagan and George H.W. Bush filled federal courts with hundreds of extremely conservative judges. Consistent with the Senate tradition with respect to lower court nominees, we generally focused on competence and character, though ideology was considered in a few extreme cases.

But right-wing senators, urged on by Religious Right organizations and their allies, shattered that tradition. Their campaign was remarkably successful in perpetuating appeals court vacancies. Currently, seven of the 13 federal circuit courts are dominated by Republican appointees and four by Democratic appointees; two are tied. When current vacancies are filled, the number dominated by Republican appointees will be 11 of 13. And by the end of this presidential term, it could be all 13. That makes it critically important that President Bush nominate and the Senate confirm mainstream judges who can win genuine bipartisan support.

The campaign by right-wing senators reflects their understanding that the appeals courts are critical to the ultimate success of their efforts to achieve ideological domination of the federal judiciary. Because the Supreme Court hears fewer and fewer cases each year (fewer than 90 last Term, compared with nearly 30,000 last year by the federal courts of appeal), the appeals courts frequently are the court of last resort when it comes to protecting civil and constitutional rights.

Judge Pickering's nomination to the Fifth Circuit is of particular importance and concern since that court's jurisdiction includes the largest minority population in the country (42%). Especially in the Fifth Circuit, which has already issued a number of troubling decisions on civil and constitutional rights, adding another judge like Charles Pickering poses a grave danger to Americans' rights and liberties.

As more than 200 law professors stated in a letter sent to the Senate Judiciary Committee last summer, no judicial nominee is presumptively entitled to confirmation. Because federal judicial appointments are for life and significantly affect the rights of all Americans, and because of the

Senate's co-equal role with the President in the confirmation process, nominees must demonstrate that they meet the appropriate criteria. These criteria include an "exemplary record in the law," an "open mind to decision-making," a "commitment to protecting the rights of ordinary Americans," and a "record of commitment to the progress made on civil rights, women's rights and individual liberties."

Given what is at stake, and given the unprecedented situation created by the six-year blockade of the appellate courts, it is our right and our obligation as citizens to examine carefully this nominee's record against these criteria and to express any legitimate concerns about that record to the public and to the Senate. Indeed, history shows that People For the American Way and others who exposed the right wing judicial philosophies of such Supreme Court nominees as Robert Bork and Clarence Thomas were guilty, if anything, of understatement.

The Journal editorial considers our opposition to Judge Pickering's confirmation as "borking," propagating the right-wing's use of that word as a verb meaning an unfair personal attack on a nominee. But the Bork nomination was not about Robert Bork's personal life or politics. Robert Bork's confirmation to the Supreme Court was opposed by millions of Americans and rejected by the largest bipartisan vote in Senate history because his record of extremism in opposition to civil and constitutional rights demonstrated that he was unqualified to sit on our nation's highest court. Our report examining Charles Pickering's long public record is precisely that, an examination of his record. Space does not permit a full recitation of everything overlooked by the Journal in Judge Pickering's record. We commend your readers to our full report, available on our web site, www.pfaw.org, for the details that the Journal ignored.

We believe strongly in the Senate's constitutional obligation to scrutinize carefully the record of every nominee for a lifetime appointment to the federal judiciary, particularly a nominee to the Supreme Court or the Courts of Appeals. While we cannot know what is in Judge Pickering's heart, we can know what is in his record. And that record makes him unworthy of a lifetime appointment to one of the most powerful courts in the country.

Schauder, Andrew

From: Schauder, Andrew
Sent: Wednesday, February 20, 2002 12:52 PM
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Subject: judicial media review
Attachments: Judicial Media Review 2-19-02.wpd

Please see attached review

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Tuesday, February 19, 2002

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NAACP Denounces Pickering Confirmation During Press Conference at Annual Meeting

U.S. Newswire
Sunday, February 17, 2002

Kweisi Mfume, president & CEO, of the National Association for the Advancement of Colored People (NAACP) said yesterday that the association stands firm in its absolute opposition to the

confirmation of Judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit at a press conference held here during the Annual Meeting.

Mfume said, "We will continue to demand fairness on the part of those empowered to interpret the laws of our nation. We are opposed to the Pickering confirmation because we decry a judicial nomination process where civil rights and civil liberties, and equal protection under the law are forced to take a back seat to partisan politics and political affiliations." Mfume added, "Accordingly and rightfully so, we stand firm as an organization in our absolute opposition to the Senate confirmation of Judge Charles Pickering of Mississippi, and we stand united against all others whose judicial records give rise to suspicion about their ability to render impartial judgment and fair interpretation of federal law."

Julian Bond, chairman, NAACP Board of Directors said, "The NAACP was created to fight for freedom and justice in a nation dedicated to those goals. We must continue to fight now with renewed determination. Each of has a role to play as guardians of our nation's liberty, and that is the role history has assigned to us."

Mfume called on the Congress to join the association in the fight to defeat the Pickering confirmation, and challenged the members to help fight against hate crimes and racial profiling. He also urged them not to ignore the AIDS epidemic both in Africa and at home.

"These are wrongs that must be confronted," Mfume said. "We are compelled to act responsibly before the world to better humanity, and ultimately, to better ourselves."

In light of the Sept. 11 tragedies, Mfume said, "By moving our Annual Meeting back to New York, the NAACP honors the world's leading city and its residents along with the scores of Americans who are resolved to defend the ideals of a free and open society. This is the city of our birth, and we stand in solidarity with New Yorkers."

The NAACP was founded in New York City on the 100th anniversary of President Abraham Lincoln's birthday, which was Feb. 12, 1909. The Association last held its annual meeting in New York in 1998. The meetings were held in Washington, D.C. between 1999-2001.

Bush Reaffirms Support for Pickering; White House Says Democrats Stall on Judges

By James Brosnan
The Commercial Appeal
Saturday, February 16, 2002

The White House on Friday reiterated President Bush's support for the troubled nomination of U.S. Dist. Judge Charles Pickering of Mississippi to the Fifth U.S. Circuit Court of Appeals in New Orleans.

"The President believes in and will fight for the nomination of Mr. Pickering," said White House spokesman Ari Fleischer. Fleischer's comment on Pickering was not prompted by a question, but

came instead as Fleischer opened his daily briefing with an attack on Senate Democrats for holding up action on judicial nominations from the Republican administration.

Fleischer complained that the Senate has voted on only 37 of Bush's 90 judicial nominations and that there has been "enhanced lag" for the Circuit Court nominees, with votes on only seven of 29 nominees.

The 12 regional appellate courts have 30 vacancies, a vacancy rate of 18 percent, said Fleischer.

Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) noted that many of the vacancies exist because when Republicans controlled the Senate they refused to act on many of President Clinton's nominees.

"During the last six years of the Clinton administration it took an average of about 150 days to move a district court nominee to confirmation. I am proud that we have been able to do better since last July," said Leahy.

The committee held a second hearing on Pickering's nomination last week and Friday members submitted additional questions to the Justice Department for Pickering to answer.

A vote is expected in March. Pickering needs at least one of the 10 committee Democrats to vote to send his nomination to the Senate, but all have expressed concerns either about his civil rights record in the state or rulings on the bench.

Internal Justice Department documents claim Pickering lobbied to reduce jail time for a man convicted of burning a cross on an interracial couple's lawn in 1994.

NAACP Decries Judicial Nominee

By Christopher Lawton
Newsday
Sunday, February 17, 2002

NAACP leaders Kweisi Mfume and Julian Bond voiced staunch opposition yesterday to Senate confirmation of a federal judge's nomination to the Fifth U.S. Circuit Court of Appeals, saying it is an affront to "civil rights, civil liberties and equal protection under the law."

U.S. District Court Judge Charles Pickering, a conservative Mississippi judge, "really represents most of the things that this organization opposes," Mfume, NAACP president and chief executive, said at a news conference at the New York Hilton and Towers Hotel, where the group's board of directors and trustees were having their annual meeting. Pickering, 64, whom President George W. Bush nominated to the appeals court, defended his past actions as a prosecutor and politician on Feb. 7 before the Senate Judiciary Committee. The committee has not scheduled a vote on his nomination.

Pickering told senators that he took stands against racists in Mississippi in the 1960s and 1970s, endured threats against his family and lost re-election as a county prosecutor due to his views.

But he had to concede that he misled senators in 1990 during the Judiciary Committee's hearing on his nomination as a federal district court judge, when he said he never had contact with the Mississippi Sovereignty Commission, a state agency dedicated to maintaining segregation.

On that point, Bond yesterday was heated, saying Pickering "lied to the United States Senate about his associations with the terrorist group ... a state-funded organization which helped to do all it could to stop democracy in the state of Mississippi."

NAACP Asks Congress to Oppose Judicial Nominee

By Zach Howard
The Orlando Sentinel
Sunday, February 17, 2002

The National Association for the Advancement of Colored People on Saturday asked Congress to support its opposition to President Bush's nomination of a Mississippi judge.

"We challenge every member of the Congress . . . to stand with our association," NAACP President and CEO Kweisi Mfume told hundreds of members of the nation's oldest and largest U.S. civil-rights organization at an annual meeting in New York. The group, which has about 500,000 members nationwide, has said it opposes Senate confirmation of Judge Charles Pickering of Mississippi, nominated to serve on the 5th U.S. Circuit Court of Appeals in New Orleans.

It is one of a coalition of more than 50 organizations acting in opposition to the Pickering nomination since January.

White House officials were not available for comment on the NAACP's action. Efforts to reach Pickering were unsuccessful.

Pickering, a district-court judge since 1990 in Jackson, Miss., has been attacked by national groups for his record as a federal judge and earlier as state senator on matters including women's rights, abortion and voting rights.

"Judge Pickering, in most instances, really represents most of the things that this association is opposed to, and, in most of his rulings, continues to raise suspicions about whether or not he will be able to interpret . .. and administer fairness as he interprets the federal law," Mfume said.

Review Backs Nominee

By Audrey Hudson
The Washington Times

Friday, February 15, 2002

A legal-ethics expert asked by Republicans on the Senate Judiciary Committee to review a cross-burning case says that District Court Judge Charles W. Pickering's behavior in the matter deserves praise, not criticism.

Democrats charged that the judicial nominee for the U.S. Court of Appeals for the Fifth Circuit behaved unethically in determining a crime sentence in the case involving the burning of a cross in the yard of a racially mixed couple.

Michael Krauss, a professor of legal ethics at George Mason University School of Law, reviewed the 1994 Mississippi case at the request of Senate Judiciary Committee Republican staffers.
Mr. Krauss sits on the Board of Governors of the Virginia state bar's education section and said he is frequently called on to discuss ethical issues with members of the bar and bench.

Judge Pickering's judicial behavior "is not unethical or in any way unbecoming of a member of the judiciary," Mr. Krauss said in a written review.

Liberal organizations oppose the nomination of Judge Pickering and are attempting to label him a racist. Democrats attacked Judge Pickering during his second confirmation hearing last week and said he engaged in unofficial communication to reduce the maximum sentence in the case.

Judge Pickering said he objected to the prosecution's sentencing recommendations on the grounds that it was disproportionate, and redacted documents released yesterday by the Judiciary Committee seem to back his assertion.

A 1994 Justice Department memo said Judge Pickering "immediately took issue with the 'severe disparities'" in the sentencing.

Three men were accused of the federal offense, but the prosecutor cut a deal with two offenders, who were then put on probation and sentenced to community service one had a history of racism and had fired a gun into the home on a previous occasion, and the second had "low mental capacity," according to the memo.

The third suspect was a first-time offender, but the prosecution recommended more than seven years in prison. Judge Pickering instead sentenced him to 39 months in jail and called his actions "heinous," "reprehensible," "despicable," and "dastardly."

Judge Pickering asked federal prosecutors to inform their superiors at the Justice Department of the discrepancy in their sentencing recommendations. He also complained about the sentencing to a friend in a different branch of the department, but there is no evidence that confidential information was revealed, the review said.

"Judge Pickering was clearly concerned that no rational basis had been demonstrated for the

widely disparate sentencing recommendations ... ," the review said.

Judge Pickering's actions are described as a "determined effort" to "discharge, faithfully and competently, his judicial duties under our Constitution. I believe Judge Pickering deserves praise for his efforts," the review said.

Senate Minority Leader Trent Lott, Mississippi Republican, did not specifically identify Mr. Krauss' review, but said the Senate is receiving letters that should address Democrats' concerns.

"I believe any questions about him will be properly and sufficiently answered and we will get him out of committee," Mr. Lott said.

Sen. Charles E. Schumer, New York Democrat, is the only member of the Judiciary Committee to make public his intention to vote against Judge Pickering. Mr. Schumer cited the cross-burning case as the primary reason for his opposition.

A senior Republican aide said Democrats are underestimating the political consequences of derailing the nomination.

"It will be a political boomerang with a razor-blade tip that will come back at them very hard," said the aide, who refused to detail what Republicans are plotting.

Meanwhile, Sen. Joseph R. Biden Jr., Delaware Democrat, is blocking two Transportation Department appointees responsible for enforcing airline-security regulations, in exchange for getting support for an Amtrak security bill.

The nominees are Emil H. Frankel, for assistant secretary for transportation policy and Jeffrey Shane, for associate deputy secretary.

Blacks at Home Support a Judge Liberals Assail

By David Firestone
The New York Times
Sunday, February 17, 2002

Back in Washington, his opponents have depicted Judge Charles W. Pickering as the personification of white Mississippi's oppressive past, a man so hostile to civil rights and black progress that he is unfit for promotion to a federal appeals court.

But here on the streets of his small and largely black hometown, far from the bitterness of partisan agendas and position papers, Charles Pickering is a widely admired figure of a very different present.

In funeral parlors and pharmacies, used-car lots and the City Council chambers, the city's black establishment overwhelmingly supports his nomination to the United States Court of Appeals for

the Fifth Circuit, which is heading toward a contentious vote in the Senate in the first major judicial battle of the Bush administration.

Though few black residents here subscribe to Judge Pickering's staunchly Republican politics, many say they admire his efforts at racial reconciliation, which they describe as highly unusual for a white Republican in the state.

"I have never seen Trent Lott open his arms to the black community the way Charles Pickering has," said Larry E. Thomas, owner of Thomas Pharmacy, referring to the Senate minority leader, who is Judge Pickering's friend and patron. "Over the years I've seen him work with black leaders and really try to make an effort to understand and help the community. That's a progressiveness that we need to see more of in this state."

Progressive is not exactly the description used by the national black officials who are making an intense effort to prevent the judge's appointment. "A vote for Pickering is a vote against civil rights," said Julian Bond, the national chairman of the N.A.A.C.P. Representative Robert C. Scott, Democrat of Virginia, speaking against the nomination with other members of the Congressional Black Caucus, said, "It's hard to imagine a person who is more hostile to civil rights." Judge Pickering has also been condemned by a variety of big-city newspaper editorial boards and columnists.

But such comments carry little weight among those who actually know the man personally here in Laurel, in southeast Mississippi. Judge Pickering, now a federal district judge in the nearby city of Hattiesburg, was praised by black city officials for helping to set up after- school youth programs here, and for directing federal money to medical clinics in low-income areas when he was a state senator. Black business leaders say he was influential in persuading white-owned banks to lend money to black entrepreneurs, helping to strengthen the city's black middle class.

"I can't believe the man they're describing in Washington is the same one I've known for years," said Thaddeus Edmonson, a former local president of the N.A.A.C.P. who is now president of the seven-member Laurel City Council and one of its five black members. "If those people who are voting against him because of some press release would just come down here and talk to the people who know him, I think they would have a very different opinion."

The judge's widespread popularity in his hometown has been frustrating to the many civil rights and abortion rights groups that have worked to portray him as an ideological relic of the Old South.

Several opponents of his nomination have tried unsuccessfully to get his supporters to change their minds, and their inability to do so reflects the distance between national liberal groups and many Southern blacks in small towns. In a city like Laurel, with a population of 18,393, one's personality and faith are often more important than a judicial paper trail or an adherence to an agenda.

People for the American Way, a liberal organization based in Washington, has criticized Judge

Pickering for disregarding the separation of church and state by promoting religious programs from the bench. But many prominent blacks here say it is precisely his religious background he was president of the Mississippi Baptist Convention in the 1980's that they admire.

"I know Judge Pickering is a fair and impartial person grounded with Christian ethics and beliefs, who ought to be given this chance," said the Rev. Arthur Logan, the black pastor of the Union Baptist Church and a member of the City Council. "There are many people in Mississippi who made these same mistakes early in life, but their strong Christian character brought them closer
to God and helped them change."

Four of the five black council members, in fact, said they enthusiastically supported Judge Pickering's appointment. The fifth, Manuel Jones, said he opposed the nomination, largely because he differed with Judge Pickering's efforts in the late 1980's to integrate the largely black city schools with the largely white county schools.

Judge Pickering, then in private practice in Laurel, was one of several white city leaders who argued that the city could not attract economic development with an effectively segregated school system. At the time, Mr. Jones was president of the Laurel-Jones County branch of the N.A.A.C.P., which maintained that consolidation would dilute black administrative power over the city schools. The consolidation plan was eventually overturned by a federal judge, who said it was not justified.

Mr. Jones said he rebuffed a recent telephone request by Judge Pickering that he write the Senate a letter of support. (He had publicly opposed the judge's original appointment to the federal bench in 1990.) Several other council members did agree to the judge's request, however, and their letters are on file with the Senate Judiciary Committee.

"It's hard to go against a sitting federal judge," said Mr. Jones, searching for an explanation of why his colleagues have taken a position that differs so sharply from his.

Many of the judge's critics have cited actions or statements he made in the 1960's and 70's. They have pointed to an article he wrote in 1959 that appeared to support strengthening the state's law against interracial marriages, and to his votes in the state senate that appeared to dilute black voting strength.

The Battle Escalates; New Fighting Over the Charles Pickering Nomination

By Byron York
National Review Online
Friday, February 15, 2002

In a move to escalate the already-intense battle over the nomination of Charles W. Pickering Sr. to a place on the Fifth Circuit Court of Appeals, some Democrats on the Senate Judiciary Committee are now suggesting that Pickering may have misled the committee at hearings held

February 7. Pickering strongly denies the allegation.

At issue are statements Pickering made in response to questions from Democrat John Edwards about a 1994 cross-burning case (see "Behind the Democrats' Attack"). At the time, Pickering, a judge on the federal district court in southern Mississippi, questioned the Clinton Justice Department Civil Rights Division's decision to make no-jail plea bargains with two of the three defendants in the case, while recommending that the third defendant, a man named Daniel Swan, be sentenced to seven and a half years in prison. Evidence that emerged during the trial suggested that one of the defendants who got off with no jail had a significant history of racial hatred, which is an important factor in sentencing defendants convicted under the federal hate crimes statute. There was far less evidence of racial animus on Swan's part; in fact, seven witnesses, both black and white, testified that they were not aware of any racial animus he might have held against black people. While Pickering did not object to sending Swan to prison he was clearly guilty of taking part in the cross burning the judge believed that the seven and a half year sentence was too severe, given that a more culpable co-defendant was given no jail time at all.

At last week's hearing, Edwards questioned Pickering about a conversation Pickering had with defense lawyers and prosecutors from the Civil Rights Division. Swan had already been found guilty, and Pickering had told both sides that he was unhappy with the government sentencing recommendation. In the Senate questioning, Edwards alleged that Pickering was so unhappy with the sentence that he threatened to order a new trial for Swan.

"You told the government lawyers that you would on your own motion order a new trial, and when the government lawyer asked you, and I'm quoting now, 'What would be the basis for such a motion?' your answer was, 'Any basis you choose.' First of all, judge...did you say that you would order a new trial, even though no motion for a new trial had been made?"

"I did not," Pickering answered.

"So you deny that?"

"I've reviewed the transcript "

"So you deny having said that?" Edwards pressed.

"I did not say that," Pickering said.

"So if the lawyers who were involved in that case have said that that's a statement you made to them, that would be a lie?"

"Senator, on the record, I mentioned "

"Excuse me, judge," Edwards interrupted. "According to documents that we've been provided, this took place in a private meeting you had with the lawyers, when you told the lawyers you

would order a new trial on your own motion, and when they asked you, and I'm quoting now, 'What would be the basis for such a motion for a new trial?' you said, 'Any basis you choose.' Do you deny having said that?"

"I have no recollection of having said that," Pickering answered, "and I do not believe that I said that. Now, I have not seen the document that you are referring to. The Justice Department did not show me the files that they had."

"Did you have private meetings with the lawyers off the record about this case?"

"The response that I gave to Senator Leahy on this indicated that after "

"I'm not asking about Senator Leahy," Edwards interrupted. "Did you have private meetings with the lawyers?"

"With both the defense counsel and the [government] counsel, I had a meeting, yes."

"So private meetings did take place?"

"A private meeting took place."

"And you deny having any discussion in that meeting about ordering a new trial on your own motion? You deny having done that?"

"There was a discussion on the record of a new trial on the basis of the [jury] instructions, but I don't have a recollection of any indication that I would do that on my own motion," Pickering said.

The documents to which Edwards referred and which Pickering had not seen at the time of the hearing were two internal Justice Department Civil Rights Division memos. One of the memos, dated November 29, 1994, concerned the private meeting between Pickering, government lawyers, and defense attorneys. As he had in open court, Pickering expressed great unhappiness with the Civil Rights Division's jail recommendation for Swan. "He said that Swan clearly must do some time behind bars, but seven years is just too much," prosecutor Brad Berry wrote in the memo. "Pickering said he has carefully examined his conscience in this case, and is confident that his discomfort with the sentence is not the product of racism."

Then Berry addressed the issue of a new trial. Much of the conversation centered on what was called the "844 charge," which was the part of the charges against Swan that carried a five-year mandatory minimum sentence (other charges against Swan made up the rest of the seven and a half year sentencing recommendation). Pickering, according to Berry's memo, asked whether the Department would agree not to oppose a motion for a new trial on the 844 charge...if Swan received the maximum on the other two charges. Pickering expressed a willingness to sentence Swan to 36 months on the other two charges if he could find a way to do it. He said that if the Department does not agree to do this, he might well write a nasty opinion from our perspective,

emphasizing the sentencing disparities and the injustice of applying Section 844 in this case. He said that given his strong feelings about applying 844 in this case, he might well leave the task to the Fifth Circuit. After further discussion, I asked Pickering what would be the basis for the motion for a new trial. Pickering responded, "Any basis you choose."

The paragraph is unclear on where the motion for a new trial might come from, but it does not say, as Edwards alleged, that Pickering threatened to call for a new trial on his own motion. Pickering's defenders suggest that a more reasonable reading of the paragraph would be that Pickering was assuming that the defense, as is common in such cases, would ask for a new trial for Swan. In addition, a later memo, by another Justice Department lawyer, suggests that Pickering never bullied or threatened government lawyers in any way, contrary to Edwards's allegation. "He [Pickering] thinks the sentence facing Swan is draconian, and he wants a way out," prosecutor Jack Lacy wrote,

He has been careful to phrase his concern in such terms as, "I wish you could suggest some way that this harsh sentence could be avoided." He has never directly [italics in the original] asked us to do anything...

In the same memo, Lacy wrote that he "personally agreed with the judge that the sentence is draconian."

Meanwhile, in his first statement since the confirmation hearings, Pickering has offered his own account of the issue. In a letter to Judiciary Committee ranking Republican Orrin Hatch, Pickering writes that he had doubts whether the five-year mandatory-minimum sentence was applicable to the case:

In chambers, I discussed with counsel for both parties (1) the possibility of a motion for a new trial based on the lack of specificity of the jury instruction on racial animus, if the government insisted on applying the five-year mandatory minimum charge, or (2) the possibility of a motion to set aside the verdict or dismiss the charge of the count which carried the mandatory five-year minimum sentence. When counsel for the government asked how this would be accomplished, I recollect responding to him that the government could elect the grounds. I never indicated I would grant a motion for a new trial, sua sponte [on his own motion], and I never indicated I would do so on whatever ground I chose.

Finally, in his letter, Pickering cites a portion of the trial transcript in which a lawyer for the Civil Rights Division appears to admit that the government indeed went too easy on one of the defendants who received a no-jail plea bargain. "The lesson that I take from that, your honor," the lawyer said, "is that perhaps the government should have been more tough should have asked for a more stringent or stronger or longer sentence for the other defendants in this case."

Speculation Builds Over Chief Justice Successor

By Jan Crawford Greenburg
The Chicago Tribune

Sunday, February 17, 2002

When Supreme Court Justice Anthony Kennedy walked into a District of Columbia magnet school last month to talk to students about concepts of freedom, he said he was hoping they would gain a greater understanding of democracy.

But his key role in unveiling the "Dialogue on Freedom" initiative, with help from the American Bar Association and First Lady Laura Bush, prompted some court watchers to suggest he also may have something else on his mind.

"I'm sure he wants to be chief justice," one court observer said.

Chief Justice William Rehnquist has not announced his retirement, but most agree he is likely to do so this summer or next. With such a closely divided court, the magnitude of that prospect already has public interest groups, lawyers and law professors quick to speculate on even the sincerest intentions of possible nominees and anxious over what all predict will be a colossal confirmation battle.

"This is going to be one of the most dramatic moments in American history," Ralph Neas, president of People for the American Way, said of the confirmation hearings for the next Supreme Court justice.

Indeed, the bitter battle that Neas' group has spearheaded over Charles Pickering, one of President Bush's federal appeals court nominees, is only a hint of what's to come when the administration seeks to fill a vacancy on the high court, observers say. The current court generally is divided 5-4 on contentious issues such as race, religion and the role of government, and Bush is poised to nominate up to three justices, including the chief justice, as aging ones retire.

Rehnquist, 77, is a likely candidate for retirement this year or next, as is Justice Sandra Day O'Connor, although she said recently she would not step down this year. Justice John Paul Stevens, the court's most liberal member and, at 81, its most senior, also could retire this term--particularly because Democrats control the Senate and, Neas vows, would not confirm an ardent conservative to replace him.

But the chief's spot has grabbed the interest of many. To be sure, the chief justice has just one vote, but he also assigns opinions when he is in the majority. That can help shape how broadly or narrowly a decision is written. What's more, the chief is the administrator of a branch of government.

As such, filling that post could present the biggest problem for Bush, particularly if Rehnquist is the only justice to step down. The Senate historically has placed greater emphasis on confirming the chief justice than associate justices, and Democratic leaders already have indicated they will not make it easy for Bush to fill a vacancy.

Conservative groups, aware of the looming battle, are becoming increasingly critical of the administration's approach. They say the administration is not doing enough to get ready for the fight and are particularly upset at Bush's refusal, despite requests, to mention the issue of judicial appointments in his State of the Union address.

Further complicating matters is that there is no obvious choice to take Rehnquist's place. Opponents on the left and the right have raised flags about several of those believed to be contenders, including Kennedy and the current White House counsel, Alberto Gonzales. Groups such as Neas' say they would love to take on two other possible nominees, conservative federal appeals court Judges J. Harvie Wilkinson III and J. Michael Luttig.

Some have said Kennedy's statesmanlike behavior in recent weeks has the cast of a potential chief justice candidate.

That's not to question his sincerity in the "Dialogue on Freedom" initiative. Kennedy, 65, has had a long-standing interest in promoting the virtues of the legal system to young people.

"I would think if an opening occurs, he certainly is one of the people who would be considered seriously," said Jesse Choper, a law professor at the University of California at Berkeley. Of the Democratic-controlled Senate, Choper said: "They'd be hard-pressed to beat him."

Elevating a current justice could siphon attention from the nominee who would take his place as associate justice. That's what happened in 1986, when President Ronald Reagan sought to elevate
Rehnquist as chief and nominated Antonin Scalia as associate justice. The Senate spent all its time on the chief's nomination, while Scalia- -one of the court's most ardent conservatives--skated through unanimously.

That said, "Chief Justice Kennedy" is an extremely unlikely scenario. His nomination would infuriate the far right, which was outraged by his refusal in 1992 to overturn Roe vs. Wade, as well as other decisions it perceives as liberal, such as one that blocked clergy from praying at school graduation ceremonies.

"A lot of the president's conservative base would strongly oppose elevating Kennedy," said Tom Jipping, director of the Center for Law and Democracy at the Free Congress Foundation.

Moreover, elevating Kennedy to chief would give the left ample fodder as well. He joined the court's three most conservative members two years ago, for example, in dissenting from a decision that struck down state efforts to ban certain late-term abortions.

Bush vs. Gore role damaging

But his role in Bush vs. Gore could be the most damaging for his prospects. Any confirmation hearing for Kennedy (or O'Connor, if she were tapped for the chief's post) would resurrect the 2000 presidential election. Kennedy and O'Connor are considered the architects of the 5-4

opinion that stopped the vote recounts in Florida and handed the election to Bush over Al Gore.

O'Connor, who will be 72 next month, would have those problems as well as her age working against her, said David Yalof, a political science professor at the University of Connecticut. Bush probably would prefer a younger nominee who would serve for more than a few years, he said.

The other two conservatives on the court, Scalia and Clarence Thomas, are considered simply too conservative--both would overturn Roe vs. Wade, for example--to be confirmed by a Democratic- controlled Senate, Neas, Yalof, Choper and others said.

As such, most observers predict Bush will have little choice but to look outside the court for its next chief, just as President Dwight Eisenhower did in 1953 with Earl Warren, then governor of California, and President Richard Nixon did in 1969 with Warren Burger, then on the U.S. Court of Appeals for the District of Columbia Circuit.

"We're looking at a moment where the current president's best prospects for chief justice lie outside the court," Yalof said.

Yalof and other court watchers, such as Choper, say they believe Bush would like to name the first Hispanic to the court. Most say White House Counsel Gonzales is the front-runner, certainly for associate justice, because he has the confidence of Bush and may not have the damaging paper trails of other potential nominees.

The latter likely would do in the other leading Hispanic candidate, Emilio Garza, a judge on the U.S. Court of Appeals for the 5th Circuit. Garza has openly suggested his opposition to Roe vs. Wade, a decision he said is "inimical to the Constitution."

Gonzales could raise brows

Gonzales could be a controversial choice, however, particularly for chief. He served on the Texas Supreme Court just 23 months before assuming his current position, and he could be viewed as too political, Neas and others said. Moreover, the far right views him suspiciously, noting that while on the Texas Supreme Court he joined a majority decision allowing some minors to get abortions without parental notification.

But Yalof said he thought Gonzales "had a lot to offer for chief" because it is an administrative post.

"He's currently in the administration and is someone the president would feel comfortable with, not simply rendering decisions but running a branch of government," Yalof said.

Bush may believe he could get a more predictable conservative as chief, because the appointment would not move the court to the right. Rehnquist, one of the court's most conservative members, would overturn Roe and has led the court in scaling back congressional

power and handing it to the states.

If so, Bush could turn to the U.S. Court of Appeals for the 4th Circuit, where Wilkinson and Luttig have established solid conservative reputations. Wilkinson, who turns 58 this year, is a former law professor at the University of Virginia and the chief judge of the circuit.

Luttig is a former Scalia clerk who worked to help get Thomas confirmed while working in the Justice Department. Philosophically, he is closer to Scalia and Thomas--the justices Bush said during the campaign he most admired--than Wilkinson. He wrote the high-profile opinion, which the Supreme Court upheld, striking down a section of the Violence Against Women Act as beyond Congress' power.

Recently, however, the two have parted ways dramatically in several high-profile cases, with Luttig, 47, all but accusing Wilkinson of being a faux conservative.

"Many people think Luttig has blessed Wilkinson by making him seem like a moderate statesman," one court observer said.

Ruled with liberal colleagues

In a recent high-profile school desegregation case, Wilkinson joined with more liberal judges in refusing to hold a North Carolina school system liable for running a race-conscious magnet school. Wilkinson said the school district could not be held liable because it had been under a court order to end segregation. But Luttig, in dissent, said Wilkinson "variously ignored and misunderstood" the law.

They also split ways in a high-profile case over the breadth of Congress' power to protect endangered species. Wilkinson wrote for the majority that the federal government had power to limit the taking of red wolves on private lands, a decision Luttig harshly criticized in dissent.

Wilkinson is more in the mold of the gentle conservative, whereas Luttig is more in-your-face," said one lawyer who frequently practices in the 4th Circuit. "I think Wilkinson tries to be more scholarly, whereas Luttig has much more of a rubber-hits-the-road kind of approach."

That's not to say Wilkinson is not conservative. He wrote a majority opinion upholding the Clinton administration's "don't ask, don't tell" policy that excluded acknowledged homosexuals from the military.

"I would guess if either Luttig or Wilkinson is on the Supreme Court, their voting patterns would not be that different," said A.E. Dick Howard, a law professor at the University of Virginia.

Conservative groups acknowledge that either could be difficult to confirm, which could prompt Bush to name a stealth candidate, such as Judge Samuel Alito Jr. of the U.S. Court of Appeals for the 3rd Circuit. They put the blame partly on Bush and suggest the administration has ceded control of the debate on the issue to the Democrats.

"I believe the president, before any Supreme Court vacancy, needs to provide sustained public leadership on judicial appointments, generally," said Jipping of the Center for Law and Democracy. "If the administration is going to wait until there's a Supreme Court vacancy, they're going to lose. Or they're going to feel compelled to nominate someone who won't be worth it."

The O'Connor Factor

By Charles Lane
The Washington Post
Monday, February 18, 2002

When word got out that Supreme Court Justice Sandra Day O'Connor would be giving a public lecture last fall in Lincoln, Neb., 500 people snapped up every available seat, leaving 100 others to be turned away. The University of Nebraska gave her a medal. Female law students presented a corsage.

"If it hadn't been for you paving the road, we wouldn't be here today," Lisa Rasmussen told O'Connor, according to the Daily Nebraskan.

More than two decades after President Ronald Reagan made her the first woman on the Supreme Court, O'Connor, 71, may be a bigger celebrity -- and a more powerful influence on American law and society -- than ever before.

She has weathered what she has called the "difficult" 2000 election case in which she was one of five Republican-appointed justices to join a much-criticized ruling that sealed President Bush's victory. She has added her voice to those expressing concern that innocent people may be sentenced to death. Favorable reviews are coming in for her much-publicized new memoir, co-written with her brother, H. Alan Day, about growing up on a remote desert ranch during the 1930s and '40s.

And on the most contentious social issues facing American society, she continues to cast what is frequently the deciding vote on a nine-member court often split between liberals and conservatives.

On Wednesday, the court hears oral arguments on two such issues -- state-funded vouchers for private and parochial school tuition, and a possible ban on the death penalty for mentally retarded capital offenders. And once again, attorneys for both sides will be pitching much of their argument to the tall, silver-haired woman sitting just to Chief Justice William H. Rehnquist's left.

So pivotal -- and familiar -- is O'Connor's role that it has become difficult to imagine the court without her, despite rumors, denied by the justice, that she may retire soon. Lately speculation has run in the opposite direction -- that O'Connor could ascend to chief justice if Rehnquist, 77, steps down -- a scenario she also dismisses.

O'Connor's power has been accumulated not by asserting an ironclad doctrine for others to follow, but by remaining as noncommittal as possible: Time and again, she has signed on to narrow rulings crafted according to the facts of a particular case, leaving open the option of another incremental holding later on.

"The rule of law must also be flexible enough to adapt to different circumstances," she told her Nebraska audience, expressing a precept she had articulated many times in her opinions.

"Hers is the power of the median voter," said University of California at Los Angeles law professor Eugene Volokh, a former O'Connor law clerk. "Lawyers target her for the same reason both sides in a political campaign target the center."

The question hovering over O'Connor's 21-year career on the court, though, is whether her approach is too much like the political art of compromise she once practiced as majority leader of the Arizona state Senate.

By providing only sketchy constitutional guidance to legislatures and lower courts, some lawyers, legal academics and judges say, her restrained jurisprudence lays the basis for legal instability that ultimately must be sorted out by the Supreme Court -- and, in many cases, by O'Connor herself.

O'Connor's fellow justice, Antonin Scalia, has published opinions blasting her mode of reasoning, including a 1988 gibe at her "Solomonic" answer to a death penalty case: "Solomon," Scalia wrote, "was not subject to the constitutional constraints of the judicial department of a national government in a federal, democratic system."

O'Connor's admirers describe her method as "judicial minimalism."

"Clear rules are better; they make the court's own judgments more transparent," Volokh said. "But if a justice is not persuaded the Constitution demands a clear rule, it's her duty to vote for a more fact-sensitive one."

O'Connor, a lifelong Republican, votes more than 80 percent of the time with Rehnquist, a Nixon appointee. She has joined him, Scalia and other conservatives in the court's recent effort to bolster states' rights.

But on social issues, she has muted the court's rightward tendencies. Most famously, she voted to uphold the right to abortion enshrined in Roe v. Wade, co-writing the 1992 opinion that barred state laws that impose an "undue burden" on the right to choose. In 2000, she provided the fifth vote for a ruling that struck down Nebraska's ban on what opponents call "partial birth" abortions.

Abortion, she recently told NBC's Katie Couric, "is an issue about which people feel passionately, and I'm very much aware of that when we have a case in that area."

Certainly, there is little evidence of ideological fervor in O'Connor's personal story. Her childhood was spent among some of the last real cowboys in the West, on the 300-square-mile Lazy B Ranch. Straddling Arizona and New Mexico, the Lazy B had no electricity or running water; as depicted in her memoir, it was a place where individual adaptability and common sense were at a premium, and the social changes linked to the New Deal and World War II made little direct impact.

Graduating third in her class (Rehnquist was first) from Stanford Law School in 1952, O'Connor was stunned by law firms' refusal to hire her, but made a career in local government and the Arizona Republican Party. She was appointed to the state Senate in 1969, became majority leader in 1972 and later ran successfully for state trial judge before being elevated to the state appeals court by a Democrat, then-Gov. Bruce Babbitt in 1979.

When Reagan offered her the Supreme Court job in 1981, antiabortion groups tried to derail her nomination, citing her opposition as a state senator to certain laws restricting abortion. O'Connor herself has admitted she felt uncertain about her own modest judicial experience.

But she was fortified by lessons learned on the Lazy B. It gave her, she recently told C-SPAN interviewer Brain Lamb, "a certain amount of self-confidence in your ability to work things out and not be afraid to tackle something."

Today she regularly recruits law clerks who have served both liberal and conservative lower-court judges, relying on them for detailed briefings, oral and written, on each case -- and occasionally treating them to her homemade Tex-Mex cuisine.

Both cases before the court on Wednesday show how O'Connor's past rulings set the stage for future cases in which she again plays the potentially deciding role.

In the school voucher case, opponents of the program will try to persuade the court that, as practiced in Cleveland, the voucher subsidy gives families no real choice but to spend government money at religious schools, an issue framed in O'Connor's past opinions on the church-state balance.

In the death penalty case, Daryl Atkins, convicted of murder in Virginia, asserts that he has an IQ of 65, which qualifies him as moderately retarded under current psychiatric guidelines.

His attorneys argue that a national consensus has formed against the death penalty for persons with very limited intellectual abilities, so Atkins's execution would be "cruel and unusual punishment" prohibited by the Eighth Amendment.

In 1989, a Texas death-row inmate, Johnny Paul Penry, sought and was denied such a ruling from the Supreme Court. O'Connor's role was decisive.

Wrestling with Penry's claim that mentally retarded persons are less able to reason and hence

less culpable for their crimes than others, O'Connor wrote that states must give juries a genuine chance to consider mental retardation as a factor weighing against the death penalty. It was an argument repeated by Atkins.

This section of O'Connor's opinion, which ordered a new trial for Penry, was joined by liberals such as the late Justices William J. Brennan Jr., Thurgood Marshall and Harry A. Blackmun and John Paul Stevens, who is still on the court.

O'Connor, however, concluded that it was not yet clear that all mentally retarded people lacked the reasoning ability ever to warrant capital punishment. And there was insufficient evidence of a national consensus against executing them, she wrote. Only two states with the death penalty had outlawed it.

This portion of her opinion was joined by conservatives Rehnquist, Scalia, Anthony M. Kennedy and Byron R. White, who has since retired.

Still, O'Connor left the door open. A national consensus, she wrote, "may ultimately find expression in legislation, which is an objective indicator of contemporary values upon which we can rely."

"That day has arrived," Atkins's attorneys argue in their brief for the case to be argued Wednesday. They noted that 18 of the 38 states that permit capital punishment now have laws outlawing death sentences for the mentally retarded. When you add the 12 states that do not allow capital punishment at all, they argue, 30 states -- 60 percent of the total -- plus the federal government, forbid the death penalty for retarded offenders.

Is 60 percent enough to make for a national consensus? O'Connor's past opinions are suggestive but, characteristically, not definitive on how she might rule.

In 1988, when the court voted to strike down the death penalty for 15-year-old murderers, O'Connor supplied the fifth vote -- but did so for reasons that were all her own.

In a separate opinion, she noted that 32 of 50 states -- 64 percent -- either had no death penalty or had limited it to perpetrators 16 or older. This, she said, created a strong presumption that a national consensus against executing those younger than 16 existed. But more state legislation would be needed to know for sure, because a large minority of states that set no minimum age for the death penalty appeared to permit executing 15-year-olds.

O'Connor explained her vote as limited only to situations in which states had specified no minimum age for death penalty.

Just a year later, she joined four conservatives in holding that executions for 16- and 17-year-old perpetrators were constitutional. There, she assented to a national-consensus calculus that focused only on the rules in the 37 states that had the death penalty at the time, noting that "a majority of states authorizing capital punishment permit it for defendants 16 and above." And

today, a majority of death penalty states still allow sentencing retarded offenders to death.

Five of the death penalty states that have banned capital punishment for the retarded passed their laws in the last year, after the Supreme Court's surprising announcement in March 2001 that it would revisit the 1989 Penry ruling in the case of North Carolina death row inmate Ernest McCarver.

Legal analysts say that the mere fact that the court agreed to reconsider the subject suggests that change is afoot at the court. O'Connor herself has made two public statements -- to a Minnesota women's lawyers' group in July and again on her October visit to Nebraska -- that seemed to capture national anxiety about administration of the death penalty.

"More often than we want to recognize," she said in Nebraska, "some innocent defendants have been convicted and sentenced to death."

Edwards' Tactics Draw Ire

By Paul Kane
Roll Call
Monday, February 18, 2002

With a blistering cross-examination of a controversial judicial nominee, Sen. John Edwards (D-N.C.) has landed in hot water with the nation's leading anti-tobacco lawyer.

Dickie Scruggs, the trial lawyer from Pascagoula, Miss., who recently led the legal assault on the tobacco industry, has vowed to never again support Edwards and plans to rally other trial lawyers to his anti-Edwards campaign.

If Scruggs follows through on his stated mission, it would deal a serious financial blow to Edwards, himself a former trial lawyer who has relied heavily on the legal industry to underwrite his burgeoning national ambitions.

The bone of Scruggs' contention is Edwards' treatment of U.S. District Judge Charles Pickering of Mississippi, who is seeking a lifetime appointment to a seat on the Fifth Circuit Court of Appeals. "I'm really mad about it," Scruggs said of the questioning Edwards subjected Pickering to at a Feb. 7 hearing and the North Carolina Senator's apparent lack of respect for Scruggs' opinion of the judge. "It wasn't the manly thing to do."

Scruggs has a family stake in the Pickering nomination: He's married to Senate Minority Leader Trent Lott's (R-Miss.) sister-in-law. Lott, who has known Pickering for more than 30 years, has made this confirmation a personal crusade and has threatened to retaliate against Democrats if they block Pickering, whose son, Rep. Chip Pickering Jr. (R-Miss.), used to work for Lott.

Scruggs said his efforts to reach out to Edwards, a personal-injury trial lawyer before unseating Sen. Lauch Faircloth (R) in 1998, were part of a broader effort to lobby Democrats he bonded

with during the "tobacco wars."

Scruggs has tried to make the case that liberal interest groups in Washington are inaccurately portraying Pickering, 64, as a southern segregationist in retaliation for the way Republicans treated Clinton administration nominees in the 1990s.

"He's getting a bum rap," Scruggs said.

Scruggs, who has known Pickering for more than 20 years, called him a "fine judge." A lifelong Democrat who has given and helped raise thousands of dollars for the party's candidates, Scruggs said Democrats are wrong - personally, politically and legally - to oppose Pickering.

If he gets rejected, Scruggs said, Pickering's replacement will in all likelihood pose a greater threat to Democratic interests as a younger and more stridently conservative jurist, and one without decades of rulings and political activity to use in opposition to the nomination at Senate hearings.

Scruggs' ire, however, is currently focused on fellow trial lawyer Edwards, who ignored a series of calls the Mississippi attorney made to Edwards office in advance of the tension-filled Feb. 7 hearing.

"I started calling him on Tuesday [Feb. 5] and left messages all over for him," Scruggs said in an interview last week.

Noting trial lawyers' past financial support for Edwards, Scruggs said: "Not that he owes me a vote, but he owes me a phone call."

Scruggs attended Pickering's hearing, where he spoke with Democratic Sens. Edward Kennedy (Mass.), Russ Feingold (Wis.) and Dianne Feinstein (Calif.) about the nomination. He said he also spoke with top aides to Sen. Joseph Biden (D-Del.), but couldn't get a return call from Edwards.

Other trial lawyers from Mississippi also tried to reach Edwards and were rebuffed, Scruggs said.

At the hearing, Edwards was relentless in his questioning, focusing on a 1994 cross- burning case Pickering oversaw. Frequently cutting Pickering off and forcing him into one-word and yes-or-no answers, Edwards prompted Pickering to admit he had "ex parte" conversations with Justice Department officials regarding the case.

Biden told Roll Call last week that Pickering's answers to Edwards will play a key role in whether he supports the judge and questioned his truthfulness in responding to committee members' inquiries. One senior Democratic aide called Edwards "brilliant," noting that the cross-burning case was the "perfect metaphor" for Democratic opposition. A top GOP aide admitted the line of questioning was hurting the judge's case.

Pickering's explanation - that he felt prosecutors had gone soft on the main culprit, who received no jail time in exchange for a guilty plea, and were coming down hard on a bit player in the case - barely registered. Scruggs said Pickering's family was furious: "They felt very humiliated about it."

A few days after the hearing, the judge's son said he was in "remarkably good spirits."

But, Rep. Pickering added, "They're trying to use Mississippi's reputation and history to smear a good man."

Scruggs said he left the hearing disgusted with Edwards, who he felt was twisting the facts of the case and playing the role of "the heavy" at the behest of other Democrats.

Not expecting to have his calls returned, Scruggs said he got another trial lawyer to get in touch with Edwards. "I sent a message through another trial lawyer: He can forget my support and that of anybody I have influence with," Scruggs recalled.

Early last week, Edwards finally called Scruggs, who characterized the conversation as "cordial."

Edwards' office did not confirm or deny Scruggs' account. In a statement released by his office, Edwards said, "I will make an independent evaluation on the merits with regard to the nomination of Judge Pickering. At this stage, I have very serious reservations."

On Saturday, Edwards was one of three potential Democratic White House hopefuls, along with Majority Leader Thomas Daschle (S.D.) and Sen. John Kerry (Mass.), to speak at the state Democratic convention in California.

While Scruggs himself has not been a direct financial backer of Edwards, lawyers have been the Senator's single largest backer, and many of Scruggs' friends are among Edwards' supporters. In the 1998 election cycle he received $905,280 from lawyers and law firms, the fourth most of any candidate in that cycle, according to the Center for Responsive Politics. That's all the more impressive considering Edwards does not take PAC money.

Up for re-election in 2004, Edwards campaign committee has already collected at least $218,686 from the legal industry, more than all but three other Senators - and each of those three faces re-election this fall.

To finance his national ambitions, Edwards opened a leadership political action committee, New American Optimists, last fall, raising $731,850 in November and December.

More than $650,000 of that total came from lawyers, their family members or employees of law firms, according to a Roll Call analysis of the PAC's donors.

Of that, $167,000 came from Mississippi attorneys, legal employees or their family members -

many of whom work at firms, such as Minor & Associates and Langston Law Firm, whose principals are also supporting Pickering.

Asked if he could see himself ever supporting Edwards, or encouraging his friends in the legal community to back him, Scruggs said the Pickering nomination will be decisive. "I guess I ought to see how he votes," he said.

Group in Judge Seminars Denies Slanted View Point

By Ann McFeatters
Pittsburgh Post-Gazette
Saturday, February 16, 2002

A foundation that sponsors seminars on environmental economics for federal judges says its work is being mischaracterized by a land-use group seeking to derail the nomination of Western Pennsylvania U.S. District Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals.

Community Rights Counsel, an organization that provides legal aid to local governments and environmentalists in land-use cases, is one of 27 environmental, women's rights and civil rights groups that are raising questions about Smith's nomination by President Bush.

In a letter to members of the Senate Judiciary Committee, which holds confirmation hearings for nominees to the federal bench, the group claims that between 1992 and 2000 Smith spent "nearly three months at luxury resorts and dude ranches on trips funded by corporations and special interests with a stake in federal court litigation," including expenses-paid visits to seminars hosted by the Foundation for Research on Economics and the Environment, or FREE, which is based in Bozeman, Mont. FREE Chairman John Baden said that while his group receives corporate money, only money from tax-exempt foundations is used to conduct the seminars for judges. Baden also said Community Rights Counsel wrongly portrays FREE as "right-wing."

"While FREE's programs are explicitly pro-environment, they explain why ecological values are not the only important ones. We stress that tradeoffs among competing values are inescapable. We show why it is ethically and materially irresponsible to pretend such choices can be avoided."

In a letter explaining his group's orientation, Baden went on to say, "The intellectually naive confuse FREE's classical liberal, incentive-based orientation with that advocated by those who support subsidized exploitation of the environment (e.g., below-cost timber sales on the national forests)."

Doug Kendall, a lawyer with Community Rights Counsel, says his group stands by its characterization of FREE as supported by "corporations that litigate in federal courts." He said, "Ninety percent of the speakers at their programs are right-wingers from think tanks or academia and one or two token environmentalists, some of whom say awful things about FREE and some of whom say good things."

FREE's Web site identifies its corporate funders in 2001 as the American Chemistry Council, Caterpillar, Exxon Mobil, General Electric, General Motors, Georgia Pacific, Merck, Shell and Tindall. Foundation supporters include the Ajax Foundation, the Chase Foundation of Virginia, the John M. Olin Foundation, the Sarah Scaife Foundation and the True Foundation.

Pickering's Actions Questioned in Cross Burning Case

By Jason Straziuso
The Associated Press
Friday, February 15, 2002

Internal Justice Department documents claim U.S. District Judge Charles Pickering lobbied to reduce jail time for a man convicted of burning a cross on an interracial couple's lawn in 1994.

At one point in the lobbying effort, according to a written report by a government attorney, the appellate court nominee from Mississippi even threatened to retry the case.

Whether the federal judge acted in good faith in seeking a just punishment for the defendant or attempted to sidestep the law is the question Senate Judiciary Committee members are examining as they contemplate Pickering's nomination to the 5th U.S. Circuit Court of Appeals. After a burning cross was placed on an interracial couple's lawn near Improve in Walthall County, charges were filed against three individuals.

Two males, ages 17 and 25, were sentenced to probation and home confinement in exchange for guilty pleas. A third person, Daniel Swan, then age 20, turned down the plea offer and was convicted in a trial.

The Justice Department sought a seven-year sentence for Swan. One of the charges Swan faced carried a five-year minimum sentence. He eventually received a 27-month sentence.

Government lawyer Brad Berry, in a 1994 internal Justice Department memo, said Pickering called Berry into his chambers and told the attorney he had problems with the seven-year sentence and the disparities in the sentencing for the three defendants.

Berry's memo was made public by the Democratic-controlled Senate Judiciary Committee. Pickering is a Republican.

Berry wrote that Pickering felt the Justice Department "is probably right on the law, but the result in this case would clearly be unjust."

The memos claimed Pickering had several off-the-record conversations with government attorneys in an attempt to get around the minimum sentencing requirement.

Berry also wrote that Pickering threatened to order a new trial on "any basis you choose."

Democrats have alleged Pickering privately contacted the Justice Department to manipulate the sentence.

Pickering has told Judiciary Committee members the only contact he had with the agency outside of court was a telephone call to a friend. Pickering said the contact was not improper because he did not discuss the case's specifics, but rather simply voiced frustration at the situation.

Pickering said Friday he cannot comment on issues surrounding his nomination. U.S. Rep. Chip Pickering, R-Miss., the judge's son, recently said that Swan was pulled into taking part in the cross burning, while the leaders of the act got off with the lighter plea sentences.

Republicans, led by Senate Minority Leader Trent Lott, R-Miss., accuse the Democrats of holding Pickering up as a test case for future conservative Supreme Court nominees.

The Judiciary Committee is expected to vote on Pickering's nomination by mid-March.

On Thursday, Sen. Charles Schumer, D-N.Y., said he would not support Pickering due to the cross burning information.

Marty Wiseman, director of Mississippi State University's John C. Stennis Institute of Government, said it appears Pickering's aim was not to subvert the law but to be just in his sentencing.

"This was what Judge Pickering was wrestling with and discussing with the various folks with the Justice Department," Wiseman said.

Republicans on the committee requested a review of the cross burning affair from George Mason University law professor Michael Krauss.

Krauss, in a Feb. 11 letter to Sen. Orrin Hatch, R-Utah, ranking Republican on the committee, concluded that Pickering's judicial behavior was proper and the just "deserves praise for his efforts."

Krauss wrote that no rational basis had been established for the disparate sentencing among the three accused males.

Op/Eds

What Judges Do. The Founders Saw that Laws Are Often Murky, So Judicial Beliefs Matter

By Mark Kozlowski

New Jersey Law Journal
Monday, February 18, 2002

Mark Kozlowski is associate counsel at New York University School of Law's Brennan Center for Justice.

Should the Senate be concerned with the personal ideological views of federal judicial nominees? Conservatives say no. A proper judge qua judge, they assert, has no personal ideological views. A legislator may have such views, but not a judge. Thus, when President George W. Bush announced his initial batch of judicial nominees last May, he vowed: "Every judge I appoint will be a person who clearly understands the role of a judge is to interpret the law, not to legislate from the bench."

Whenever conservatives talk about the courts, the prohibition against "legislating from the bench" gets mentioned sooner or later. The idea is that, although judges must determine the meaning of statutes, the only legitimate elements to be considered are the words of the statute and the intent of the legislature in employing those words. Similarly, when called upon to interpret a provision of the Constitution, conservatives contend that the only proper guide, beyond the text itself, is the intention of those who composed and ratified the provision. To do otherwise, conservatives assert, turns the judge into a creator of law. With regard to ordinary statutes, so the argument goes, this violates the principle of separation of powers. As for the Constitution, when interpretation looks beyond text and intent, the meaning of our fundamental law comes to depend upon the will of individual judges.

What is more, conservatives frequently declare that this stark distinction between proper interpretation and "legislating from the bench" is precisely the way our Founders viewed the task of judging. Consider the testimony of Douglas Kmiec, law school dean at the Catholic University of America, during last year's Senate Judiciary Committee hearings on whether a judicial nominee's political ideology should play any role in the Senate's confirmation decision.

Kmiec noted that the Anti-Federalists, who opposed ratifying the Constitution, were very concerned about how much discretion judges might exercise. Kmiec asserted that Alexander Hamilton "responded to this criticism by emphasizing that it was not the job of judges to make law, that their role under the Constitution was simply to enforce the Constitution and laws as they were written." Under the principle of separation of powers, "lawmaking was left to the legislature and the people themselves."

To remain true to the Founders' vision, Kmiec declared, the Senate should not endeavor to discern a nominee's ideology. On the contrary, any nominee who suggested that ideology may influence the work of statutory or constitutional adjudication should be rejected. Kmiec concluded that, after determining that a nominee possesses the requisite professional qualifications, Senate inquiry should be limited to discerning "whether the nominees coming before you are willing to abide by the text of statutory law as you have authored it."

But did the Founders actually believe that statutory and constitutional interpretation could be

reduced to a nondiscretionary exercise of following text and discerning intent? As is usually the case when one fully engages the thought of those men, things turn out to be a good deal more complex.

A Cloudy Medium

Begin with language itself. If you read only our most prominent journals of conservative thought, you might conclude that the idea that "meaning" is often indeterminate is a recent invention of deconstructionist literary critics. In fact, the Founders embraced the very same notion. Here is James Madison writing in The Federalist:

"[N]o language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it must happen that however accurately the objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition may be rendered inaccurate by an inaccuracy of the terms in which it is delivered. ... When the Almighty himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful through the cloudy medium through which it is communicated."

During the constitutional ratification debates, future Chief Justice Oliver Ellsworth made the same point more succinctly: "The charge of being ambiguous and indefinite may be brought against every human composition, and necessarily arises from the imperfection of language."

'More or Less Obscure'

Take first the case of statutory interpretation. Within proper bounds, the Founders believed that judicial interpretation was an extension of the legislative process itself. Madison made the point thus: "All new laws, though penned with the greatest technical skill and passed on the fullest and most mature deliberation, are considered more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications." And Hamilton wrote: "Laws are a dead letter without courts to expound and define their true meaning and operation."

What is more, the Founders explicitly asserted that sometimes a judge would be justified in ignoring legislative intent. They fully expected that there would be occasions when a legislature, yielding to the passions of the moment or corrupt influence, would pass unjust laws. Then it would be proper for a judge to disregard legislative intent in favor of equity.

Thus, Hamilton said in The Federalist, legislatures might enact constitutional laws that were nevertheless "unjust and partial" in operation. In such cases, "the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws." Even some Anti-Federalists spoke highly of this practice. One writer praised New York judges for their willingness to construe an unjust statute in a manner that "I will not say evaded the law, but so limited it in its operation as to work the least possible injustice."

Ambiguity Embraced

With regard to the Constitution itself, the Founders were emphatic that its language was necessarily broad and indeterminate. Why, the Anti-Federalists wanted to know, did the Constitution not list precisely every act that Congress could perform? This would be most unwise, Hamilton replied:

"Nothing ... can be more fallacious than to infer the extent of any power proper to be lodged in the national government from an estimate of immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, so it is impossible safely to limit that capacity."

But if the powers of Congress cannot be precisely defined, how will we know when Congress has gone too far? Speaking specifically to the question of division of powers between Congress and the states, Madison said that there would be legitimate disagreement about the Constitution's meaning because judgments about the proper spheres of state and federal authority would not be "free from different constructions by different interests, or even from ambiguity in the judgment of the impartial." In other words, constitutional interpretation could not be reduced to an exact science.

In The Federalist itself, Hamilton noted that the Constitution's terms regarding the extent of federal court jurisdiction were subject to at least two interpretations. He then argued in favor of "the most natural and the most defensible construction." He pointedly did not assert that he was positing the single correct construction.

What does this mean for the debates over President Bush's judicial nominees? Contrary to Professor Kmiec, the Senate would be truer to the Founders if it expected more of judicial nominees than a pledge to interpret solely through text and intent. The Senate should understand, as did the Founders, that because of imprecise language, unclear intent, unforeseeable developments, and the capacity of legislatures to be swayed, the task of interpretation will inevitably demand a judge's discretion.

A Judge's Past and Present

The Chicago Tribune
Monday, February 18, 2002

The recent confirmation hearing for U.S. District Judge Charles W. Pickering, President Bush's controversial nominee for the U.S. 5th Circuit Court of Appeals in New Orleans, left many wondering which Pickering to believe.

Was he the insensitive right-wing segregationist his critics painted him out to be? Or was he the man his supporters described, a real-life version of Harper Lee's Atticus Finch, who courageously
fought the Ku Klux Klan and helped blacks to advance as a New South emerged in the late

1960s?

You can find both Pickerings in his paper trail. As a law student in 1959, he wrote a technically impressive yet emotionally cold- blooded law journal recipe for Mississippi to revive its overturned ban on interracial marriages. His recommendation became law the following year.

Democrats, many of whom are seeking payback for the roadblocks Republicans threw up in front of President Bill Clinton's nominees to the bench, hounded Pickering over his past opposition to abortion, gay rights and laws boosting minority voting power.

Pickering has also been criticized for his handling of the 1994 case of Daniel Swan, who was convicted of burning a cross in front of the home of an interracial couple. Two other defendants pleaded guilty and received minimal sentences. Swan, because he had gone to trial, faced a mandatory minimum five years in prison.

Pickering called Frank Hunger, a friend at the Justice Department who also is a brother-in-law of former Vice President Al Gore, to suggest that prosecutors avoid the mandatory sentence by dropping one of the counts on which Swan was convicted. Prosecutors eventually did drop one count and Pickering sentenced the 20-year-old Swan to 27 months in jail.

Was the call a lapse in judgment? Perhaps, but Pickering's concern was one shared by many civil libertarians, that defendants sometimes pay a "trial tax," that is, receive harsher punishment simply for exercising their constitutional right to trial.

Pickering was also grilled over his association with Mississippi's notorious Sovereignty Commission, a secretive, state-funded body that from 1956 to 1973 devoted itself to resisting desegregation.

During his 1990 confirmation hearing for the district court, Pickering said he never had contact with the committee and denied that it was still in business in the 1970s when he was in the state Senate. When the commission's files were opened to the public in 1998, a document refuted those statements. In the early 1970s, according to the document, Pickering had asked a member of the commission to keep him informed of union activity in a Laurel, Miss., labor dispute.

If that was all there was to Pickering's story, the decision would be easy: He would not belong on the appellate court.

But it is not the end of the story. There is ample evidence that Pickering has, through words and deeds, made considerable efforts to restore his reputation and improve race relations in the south.

His courageous testimony against a Ku Klux Klan leader in 1967 cost Pickering his re-election as a local prosecutor in Mississippi. A decade later, he hired the first black staff member for the Mississippi Republican Party. As a private attorney, he successfully defended a 16-year-old African-American accused of robbery in a racially charged case. He has publicly promoted racial

reconciliation in the South.

Perhaps most important, his record on the federal bench has been good. Charles Evers, brother of slain civil rights leader Medgar Evers, and other Mississippi African-Americans are among Pickering's strongest supporters.

Is there a statute of limitations on racism? Hugo Black, once a member of the Ku Klux Klan, joined the Supreme Court in 1937 and became one of its most persuasive advocates for civil liberties. Abraham Lincoln had some curious views about relations between the races, yet went on to free America from slavery.

That does not suggest that Charles Pickering is Lincolnesque. Bush could have made a better choice. But the choice he made should be confirmed.

Campaign to Smear Judicial Nominee Rooted in Ignorance

Creators Syndicate, Inc.
The Augusta Chronicle
Tuesday, February 19, 2002

ONE CAN certainly understand why papers like the Atlanta Journal and Constitution ("Extremist Judge Unfit to Sit on Appeals Court") and the Los Angeles Times ("Say No to This Throwback") are so upset about Charles Pickering, President Bush's nominee for the Fifth Circuit Court of Appeals. After all, the man once testified as a character witness for the Grand Wizard of the Ku Klux Klan.

What's that, you say? He testified against the Grand Wizard? In Mississippi? In 1967? Putting himself at political and personal risk? Oh. You say he was a local prosecutor who lost his bid for re-election because he stood up to the Klan? Hmmm. You say this man Pickering, who has been a federal judge (confirmed by the Senate) for 11 years, was asked by Mississippi's governor to serve on the executive committee of the Institute of Racial Reconciliation at Ole Miss? What? He was the one who urged the state's governor and the chancellor of the university to create the institute in the first place?

Who's been feeding you this stuff? James Charles Evers? You mean the brother of slain civil-rights hero Medgar Evers? He's defending this "extremist" in the pages of The Wall Street Journal? Hmmm.

PEOPLE FOR the American Way, the Alliance for Justice and other members in good standing of the character assassination coalition have been faxing false accusations about Pickering far and wide. Some of those faxes landed on Evers' desk. Evers, who has known Pickering for decades, was "saddened and appalled to read many of the allegations that have been put forth about Judge Pickering ... made by groups with a Washington, D.C., address and a political agenda" and without real knowledge of "Pickering's long and distinguished record on civil rights."

Evers notes that Pickering did more than face down the Klan. While in private practice, he defended an African-American man accused of robbing a white 16-year-old at knifepoint. After two trials, the man was acquitted.

People for the American Way is making much of a 1990 denial by Pickering that he ever had contact with the racist Mississippi Sovereignty Commission. PAW has uncovered a phone call with a commission staffer dating to 1972. But that phone call dealt with Pickering's concern over a labor dispute in Jones County. According to reporting by National Review's Byron York, the KKK had been making trouble, and Pickering, then a state senator representing Jones County, was keeping tabs on the situation. That one phone call is the entirety of Pickering's "contact" with the Sovereignty Commission.

As a federal judge, Pickering once overturned a damage award in a civil case because he believed that the jury was biased against the plaintiffs, an interracial couple. He ordered that the matter of damages be retried and the award for the couple was thus increased.

WELL, SAY the liberal activists, Pickering joined a law firm one of whose partners was a former
segregationist. How many Southern law firms in the 1970s did not contain former segregationists? The Supreme Court of the United States and the U.S. Senate both contain or have contained not just former segregationists but former members of the KKK. The key term is "former" -- "was blind but now I see." Besides, we are talking here of a law partner, not Pickering himself, who never was a segregationist. The very worst the mud-slingers on the left could find about the fellow was a 1959 law review article in which Pickering pointed out the poor wording of an anti-miscegenation statute. The 21-year-old Pickering did not, in the article, make the case against the law.

But in a four decade career in the law, Pickering has shown himself to be an eminently fair and reasonable jurist. He has recommended to some convicted felons that all was not lost; that they still might turn their lives around by participating in Chuck Colson's Prison Fellowship. Oops, another red flag. PAW says this is evidence of Pickering's "disregard for the separation of church and state."

THIS ATTACK on Pickering is so obviously malicious and in such bad faith that one wonders why anyone takes these liberal groups seriously anymore. They have cried wolf so many times about so many honorable men and women that they have brought shame on themselves. They have become the thing they claimed to detest: McCarthyites.

Creators Syndicate Inc.

A Case Without Merit; The Nomination of a Broadly Admired Federal Judge in Pittsburgh is Being Challenged Because of Political Pique. Ken Gormley and Frederick W. Thieman Defend Judge D. Brooks Smith Against the Calumny

The Pittsburgh Post-Gazette
Sunday, February 17, 2002

A Washington-based public interest coalition has launched an attack on Chief U.S. District Judge D. Brooks Smith, a Republican sitting in Pittsburgh, who has been nominated by President Bush to fill a vacancy on the 3rd U.S. Circuit Court of Appeals. The byzantine process of appointing federal judges usually does not grab public attention. But be assured that the outcome of this case will have a dramatic impact on every citizen in Western Pennsylvania.

Our federal court handles the most serious drug cases, white collar crimes, constitutional and environmental matters, and high-stakes suits involving out-of-state businesses. For years, though, it has been struggling to operate on two cylinders, due to insidious political warfare that has left our region with a growing number of unfilled vacancies. In the latest shot across the bow, the Community Rights Counsel (aligned with Democratic interests), has written a letter to key Senate Judiciary Committee members, seeking to sink Judge Smith's nomination.

Unfortunately, what is couched as a critique of Judge Smith's record is a stiff dose of political payback. It unfairly impugns the reputation of a sterling member of our federal bench -- and perpetuates a longstanding political grudge match that cannot possibly benefit the citizens here.

As Democratic members of the bar in Western Pennsylvania, we strongly urge the Community Rights Counsel to reconsider this dangerous political strategy.

It is no secret what events precipitated this assault on Judge Smith's nomination. For the past six years, during the Clinton administration, Republican Sen. Rick Santorum blocked every Democratic nominee to the federal court, based upon blatant, hardball political tactics that harmed our region. Now Democrats are prepared to give it back to the Republicans in spades.

We sympathize with the frustration of Democratic interest groups. We also agree that it is crucial to challenge any White House nominee who is not suited -- by virtue of temperament or extreme judicial philosophy -- to hold these influential federal appointments. But Judge D. Brooks Smith is not an extremist, by any stretch of that term. He received the highest rating (unanimously) from the American Bar Association and the top rating from the Allegheny County Bar Association. Since his appointment by President Reagan in 1988, Judge Smith has earned the universal respect of judges and lawyers in Western Pennsylvania, regardless of party affiliation.

Stacked up against one negative letter written by the Washington coalition, over a hundred letters have been written to the Judiciary Committee in support of Judge Smith's nomination by notable Western Pennsylvania lawyers, judges, public officials and organizations.

These include letters from six former U.S. attorneys (under Democratic and Republican presidents); numerous members of Congress of both parties; all 10 of Judge Smith's colleagues on the federal district court, seven of whom were appointed by Democratic presidents; the president of the Pennsylvania Bar Association; the deans of Duquesne and Pitt law schools; the Women's Bar Association; a former president of the local ACLU; dozens of members of the

criminal defense bar; and judges from the Supreme Court Superior Court of Pennsylvania (both Democrats and Republicans).

Federal judges, unlike elected political officials, cannot respond when attacked in the arena of public opinion. Their positions bind them to silence. Their reputations are the only currency that they bring to the bench in resolving society's most difficult conflicts.

If the Democrats in Washington wish to take aim at objectionable candidates, this is the wrong target. Moreover, the charges leveled against Judge Smith by the Community Rights Counsel are misinformed at best:

* They assert that Judge Smith took "trips paid for by companies and interest groups," a claim that is overblown. The Judicial Conference of the United States has permitted the types of trips cited by the Community Rights Counsel, for the purposes of continuing education, so long as the judge determines there is no actual or potential conflict with pending cases. Most federal judges in the United States -- both Democrats and Republicans -- attend such seminars. Although there has been a recent movement to introduce legislation to limit such trips, it is still the subject of honest debate.

* They state that Judge Smith accepted a plea bargain in U.S. vs. Action Mining that was "too low." This is unsupportable. Judge Smith's fine of $50,000, after this small mining company had already been slapped with $625,000 in civil penalties, was considered within the normal range. Then-U.S. Attorney Harry Litman, whose office prosecuted the case, viewed Judge Smith's sentence as fair, reasonable and a victory for the U.S. government.

* They assert that Judge Smith spoke out against the Violence Against Women's Act, in 1994, which is true. Most of the federal judiciary in the United States, and many state judges, opposed this law. It shifted sensitive abuse cases from the state courts (which were arguably better equipped to handle such matters) to the federal judiciary (which was already overtaxed). Although many of us supported the Violence Against Women's Act, others thought there were better ways to accomplish its important policy goals.

As a lawyer, prosecutor and state judge, Judge Smith handled countless abuse cases involving female victims. It is unfair to oppose a nominee for expressing sincere views as to how best handle this sensitive body of cases.

* * *

Not a single judge or lawyer who has dealt with Judge Smith during his 14 years on the federal bench, to our knowledge, has seriously questioned his fairness, impartiality or absolute competence. Writing to Sen. Patrick Leahy, Amy J. Greer, president of the Allegheny County Bar Association, indicated the local bar association's "full support" for Judge Smith's nomination to the appellate bench.

The public interest demands that a first-rate federal appeals judge be appointed to fill a crucial

vacancy on our court. Members of our bar have a tradition of respect for judges, of any political affiliation, who earn it. Judge Smith will be a credit to all lawyers, judges and citizens of Western Pennsylvania. That, rather than settling political scores, should be the guiding polestar.

NOTES:
Ken Gormley is a professor at Duquesne University School of Law. Frederick W. Thieman, a partner at Thieman & Kaufman, is a former U.S. attorney for the Western District of Pennsylvania.

The Role of Ideology in Judicial Selection: Test Case

By Stuart Taylor, Jr.
The National Journal
Saturday, February 16, 2002

Federal District Judge Charles Pickering Sr. of Mississippi has the misfortune of being the first Bush federal appeals court nominee openly targeted by liberal groups and Senators determined to block the President from transforming the lower courts-and, if he gets a chance, the Supreme Court-into conservative bastions.

So, poor Pickering finds himself trashed as "a throwback to the old, segregated South," in the words of Marcia Kuntz, of the liberal Alliance for Justice. That makes Kuntz a contender for the 2002 John D. Ashcroft award, given (by me) for the ugliest smear of a nominee in the tradition of then-Sen. Ashcroft's 1999 trashing of Missouri Supreme Court Judge Ronnie White as a "pro-criminal" jurist with "a tremendous bent toward criminal activity." (White's criminal activity consisted of voting to reverse death sentences and convictions in a fraction of his cases.) Pickering, 64, an anti-abortion conservative who would sit on the U.S. Court of Appeals for the 5th Circuit-which covers Mississippi, Texas, and Louisiana-seems a decent man and a diligent, if often-reversed and undistinguished, judge. He may not be quite the paragon of courageous leadership in the struggle for racial equality his supporters portray. But he is hardly the racially insensitive "throwback" portrayed by some of his liberal opponents.

But this battle is not primarily about Pickering. And the major combatants are not animated by whether his heart is tainted by racism (there is no recent evidence it is), or whether he has seemed forthcoming about long-past, race-related episodes that have drawn criticism (he has not), or whether he seems a basically ethical person (he does), or whether his judicial opinions are well-crafted (they are not).

Although such issues are debating points, this is a battle about power-the power to shape the liberal-conservative balance on the federal appeals courts. Appellate judges get little media attention, but they exercise vast influence over national policy on virtually all controversial issues. They also have the last word in 99.7 percent of all federal cases. Bush would like to create conservative majorities on most or all of the 13 appeals courts. Liberals are desperate to avert such a shift.

Supreme Court confirmation battles have focused on the nominees' ideology since two decades before the climactic 1987 rejection of Judge Robert Bork. Until recently, the Senate tended to rubber-stamp any lower-court nominee equipped with a pulse, a law degree, and a clean criminal record. Deference to the President's choice was the norm.

But now, Republicans complain that Senate Democrats, their academic auxiliaries, and liberal groups are openly calling for an ideological litmus test to block strongly conservative Bush nominees to the appeals courts. Democrats have a pretty good rejoinder: The Republicans started it by mounting what People for the American Way President Ralph G. Neas calls "an unprecedented partisan and ideological blockade" to derail an unusually high 35 percent (or 24 candidates) of Clinton's appeals court nominees from 1995 to 2001 without even giving them hearings. In some cases, Republican Senators (apparently including Ashcroft) used anonymous "holds" to stall individual nominees-one lasted for a record-breaking four years. Even White House Counsel Alberto R. Gonzales admitted to CNN in August that this Republican stalling had been wrong.

The result of this stall was that Bush inherited an unusually large number of vacancies when he took office. And Senate Democrats are understandably reluctant to reward past Republican obstructionism by helping Bush fill these vacancies with conservatives. If all of Bush's current nominees are confirmed, Neas says, 11 of the 13 appeals courts (up from seven now) will be controlled by Republican-nominated judges.

Such partisan labeling of judges might have sounded strange two or three generations ago. But with the ever-greater politicization of the law over the past 50 or more years, the party registration of the nominating President has become the best rough predictor of how a federal appellate judge is likely to vote in the most-controversial cases. Small wonder that the confirmation process has degenerated into a downward spiral of partisan brawling.

What role should ideology play in the confirmation process for appellate nominees? It depends on where you sit. When Bill Clinton was President, Republicans infuriated Democrats by stalling or killing nominees they deemed to be too liberal. Now that Bush is President, Democrats endorse ideological vetoes (of conservatives) and Republicans are shocked-shocked!- to see the
process politicized.

A more neutral principle might be this: In the interest of filling vacancies within a reasonable amount of time, and encouraging first-rate lawyers to accept nominations without fear of an ever-longer and more harrowing confirmation process, Senators should ordinarily give considerable deference to the President's choices. But deference has a limit.

The limit is that Senators can and should use their "advise and consent" power to keep the judiciary as a whole reasonably representative of the American people, rather than allowing the President to suddenly tilt the courts to the left or the right of center. While courts have not traditionally been seen as representative bodies, they have claimed many of the powers once exercised by those bodies. And Bush's hotly disputed victory in the freakishly close 2000

election gave him no mandate to make the third branch of government dramatically more conservative.

This does not mean that the Senate should indiscriminately block the most-conservative nominees. Indeed, the Democrats should stop stalling stellar conservatives such as John Roberts and Miguel Estrada, two leading appellate advocates, who would sit on the District of Columbia Circuit, and Michael McConnell, a widely respected constitutional scholar, who would sit on the 10th Circuit.

Democratic Senators would be justified, however, in temporarily blocking conservative Bush nominees to keep open vacancies that Senate Republicans unjustifiably prevented Clinton from filling, and in insisting that Bush either renominate the Clinton candidate (as he has done in one case) or choose someone else ideologically acceptable to Democrats.

Where would these criteria leave Judge Pickering-whose old friend and chief patron, Senate Minority Leader Trent Lott, R-Miss., has said Pickering will be confirmed "or else"? Pickering is not without virtues. Even opponents who assail his civil-rights record acknowledge that he courageously testified against a Ku Klux Klan leader in a 1967 murder case, when that was a dangerous thing to do. He has long been a leader in organizations seeking to improve race relations in his state and has many admirers there, including some Democrats. Supporters, including James Charles Evers, the brother of slain civil-rights leader Medgar Evers, claim that he "has an admirable record on civil-rights issues."

Liberal groups, Democratic Senators, and the Mississippi NAACP vigorously disagree. In a 25-page report, People for the American Way asserts that Pickering's opinions "suggest a hostility to civil and constitutional rights" and faults him for a rigidly conservative ideology; for his high rate of reversal on appeal, including 15 cases in which the 5th Circuit found that he had misread "well-settled principles of law"; for his use of a judicial opinion as a forum to criticize (while construing narrowly) the Supreme Court's one-person-one-vote precedents; for disparaging comments about black job-discrimination plaintiffs whose claims he considered weak; and for his unconvincing explanations of several decades-old, disputed episodes, including
his authorship of a law review note advising the Mississippi Legislature on how to fix a technical flaw in its anti- miscegenation law, the better to enforce it against interracial couples. (That was in 1959, when Pickering was a 21-year-old law student.) Critics also suggest that he violated an ethical rule when he phoned a high-level Justice Department official in 1994 to protest a prosecutor's insistence on a five-year mandatory prison term for a man convicted of burning a cross on an interracial couple's lawn.

As for Pickering's judicial opinions, a quick scanning calls to mind Sen. Roman Hruska's legendary 1970 encomium to Supreme Court nominee G. Harrold Carswell: "Mediocre judges and people and lawyers ... are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises, Cardozos, and Frankfurters, and stuff like that there."

Indeed we can't. None of Pickering's blemishes seems clearly disqualifying, and ordinarily

deference to the President's (and the Minority Leader's) choice might argue for an unenthusiastic vote to confirm. But this is not an appropriate case for deference. The reason is that Senate Republicans kept three seats open on the 5th Circuit for Bush to fill by blocking three Clinton nominees from even getting votes. Until the Republicans rectify that obstructionism, maybe Pickering should wait.

Terry Eastland: Bush Not Fighting for Judicial Nominee

By Terry Eastland
The Dallas Morning News
Monday, February 18, 2002

In May, even as Vermont Sen. James Jeffords prepared to leave the Republican Party, President Bush decided to nominate federal District Judge Charles Pickering to the 5th U.S. Circuit Court of Appeals, which encompasses Texas, Louisiana and Mississippi. Mr. Pickering has endured not one but two Senate Judiciary Committee hearings. Today, his nomination is in doubt. And the main reason it is can be traced to Mr. Jeffords' departure from the GOP.

Before he left, the two parties had the same number of senators: 50. But the GOP controlled the Senate on the strength of Vice President Dick Cheney's authority to cast tie-breaking votes. Mr. Jeffords' departure he became an independent reduced the GOP number to 49. The Democrats thus gained control, an event of predictable consequence for judicial appointments.

Most judicial nominees are confirmed regardless of who controls the White House or the Senate. But when, as now, there is divided government with one party in control of the White House and the other the Senate more nominations are likely to be contested and defeated than when the same party controls both.

Had Mr. Jeffords remained a Republican, Mr. Pickering would have been confirmed long ago. He was unanimously confirmed for the district court in 1990, and the American Bar Association has rated him "well qualified." Even now, if he could be voted out of committee, he would stand a good chance of winning confirmation, since two Democrats Fritz Hollings and Zell Miller have voiced their support.

Mr. Pickering's problem, however, is how to get from here to there from the committee, where the Democrats hold a 10-to-9 edge, to the Senate floor. The Judiciary Committee is territory patrolled by Patrick Leahy (the chairman), Edward Kennedy, Joseph Biden, Herbert Kohl, Dianne Feinstein, Russell Feingold, Charles Schumer, Richard Durbin, Maria Cantwell and John Edwards, most of whom are exquisitely attuned to the imprecations of left-wing interest groups, such as People for the American Way and Alliance for Justice. Those groups have pushed hard, and so far successfully, against the nomination.

Mr. Pickering himself has the misfortune of having virtually invisible White House support. He was chosen largely out of deference to a senator, his longtime friend Trent Lott, who began pitching for the judge's elevation to the 5th Circuit when he was Senate majority leader.

Had Mr. Lott not lobbied for Mr. Pickering's nomination announced on May 25, one day after Mr. Jeffords fled the GOP Mr. Bush probably would have selected someone else. Mr. Pickering, after all, is a few months away from 65, the age a judge may take senior status. Nor, his ABA rating aside, is he a legal superstar, someone likely to shape the law of the 5th Circuit. "We did this solely to please the then majority leader," one White House official told me. "It's his guy, and it's up to him to get him confirmed." That task would be far easier were the "then majority leader" still the majority leader.

Rarely making headlines, the Pickering nomination has become a series of stories within a story. Some Democrats are motivated against the nomination because they don't like the way Mr. Lott ran the Senate. Others are inclined against the nomination as payback to Republicans for their sometimes slow processing of Clinton judicial nominees, including three for the 5th Circuit who failed even to get hearings.

Also, there are Clinton Justice Department lawyers who butted heads with Mr. Pickering over their sentencing recommendations in a cross-burning case and are laboring against him behind the scenes. And, of course, there are the liberal interest groups, back after eight years on the sidelines, picking at Mr. Pickering as a warm-up for the real battle over a Bush nominee to the Supreme Court.

Substantively, the case against the nominee is unimpressive. He grew up in segregated Mississippi, but the left's effort to portray him as "insensitive" to civil rights is misguided and unfair: In 1967, as an elected county prosecutor, Mr. Pickering testified against the imperial wizard of the Ku Klux Klan, an act of moral courage that cost him his office. Mr. Pickering does hold conservative political views. But, contrary to concerns voiced by the law firm of Leahy, Kennedy, Biden, et al., his record on the bench isn't that of a judge who fails to distinguish between his own personal and political views and what the law says.

Of course, none of that may matter, since the Democrats have the power to defeat his nomination. This is the Jeffords effect, and the jury is out on whether Mr. Lott can overcome it. He might, but probably not, unless Mr. Bush, stingy with expenditures of his considerable political capital, finally decides to join the battle.

Interest Groups/Press Releases

NAACP Denounces Pickering Confirmation During Press Conference at Annual Meeting

NAACP
Saturday, February 16, 2002

Kweisi Mfume, President & CEO, of the National Association for the Advancement of Colored People (NAACP) said today that the Association stands firm in its absolute opposition to the confirmation of Judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit at a press conference held here during the Annual Meeting.

Mfume said: "We will continue to demand fairness on the part of those empowered to interpret the laws of our nation. We are opposed to the Pickering confirmation because we decry a judicial nomination process where civil rights and civil liberties, and equal protection under the law are forced to take a back seat to partisan politics and political affiliations."

Mfume added: "Accordingly and rightfully so, we stand firm as an organization in our absolute opposition to the Senate confirmation of Judge Charles Pickering of Mississippi, and we stand united against all others whose judicial records give rise to suspicion about their ability to render impartial judgment and fair interpretation of federal law."

Julian Bond, Chairman, NAACP Board of Directors said: "The NAACP was created to fight for freedom and justice in a nation dedicated to those goals. We must continue to fight now with renewed determination. Each of has a role to play as guardians of our nation's liberty, and that is the role history has assigned to us."

Mfume called on the Congress to join the Association in the fight to defeat the Pickering confirmation, and challenged the members to help fight against hate crimes and racial profiling. He also urged them not to ignore the AIDS epidemic both in Africa and at home.

"These are wrongs that must be confronted," Mfume said. "We are compelled to act responsibly before the world to better humanity, and ultimately, to better ourselves."

In light of the September 11th tragedies, Mfume said: "By moving our Annual Meeting back to New York, the NAACP honors the world's leading city and its residents along with the scores of Americans who are resolved to defend the ideals of a free and open society. This is the city of our birth, and we stand in solidarity with New Yorkers."

The NAACP was founded in New York City on the 100th anniversary of President Abraham Lincoln's birthday, which was February 12, 1909. The Association last held its annual meeting in New York in 1998. The meetings were held in Washington, D.C. between 1999-2001.

The National Association for the Advancement of Colored People (NAACP) is the nation's oldest and largest civil rights organization. Its half-million adult and youth members throughout the United States and the world are the premier advocates for civil rights in their communities and monitor equal opportunity in the public and private sectors.

Anderson, Carl A

From: Anderson, Carl A
Sent: Thursday, February 21, 2002 5:35 PM
To: Schauder, Andrew; Newstead, Jennifer; Ciongoli, Adam; 'Bradford_A._Berenson@who.eop.gov%inetgw'; 'Brett_M._Kavanaugh@who.eop.gov%inetgw'; Bryant, Dan; 'Heather_Wingate@who.eop.gov'; Long, Linda E; Benedi, Lizette D; McMahon, Lori; Day, Lori Sharpe; 'Matthew_E._Smith@who.eop.gov%inetgw'; Suit, Neal; Joy, Sheila; 'Tim_Goeglein@who.eop.gov%inetgw'; 'Timothy_E._Flanigan@who.eop.gov%inetgw'; Dinh, Viet; 'Ziad_S._Ojakli@who.eop.gov%inetgw'; O'Brien, Pat; Comstock, Barbara; Koebele, Steve; 'James_W._Carroll@who.eop.gov'; Ho, James; Goodling, Monica
Subject: judicial media review
Attachments: Judicial Media Review 2-21-02.wpd

Please see attached review

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Thursday, February 21, 2002

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General Judicial Articles

Campaign To Block Nomination Gets Ugly

By Brit Hume
Fox News
Tuesday, February 19, 2002

And now the most absorbing two minutes in television, the latest from the wartime grapevine.

The campaign on the left to block the nomination of federal Judge Charles Pickering of Mississippi to the U.S. Court of Appeals may have succeeded; not a single Democrat on the Senate Judiciary Committee seems willing to let the Pickering appointment reach the Senate floor. But the tactics of Pickering's opponents proved too much for even the reliably liberal Washington Post, which over the weekend called it "an ugly affair" and "the latest example of the degradation of confirmation process." The Post said Pickering's critics have focused not on his qualifications, but have "tried to portray him as a barely reconstructed segregationist."

And the New York Times reports that the opposition to Pickering from national liberal and civil rights groups is not shared bythe largely black residents of his hometown of Laurel, Miss. There, said the Times, "many say they admire his efforts at racial conciliation, which they describe as highly unusual for a white Republican in the state." The Times adds, "the city's black establishment overwhelmingly supports his nomination."

Nation; Inside Politics

By Greg Pierce

The Washington Times
Wednesday, February 20, 2002

EXCERPT

Unmanly behavior

Sen. John Edwards, a former trial lawyer, "has landed in hot water with the nation's leading anti-tobacco lawyer" because of the North Carolina Democrat's harsh questioning of federal appeals court nominee Judge Charles W. Pickering Sr., Roll Call reports.

Mr. Edwards, in a recent confirmation hearing for Judge Pickering, refused to let the judge respond fully to his questions, instead demanding "yes" and "no" answers about the sentencing of a man involved in a cross-burning on the lawn of an interracial couple. Although Mr. Edwards, in a speech last week before California Democrats, bragged about his treatment of Mr. Pickering, others have questioned Mr. Edwards' behavior and what The Washington Post on Sunday described as that and other "ugly" and misleading attempts to defame the judge.

Trial lawyer Dickie Scruggs "has vowed to rally other trial lawyers to his anti-Edwards campaign," reporter Paul Kane writes.

Mr. Edwards' disrespectful behavior toward the judge "wasn't the manly thing to do," Mr. Scruggs said.

Grotesque reminders

Northern Virginia's Dulles chapter of the National Organization for Women says it "was recently contacted by groups tied to the Democratic Party and asked to join the current nasty efforts" to derail the nomination of federal Judge Charles W. Pickering Sr.'s nomination to a U.S. appeals court.

"We refused," the group said in a prepared statement. "Instead, we are pleased to join the ranks of all those who support him."

The group added: "The vicious anti-Pickering smears have even less to do with women's rights, coming as they are from groups who unwaveringly supported sexual harassment and perjury in high office. They are but grotesque reminders of the discredited politics of personal destruction."

NEW CONFLICT ALLEGATION SURFACES AGAINST APPEALS COURT NOMINEE

By Ann McFeatters
Pittsburgh Post-Gazette

Thursday, February 21, 2002

A new allegation surfaced yesterday that U.S. District Judge D. Brooks Smith did not disqualify himself soon enough in yet another high-profile case in which he had a potential conflict of interest.

On Tuesday, the Senate Judiciary Committee plans to begin hearings to determine whether it should recommend Smith, 50, of Altoona, Pa., to the full Senate for confirmation to the 3rd U.S. Circuit Court of Appeals in Philadelphia.

Smith, appointed to the District Court for Western Pennsylvania in 1988 by President Ronald Reagan, has been nominated to the Circuit Court by President Bush.

Senate investigators already are looking into whether Smith failed to disclose a substantial financial interest in a bank that was involved in the Securities and Exchange Commission's successful civil fraud lawsuit against John Gardner Black. Black is an investor who defrauded 75 Pennsylvania school districts of $69.5 million in the mid-1990s and is serving prison time. Smith recused himself after a month of sitting in judgment on the Black case, revealing that his wife was employed by Mid-State Bank, which was accused of complicity in Black's fraud and ultimately repaid districts $51 million to satisfy a court settlement.

A U.S. Justice Department official who shepherds administration judicial nominations looked into the conflict allegation and found none, saying Smith's recusal on Oct. 31, 1997, demonstrated an "excess of caution." But several legal ethicists say Smith's action raises questions that the Senate panel should consider, including whether rulings he made benefitted Mid-State, in which Smith also maintained a significant portion of his assets.

Sen. Rick Santorum, R-Pa., is "confident in his support of the judge's nomination. He understands this is part of the process of confirming such nominations," a spokeswoman said. Smith, she said, "is a sitting judge, and that attests to the caliber of nominee that he is. He has a lot of support in the legal community."

Yesterday, new documents provided by Doug Kendall, a lawyer and executive director of a land-use activism group, Community Resources Counsel, which has questioned Smith's nomination on ideological grounds, indicated that Smith again sat on the bench when federal authorities filed a criminal suit against Black in 1999. He said Smith continued to sit for five months on that second case, although he still had assets in the bank that Black had used, and that Smith's wife continued to work as an officer for the bank.

After Black's lawyers filed a motion that Smith recuse himself, the judge agreed to withdraw on Nov. 1, 1999, but still did not disclose his financial interest in Mid-State Bank. Smith wrote in a memo that some of Black's reasons for requesting his recusal were "nonsense" and "would not cause a reasonable person to question this judge's impartiality." He cited facts noted by Black that his family and the judge were friends, that they had lived in the same town, that Smith attended school in a district Black was accused of defrauding and that Smith had questioned

Black's credibility in the civil case.

But Smith said that, despite having recused himself from Black's civil case because of the likelihood that the bank which employed his wife would "figure prominently" in it, he didn't believe when he met the criminal case lawyers in July 1999 that he should withdraw again.

When Black's lawyers eventually did ask for his recusal, Smith said, their probable evidence convinced him that Mid-State would "figure substantially" in the case, and that bank officials might be critical witnesses, so "recusal is the only appropriate course."

Federal law and the American Bar Association Code of Ethics require a judge to disclose all possible conflicts of interest to lawyers involved in a case, even if he or she thinks there is no reason for disqualification.

Supporters of Smith's nomination said they were satisfied that he had indicated at the start of the criminal case that there was no reason to anticipate a conflict and that he withdrew when he saw one.

Although 27 environmental, civil rights and women's groups say they are troubled by what they view as the conservative nature of Smith's prior court opinions, they haven't called upon the Senate to reject his nomination.

Nor is Kendall yet asking for that, but he did say: "It's hard to fathom how Judge Smith could sit on the second case for even a day. It clearly violates federal recusal law and raises serious questions about Judge Smith's fitness for a seat on the appellate bench."

Group asks Senate Judiciary Committee to investigate Bush nominee

The Associated Press State & Local Wire
Thursday, February 21, 2002

An activist organization asked the Senate Judiciary Committee Wednesday for an investigation into improper behavior by U.S. District Judge D. Brooks Smith, a nominee for the U.S. Court of Appeals for the 3rd Circuit.

The Community Rights Counsel said in a letter hand delivered to the offices of Sen. Patrick Leahy, D-Vt., and Sen. Orrin Hatch, R-Utah, that Smith made significant court rulings regarding a company in which he had a "very substantial financial interest."

Leahy is the chairman on the committee and Hatch is the ranking member. The rulings in question have been investigated by the Department of Justice, which cleared Smith of any wrongdoing.

At issue is the trial of John Gardner Black, who pleaded guilty in 2000 to defrauding dozens of

Pennsylvania schools and municipalities.

Court records show Black sent bogus statements to the schools to cover losses as high-risk investments went sour and tanked. The Securities and Exchange Commission discovered $69.5 million in losses after a surprise inspection.

Smith presided over the trial for a month and issued several rulings before recusing himself.

Smith's wife, Karen Smith, was the vice president of the lending department at Mid-State Bank at the time, which was accused of complicity in the scheme. Mid-State Bank, through its parent company Keystone Financial Services Inc., paid $51 million to the schools to satisfy a court settlement.

Smith recused himself on Oct. 31, 1997, but critics say he should have disclosed his wife's position with the bank immediately.

Smith held $100,000 to $250,000 in Mid-State stock and his wife had the same amount invested in a 401(k) fund with the bank. He did not disclose the investments when he recused himself, but they were listed on a financial disclosure statement required of all federal judges.

Those records were brought to light by Doug Kendall, a lawyer with Community Rights Counsel.

"This is information we stumbled into when we were looking at judges who were accepting privately funded trips by companies," Kendall said.

Smith presided over another trial for five months involving Mid-State Bank two years later before recusing himself at the request of a defense attorney, Kendall said.

"Judge Smith again failed to disclose his large financial stake in the bank," a letter to the committee states.

David Carle, a spokesman for the Senate Judiciary Committee, would not comment on committee investigations. But he did say investigators review all submitted information.

"The committee doesn't turn away new information, but the majority and minority staff review them to determine whether any further investigation is warranted."

Federal law requires judges to recuse themselves if their impartiality might "reasonably be questioned."

"There is no doubt Judge Smith should have disqualified himself and done it much sooner," said Steven Lubet, a professor of legal ethics at Northwestern University School of Law. "This comes squarely within the statute. It is not ambiguous."

Other legal ethicists say Smith's behavior was improper, but it should not be the sole determining factor in his appointment to the bench.

"The fact the judge has made a mistake of this kind is a fact the Senate should consider," said Stephen Gillers, a professor of legal ethics at New York University School of Law. "But there are other factors that go on the scale."

Smith is barred by the White House from speaking in his own defense during the nomination process. But supporters point out Smith has received the highest ratings from both the American Bar Association and the Allegheny County Bar Association.

Black Case Could Sideswipe Nominee

By Ann McFeatters
Pittsburgh Post-Gazette
Wednesday, February 20, 2002

Senate investigators are expected today to begin looking into whether Western Pennsylvania U.S. District Judge D. Brooks Smith, nominated by President Bush for the Third Circuit Court of Appeals, improperly failed to recuse himself when he issued rulings in the John Gardner Black case, one of the largest cases of investment fraud in Pennsylvania history.

The Senate Judiciary Committee is about to consider whether to recommend the confirmation of Smith, 50, a Republican from Altoona with offices in Pittsburgh and Johnstown, and may hold its first hearing on Smith's nomination next week.

The Department of Justice, to whom Smith referred inquiries, said it has looked into Smith's handling of the matter and found no fault with his actions. But a Justice official and a Senate aide involved in the confirmation process said the Senate was certain to conduct its own investigation.

On Sept. 26, 1997 the Securities and Exchange Commission charged investment adviser Black with defrauding dozens of Pennsylvania school districts and a handful of municipalities by investing in risky securities. Black put the public assets in high-risk, high-yield instruments, expecting their value would rocket, but the investments went sour. As the school accounts dwindled, Black sent false statements to the districts to cover up the losses and repaid early investors with money collected from later investors.

Most of Black's investors were rural Pennsylvania school districts that trusted him with bond proceeds earmarked for construction projects.

Black is now serving a 41-month term in a federal prison in Morgantown, W.Va.

Black's pyramid scheme came to light after SEC auditors found a $71 million hole -- later

revised to $69.5 million -- in Black's books during a surprise audit. The SEC moved quickly after the audit, seeking an emergency order from Smith as part of a civil lawsuit to shut down the businesses and freeze the remaining assets.

For one month in 1997, Smith presided over the case and issued a number of rulings before recusing himself on Oct. 31, 1997, citing a conflict of interest because his wife Karen was a vice president in the lending department of Mid-State Bank. Mid-State, through its parent company Keystone Financial Services Inc., was eventually accused of complicity in the Black scheme and repaid school districts $51 million to satisfy a court settlement.

At the time, Smith also held $100,000 to $250,000 in Mid-State stock, and his wife had a 401(k) fund invested with Mid-State also valued at between $100,000 and $250,000. Smith did not note these investments in his recusal, but they were listed on the regular financial disclosure statement required of federal judges.

One question investigators will have to sort out is whether Smith's rulings before he recused himself could have benefitted Mid-State by reducing its future liability. The Department of Justice said Smith never ruled on Mid-State's liability and therefore had no conflict of interest, and that Smith, in recusing himself because of his wife's job in a different area of the bank, should be
"commended for an excess of caution."

But Smith was told by Dick Thornburgh, the former Pennsylvania governor and U.S. attorney general who oversaw the management of the case as trustee, that Mid-State's role appeared to be more than that of a depository, and Smith thereafter issued a hotly contested ruling that could have reduced the amount of money Mid-State ultimately had to pay.

Thornburgh had pointed out that Mid-State reported to Black's school-district clients that the market value of their accounts was $157,622,923 while at the same time telling Black the accounts were worth only $86,307,513 -- suggesting Mid-State collusion in Black's scheme.

At one point, Smith denied a motion by the school districts to unfreeze some of their contested assets because they needed money for operations. He denied similar relief to districts whose assets were not held at Mid-State. Smith later allowed the districts access to half their frozen assets as a temporary measure if they agreed not to ask for more until all contested claims could be sorted out.

At the time, one school district called the ruling "economic blackmail." Two weeks before Smith's recusal, some school districts were talking publicly about suing Mid-State.

Smith also decided at one point to pool the assets of districts whose money Black had placed at Mid-State with those whose assets were in investments that had not lost so much money. This would have effectively reduced Mid-State's liability and forced districts with assets elsewhere to subsidize the losses of districts whose assets were held at Mid-State.

This ruling did not stand. The judge who succeeded Smith on the case, Donetta Ambrose, ruled that Smith had improperly combined the Mid-State and non Mid-State assets. The Third Circuit Court of Appeals agreed.

The White House yesterday referred questions to Mark Rush of Kirkpatrick & Lockhart in Pittsburgh, who was Thornburgh's lawyer as trustee in the case. Rush said Smith acted properly because during Smith's involvement it appeared Mid-State was only a depository for Black and not a potential partner in his scheme.

Toward the end of October, 1997, Rush said, he and Thornburgh told Smith they believed Mid-State was more deeply involved and on Oct. 24 pulled all the school district money out of Mid-State accounts. At that point Smith said he would have to recuse himself because of his wife's job, Rush said.

Rush said he did not know Smith also held stock in Mid-State but maintains that Smith did not act imprudently. "Does [his financial stake in Mid-State] concern me? Not at all. If I would have seen a reason for Judge Smith to recuse himself prior to Oct. 31, I, as an officer of the court, would have filed a motion myself. It was a big case."

Federal recusal law requires judges to disqualify themselves from sitting on a case if their impartiality might "reasonably be questioned." U.S. Code 28, section 455, says judges must know their assets and recuse themselves immediately if they have any financial conflict of interest.

The Supreme Court has upheld the law, which was tightened after Clement Haynsworth, a Nixon nominee for the U.S. Supreme Court, was rejected by the Senate in 1969 after he was found to have adjudicated cases in which he had a small financial interest.

Steven Lubet, a professor of legal ethics at Northwestern University School of Law, said, "There is no doubt Judge Smith should have disqualified himself and done it much sooner. This comes squarely within the statute. It is not ambiguous."

Stephen Gillers, professor of legal ethics at New York University School of Law, said Smith has two problems. "He should have revealed his financial interest in Mid-State and his wife's employment relationship to Mid-State to the parties right away as soon as he learned that Mid-State had an interest in Black's litigations.... The second problem for Judge Smith is that it appears to me Mid-State certainly had an interest in the rulings Judge Smith might make."

While these ethicists said Smith's conduct was an important issue, they said it should not alone decide whether he's confirmed.

"Because I find Judge Smith's conduct imprudent," Giller said, "I don't mean to say he should be confirmed or not confirmed. The fact the judge has made a mistake of this kind is a fact the Senate should consider. But there are other factors that go on to the scale. Has he been a really good judge otherwise? Has he generally shown ethical awareness of his responsibilities?"

Doug Kendall, a lawyer with the environmental activist group Community Rights Counsel, unearthed Smith's financial disclosure records. The group had already raised questions about what it considers Smith's conservative, pro-business rulings.

Sen. Rick Santorum, R-Pa., said Smith's record has not yet been vetted by his office and that he needs more information to decide how seriously to consider Smith's possible conflict of interest. Earlier this month, when 27 liberal environmental, civil rights and women's groups expressed concerns about Smith's conservatism on the bench, Santorum dismissed the criticism and said it was coming from Democrats who resented the delays in confirming nominees during the Clinton administration.

Sen. Arlen Specter, R-Pa., a leading sponsor of Smith's nomination, has said nothing to indicate his support has waned, but he also has championed strict laws on judicial recusal.

In 1994, Specter raised questions about Supreme Court nominee Stephen Breyer's financial interest in a venture involving asbestos and toxic pollutants while he was sitting on pollution cases. Breyer was confirmed, though not unanimously, and Specter called for re-examining the recusal law, saying judges should disqualify themselves if their investments are even indirectly involved in a case.

While Smith is barred by the White House from speaking in his own defense, Smith's friends are rallying around him. They point out that he received the highest rating from the American Bar Association and the top rating from the Allegheny County Bar Association.

U. Kentucky law prof appointed to Circuit post, awaits confirmation

By Steve Ivey
University Wire
Wednesday, February 20, 2002

Faculty excellence in the University of Kentucky's College of Law has gained the attention of the White House.

John Rogers, professor of law, recently received an appointment to the 6th U.S. Circuit Court of Appeals from President George Bush.

Paul Salamanca, associate professor of law, said it's a powerful position. Decisions made by the 6th Circuit Court, which oversees federal cases in Michigan, Ohio, Kentucky and Tennessee, can be reviewed only by the U.S. Supreme Court. Allan Vestal, dean of the College of Law, said the Supreme Court reverses few cases, making the appointment "terribly important."

Rogers said he is unable to say much about the appointment, other than he is excited about the prospect of being a judge, because his appointment is pending confirmation by the U.S. Senate.

Vestal said Rogers has spent years cultivating his skills for this position.

Rogers received a bachelor's degree in history from Stanford University in 1970 and received his law degree from University of Michigan in 1974. In January and February 1991, he served as special counsel for the Impeachment Committee of the Kentucky House of Representatives. He has been a UK law faculty member since 1978, teaching international law, constitutional law, administrative law, torts, federal courts and legal writing.

Vestal said some Circuit Court judges continue to teach, but whether Rogers will be able to continue full time remains a wait-and-see issue.

Fellow law faculty members said Rogers is a worthy recipient.

"We're all very proud of him," said Salamanca, who has known Rogers since he came to UK in summer 1995. "It's an intelligent nomination."

Salamanca added Rogers is precisely the kind of person suited for an appointment.

"He is thoughtful, intelligent, open minded and very well versed in the law," he said. "He's one of my favorite people to verbally spar with because he certainly has his own ideas, but he's more than willing to listen."

Vestal echoed Salamanca's sentiments.

"John is a very good legal scholar," Vestal said. "His background in the Department of Justice and as a teacher and scholar make him the perfect candidate."

Vestal also said this was an important credit for UK and the College of Law.

"This is a very important distinction for UK," he said. "The fact that we have professors of this caliber speaks well for us."

Salamanca said UK should be proud of Rogers' honor.

"It's a feather in (UK's) cap," he said. "I think John is one of many faculty we have that are worthy of such a position. It's a real compliment."

Law colleagues said they hope this won't be the end of UK's connection with Rogers.

"We hope to keep ties with him," Vestal said. "I've suggested he keeps his offices here at UK. We'd like to keep him as involved as possible."

"He's a great colleague," Salamanca said. "We wish him well."

Liberal Groups Question Nominee's Role in '97 Case; Appeals Court Choice Accused of Acting Improperly

By Edward Walsh
The Washington Post
Wednesday, February 20, 2002

A judge who has been nominated by President Bush to a federal appeals court is coming under fire from liberal interest groups who say he acted improperly in a 1997 case involving a bank where his wife worked and in which they had a substantial financial interest.

D. Brooks Smith, now the chief judge of the U.S. District Court for Western Pennsylvania, was assigned to the case in late September 1997. In it, the Securities and Exchange Commission accused John Gardner Black, an investment adviser, of defrauding dozens of school districts and other local governments of millions of dollars entrusted to him.

On Oct. 31 of that year, Smith removed himself from the case, citing his wife's job as a vice president of an Altoona, Pa., bank where most of the missing funds were held in accounts Black controlled.

But by then, Smith had presided over the case for a month and had issued several orders, including one four days earlier that critics say could have benefitted his wife's employer by partly shielding the bank from attempts by Black's victims to recover their losses. In his brief recusal order, Smith also failed to disclose an even larger potential conflict: He and his wife, Karen,
jointly owned at least $ 100,000 worth of stock in a holding company that owned the bank. The SEC's civil action against Black, which caused an uproar in western Pennsylvania, has resurfaced now as the Senate Judiciary Committee prepares to hold a confirmation hearing Tuesday on Smith's nomination to the 3rd U.S. Circuit Court of Appeals.

A Justice Department spokeswoman said earlier this month that Smith was not allowed to grant interviews, but that written questions could be submitted to him through the department. Yesterday, a senior Justice Department official, who asked not to be identified, said Smith "cannot respond to questions due to deference to the confirmation process."

The official said Smith removed himself from the case "out of an excess of caution" and that all of his actions were "proper."

Smith, 50, was appointed to federal district court in 1988 by President Ronald Reagan. The challenge to his handling of the Black case is part of a larger struggle over the shape of the federal judiciary. Earlier this month, a coalition of 27 liberal interest groups wrote a letter to the Senate Judiciary Committee contending that Smith's rulings as a district judge "show a disturbing
pattern of bias in favor of powerful interests and disregard for the rights and needs of ordinary

Americans."

The coalition urged the committee to scrutinize Smith's record closely before voting on his nomination.

The questions about Smith's handling of the case are being raised largely by Doug Kendall, executive director of the Community Rights Counsel, a public interest law firm that was one of the groups that sent the letter to the Judiciary Committee. In a memorandum he has circulated, Kendall argued that some of Smith's rulings "clearly advanced the interests of Mid-State Bank," the Altoona institution where his wife was a vice president and in which they had a financial interest.

Kendall cited a Smith order from Oct. 27 -- four days before the judge left the case -- that kept in place a freeze on some of the money that the school districts had turned over to Black to invest. The school districts wanted access to all of their money, but they were also divided into two camps.

One group had money invested in a pooled account at Mid-State, where about $ 71 million appeared to be missing. The other group's money was held by other banks and apparently was safe. In court filings, the first group argued that their losses should be shared by all of Black's clients, including those that did not have money at Mid-State. The other school districts argued that they should not be entangled in the case at all.

Acting on a recommendation of the SEC and a court-appointed trustee, Smith on Oct. 27 lifted the freeze on half the money, provided that the school districts agreed not to challenge the continuing freeze on the other half.

According to Kendall, by maintaining the freeze on half of the funds that were not in the pooled account at Mid-State, "Judge Smith preserved a very large pot of money that could have dramatically reduced Mid-State's litigation exposure."

Mid-State Bank was not a defendant in the case and was not accused of wrongdoing by the SEC. The school districts were inconvenienced, but eventually gained access to all of their money when another judge lifted the freeze. In 1999, Keystone Financial Inc., a Harrisburg, Pa., holding company that owned the bank, settled lawsuits filed by more than four dozen school districts for $ 51 million.

According to Smith's 1997 financial disclosure statement, he and his wife owned $ 100,000 to $ 250,000 in Keystone Financial stock. Karen Smith also owned $ 15,000 or less in Keystone stock and had a 401(k) plan at Mid-State Bank worth $ 100,000 to $ 250,000.

In an interview, Kendall said he was not accusing Smith of deliberately acting to protect those financial interests. "I'm not getting in his head and saying he's throwing this ruling to the bank, but I think it's unquestionable that this ruling was favorable to the bank," Kendall said. "Despite a very serious conflict, he ruled in a case, and he ruled in a way that benefited his financial

interest."

Steven Lubet, a Northwestern University Law School professor, said Smith's decision to rule on the case was "an inexplicable lapse, because the facts are clear and the law is clear and there isn't any question that [Smith] is disqualified, but he continued to sit on this case for 30 days."

Lubet said it did not matter that neither Smith nor the bank actually benefited from Smith's rulings. "The 'no harm, no foul' rule doesn't really have a place here," he said. "You expect judges to do the right thing. The disqualification rule is extremely important, because it's a crucial aspect of the legal system that judges should not have an interest in a case."

Smith's actions also appear to have put him at odds with standards set more than a decade ago by the 3rd Circuit, the appellate panel he hopes to join. According to Merri Jo Gillette, the lead SEC lawyer, at an Oct. 27 hearing before he partially lifted the freeze, Smith told the attorneys in the case about his wife's job at the bank and "pretty much told us it was his intention to recuse." But Smith stayed on the Black case for four more days and issued more rulings.

In a case involving another federal district judge, the 3rd Circuit ruled in 1988 that once a judge recognized a potential conflict, "he should recuse himself immediately" and not issue rulings other than "housekeeping orders."

Gillette, however, defended Smith. She said it was not clear at the time what role Mid-State Bank would play in the case. The court-appointed trustee, former attorney general and Pennsylvania governor Dick Thornburgh (R), said, "I never saw any evidence of him favoring the bank."

Stephen Gillers, professor of legal ethics at New York University Law School, said judges are required to tell the lawyers in a case of any potential conflict they have. "I can't say [Smith] certainly had to recuse himself," Gillers added. "I can say that a serious argument for recusal is present in these facts, so that Judge Smith should have revealed the information" before making any rulings.

Pickering Fight Shows Liberals At Their Worst

By Morton Kondracke
RollCall
Thursday, February 21, 2002

It's time for liberal groups such as People for the American Way and the NAACP to quit using character assassination to defeat conservative judicial nominees - and for Democratic Senators to show some independence from them.

Republicans have used defamation against liberal nominees too, as in the branding of Missouri Supreme Court Judge Ronnie White as "soft on crime" in 1999. But the usual pattern when the

GOP controlled the Senate was to simply deny Democratic nominees a hearing and a confirmation vote.

Democrats are learning to do that as well, but they're more adept at character attacks - the most egregious examples being the campaigns against Supreme Court nominees Clement Haynsworth in 1969, Robert Bork in 1987 and Clarence Thomas in 1991.

Now the liberal groups are systematically vilifying 5th U.S. Circuit Court of Appeals nominee Charles Pickering as "hostile to civil rights" - read: racist - and as yet no Democrat on the Senate Judiciary Committee has raised a peep of objection. Pickering's chances in Judiciary don't look good.

In fact, the evidence suggests that Pickering is a decent, if outspoken, religious conservative who's repeatedly gone out of his way to help African-Americans.

Would a racist send his children to newly integrated schools in Mississippi in the 1960s when an all-white "academy" was just down the road? Pickering did.

And he kept his son, now Rep. Chip Pickering (R-Miss.), and three daughters in the Laurel, Miss., public schools even when, by the time they graduated, their high school was 70 percent African-American.

In majority-black Washington, D.C., white liberals, including some Senators, usually send their kids to private schools.

As a county attorney from 1964 to 1968, Pickering helped the FBI prosecute Ku Klux Klansmen and was defeated for re-election because of it. When he ran for the state Senate in 1971, he won with two-thirds support from black voters in his district.

This is scarcely the record of someone who represents "a throwback to the days of the segregated South," as Marcia Kuntz of the liberal Alliance for Justice called him.

As a state Senator, Pickering did vote twice to fund the notorious Mississippi Sovereignty Commission - at a time, his supporters say, when it claimed to be giving up its failed segregationist mission. Ultimately, it didn't do so and Pickering voted for its dissolution.

In 1992, Pickering urged his son, then an aide to Sen. Trent Lott (R-Miss.), to help win membership in the Sigma Chi chapter at the University of Mississippi for Damon Evans, son of the Ole Miss football coach.

At that point, no African-American had ever been admitted to a white fraternity, and Evans was facing an anonymous "blackball." Pickering flew down to Oxford, made a speech to the members of his and his father's fraternity, and got Evans accepted.

If, as liberals sometimes argue, "the personal is the political," then Pickering's record is that of

an advocate of civil rights. He was able to get white-owned banks to lend money to black businesses and helped direct federal funds to after-school and medical programs for blacks.

In what ought to be a humiliating blow to the anti-Pickering assault brigade, The New York Times last Sunday reported that African-American leaders in his hometown overwhelmingly vouch for him and dismiss charges that he's racially prejudiced.

People for the American Way Director Ralph Neas was reduced to saying that those who have watched Pickering at close hand for decades know less about him than Washington activists.

I'd trust Mississippi civil rights leader Charles Evers, who backs Pickering, a lot sooner than the NAACP's Julian Bond and Kwesi Mfume, sponsors of one of the most scurrilous campaign ads ever run - the 2000 ad suggesting that George W. Bush's failure to sign a new hate-crimes law in Texas was equivalent to the murder of James Byrd.

Neas says he's never accused Pickering of being personally "racist," but that his record is one of "insensitivity" and "hostility" to civil rights.

Yet, close examinations by Jonathan Groner in Legal Times and Byron York in National Review pretty clearly discredit Neas' charges that Pickering has been biased in employment and voting-rights cases and was too lenient - and may have behaved unethically - in a cross-burning case.

York has demolished the basis for attacks on Pickering by Democratic presidential hopeful Sen. John Edwards (N.C.) in the 1994 cross-burning case.

York showed that Pickering believed that the Justice Department had let off the main perpetrator of the incident and that he intervened with Justice not - as Edwards alleged - to secure leniency for the defendant but to hasten a government response to his inquiries. He sentenced the
defendant, Daniel Swan, to 27 months in prison.

I can't say that Pickering is qualified to serve on the 5th Circuit. The Washington Post, while scolding liberals for their tactics, asserts that Pickering has been a district judge "of no particular distinction."

On the other hand, since Democrats have elevated American Bar Association ratings to iconic status, it's worth noting that a majority of its rating committee found Pickering "well qualified" and the remainder, "qualified."

Still, Pickering is in trouble. Senate Majority Leader Thomas Daschle (D-S.D.) is against him and Democrats have a 10-8 margin over Republicans on Judiciary, enough to deny him a floor vote. Moreover, the White House isn't fighting very hard for his nomination. Too bad - the guy deserves better.

The Pickering Beat The embattled judge gets help from some unexpected sources

By Terry Eastland
The Weekly Standard
Thursday, February, 21 2002

WITH THE Senate out this week, Judge Charles Pickering's embattled nomination to the U.S. Court of Appeals for the Fifth Circuit is getting help from seemingly unexpected sources.

The first is a February 17 editorial in the Washington Post. The Post editorial page is a neoliberal one and if pressed to pronounce yes or no on the nomination, might, after many nuanced paragraphs, come down politely no. But the Post routinely sticks up for due process--fairness, in a word. And so in this editorial the Post, after making sure the reader knows that Pickering wouldn't have been its choice for the Fifth Circuit, goes after "the liberal groups and Democratic senators" who've been trying "to portray him as a Neanderthal [on race]--all the while denying they are doing so."

The Post observes that Pickering's history on race is "actually quite complicated." What the Post means is that it is more complicated than the liberal groups and Democratic senators have made it out to be. No "committed" or "closeted" seg is this Judge Pickering, says the Post, a man who prosecuted the Klan back in the 1960s and testified in open court in 1967 against a major Klan figure, and in recent decades has joined with others of his state in working for racial reconciliation.

The second unexpected source of support for Pickering is the New York Times, which on February 17 led its "National Report" with a story from Laurel, Mississippi, Pickering's hometown. David Firestone reported that in Laurel, "Pickering is a widely admired figure." Indeed, "the city's black establishment overwhelmingly supports his nomination."

It's no secret that journalists with liberal views run the Times. But Firestone's story is the kind I'd
expect from news pages supervised by executive editor (and former editorial page editor) Howell Raines, who, like Pickering, grew up in the segregated South (Alabama) and has been known to order up fresh reporting where the story, as here, involves race and the South. This is not to say that Raines, were he still running the editorial page, would actually support Pickering. But Firestone's reporting shreds the left's portrayal of the 64-year-old judge as "an ideological relic of the Old South."

The third source is Dickie Scruggs, the trial lawyer from Pascagoula, Mississippi, who spearheaded the legal challenge to the tobacco industry. Scruggs is a Democrat who has helped raise big money for Democrats. (He is also married to the sister-in-law of Senate minority leader Trent Lott, Pickering's friend and biggest supporter.) But, as Roll Call's Paul Kane reported on February 18, Scruggs is upset with the way his fellow trial-lawyer, Democratic senator John Edwards, queried Pickering about a 1994 cross-burning case. Actually, it is more accurate to say

that Edwards skewered Pickering, a long-time friend of Scruggs's, twisting and even botching facts (detailed by National Review Online's Byron York) to portray the judge in the worst light possible. Scruggs, who took in Edwards's over-the-top performance from his seat in the hearing room, told Roll Call that he might withdraw his support for Edwards, who has presidential ambitions, and encourage his trial-lawyer brethren not to back him. Trial lawyers, it should be noted, have been heavy contributors to Edwards. Whether or not Scruggs carries out his threats, at least he called Edwards on his deplorable behavior.

Thanks to the Post, the Times, and Dickie Scruggs, things are looking up for Judge Pickering. At
least this week they are. The Senate will be back in session next week.

Shop Talk

By Amy Keller
Roll Call
Thursday, February 21, 2002

EXCERPT

"Mr. Backlin is going to be a tremendous asset in leading the charge for Christian Coalition's aggressive 2002 legislative agenda," said Roberta Combs, president of the Christian Coalition.

Top items on the organization's agenda this year include opposing the Shays-Meehan/McCain-Feingold campaign finance reform measure currently under consideration and supporting a bill by Sen. Sam Brownback (R-Kan.) that would ban all forms
of human cloning.

The group is also lending its support for President Bush's judicial nominee for the 5th U.S. Circuit Court of Appeals, Judge Charles Pickering of Mississippi.

Op/Eds

MISSISSIPPI BURNING DEMOCRATS PREPARE TO IMMOLATE AN UNLUCKY BUSH JUDICIAL NOMINEE

By Philip Terzian
Pittsburgh Post-Gazette
Thursday, February 21, 2002

A federal district court judge named Charles Pickering is not likely to be promoted to the 9th U.S. Circuit Court of Appeals. It is true that he was nominated last spring by President Bush. But after Vermont Sen. James Jeffords defected from the Republicans in August, giving Democrats control of the Senate, his colleague, Patrick Leahy, became chairman of the Judiciary

Committee, and judicial confirmations came to a screeching halt. Democrats on the Judiciary Committee are likely to vote unanimously against Pickering's nomination, thereby killing it.

This is an interesting, and instructive, case for various reasons. The first reason is that Pickering is from Mississippi, and that fact alone seems to have given the Democrats what amounts to a blank check to reject him. And because Pickering is in his 60s, it is presumed that he must have been an integral part of Mississippi's segregationist past. It is more than a little unfair, in my view, to hold the opinions people held a half-century earlier against them, especially if they have long since changed their minds about particular issues. (I say this as one who cast his first presidential ballot for George McGovern.) After all, the Democratic chairman of the Appropriations Committee, Robert Byrd of West Virginia, was once a member of the Ku Klux Klan. And Sen. Hillary Rodham Clinton, D-N.Y., was a Goldwater Girl in her day.

But in fact, Pickering was not only not an integral part of Mississippi's segregationist past, he was by all accounts a racial progressive. In the 1960s, he prosecuted the Klan for violent crimes, thereby losing his legislative seat at the next election. In the 1970s, he helped create the Institute of Racial Reconciliation at the University of Mississippi. Charles Evers, brother of the late Medgar Evers, and a longtime player in Mississippi politics, described to the Judiciary Committee his admiration for Pickering's integrity and fair-mindedness, and complained that "I don't know where the NAACP and these groups are coming from calling Pickering a racist."

All to no avail. Sen. John Edwards, D-N.C., demanded to know why Pickering had complained to the Department of Justice about a prison sentence for someone who had burned a cross on the front lawn of a black homeowner. Because, Pickering explained, he objected to the disparity between the mandatory seven-year term given to one defendant and the slap on the wrist given to a co-defendant who had fired a gun into the house but turned state's evidence. He was disturbed by the fact that one racist got seven years in prison, but his far more dangerous partner in crime got off essentially free.

None of this impressed Edwards, who was content to suggest that Pickering must approve of cross burning, or Edwards' admirers in the press, who congratulated him for standing up to a bigot (Mary McGrory) and dressing down a "throwback" (Los Angeles Times) to pre-civil rights Mississippi. None of the Democrats on the committee could offer any evidence to support this deceptive picture, and none showed any inclination to grapple with the truth. The Pickering nomination is, effectively, dead.

No doubt, Pickering is conservative on many issues, and opposes abortion -- although, as a federal circuit judge, his "personal views [on abortion] are irrelevant," he told the committee.

If Democrats are uncomfortable confirming someone whose opinions are contrary to their own, they should feel free to cast their votes against Pickering. What distinguishes this episode, however, is the fact that the nomination is not being fought on any legal or political principle, but on the basis of character assassination.

For Democrats, of course, it is payback time. They remember three Clinton appointees who

were denied the courtesy of a hearing, much less a vote, when Republicans controlled the Senate. Such practices are unquestionably wrong. As Chief Justice William Rehnquist has said, every nominee to the federal bench deserves the opportunity to explain himself to the Judiciary Committee, and the courtesy of a Senate vote. But while the Republicans preferred to scuttle nominations by quietly burying them in procedure, the Democrats choose to subject nominees to public campaigns of lies, distortion and personal abuse. The groundwork is laid by those progressive organizations -- Alliance for Justice, People for the American Way, etc. -- that specialize in such dirty work, but senior Democrats depend on their propaganda skills and lend their prestige to the climate of corruption.

In the fullness of time, the republic will not stand or fall on the fate of one district judge from Mississippi at the hands of the Senate. But an increasingly ugly machinery that ruins personal reputations on the basis of public deceit is neither smart politics nor a system of checks and balances.

PICKERING'S COURAGE DEMANDS CONFIRMATION

The Sun Herald (Biloxi, MS)
Wednesday, February 20, 2002

Away down South ". . . in the land of cotton, old times there are not forgotten . . . "

True. Those opening words to "Dixie" capture the spirit not only of the Old South, but of many contemporary Southerners as well.

"Forget? Never!" the bumper stickers say.

But the same could be said of folks in Chicago or New York or Los Angeles. When people in those places think of the South, especially in a political or cultural context, those thoughts run through the Civil War and the Civil Rights years. Their mind's eye sees names like Jefferson Davis and Bull Connors, and they see George Wallace standing in the schoolhouse door. Does racism still live in Mississippi in 2002?

Of course it does.

Sadly, too, it lives in all the rest of America as well.

This nation still bleeds for the sin of slavery and for the omission of deeds we should have done, and the commission of others we should not have done in those intervening years.

The river of pain flowing from that original sin sometimes ebbs, and sometimes rises, but it is never far from our consciousness or our conscience.

Charles Pickering, a 64-year-old federal district judge who hails from Jones County in South

Mississippi, can attest to that fact. The president of the United States has nominated him to a seat on the 5th Circuit Court of Appeals in New Orleans. For those who oppose him he is a tempting target, for all of those ghosts of Mississippi's past come suddenly to life with the awful thoughts of night riders, nooses and burning crosses.

Judge Pickering's own words and actions four decades ago have become the thread upon which his opposition seeks to deny him confirmation.

Today he regrets those words, utterances that can never be fully removed from the history of one man's life.

Perfection is a high standard. Charles Pickering did not achieve it. Can any of us say we have?

But since that long-ago day and those failed utterances he has been transformed. One cannot say for sure that he has had a change of heart, but of certainty it can be said he has been a changed man.

Since 1964 his public record has been exemplary by any standard.

n He has courageously stood up to the Ku Klux Klan's Imperial Wizard, a stand that contributed to his subsequent defeat as district attorney.

n He defended African-American clients in significant criminal cases.

n He has worked with University of Mississippi Chancellor Robert Khayat to establish an Institute of Racial Reconciliation at Ole Miss and he serves on that board today.

In the cauldron of this firestorm over his nomination, he is supported by the largely black community in his hometown, and by most black leaders in his home state, those who have seen his actions up close for these many years, voices with great moral authority on such matters, including Charles Evers, brother of slain Civil Rights leader Medgar Evers.

There is a plague of piousness afoot in our land today as politicians preen and pontificate before the cameras of so many committee rooms, preaching and prattling to cater to the public opinion of the moment. Their sermons often seem more the words of the Pharisees than the thoughts of pure hearts. It is true of those who have cast their stones at Judge Pickering.

You wonder if Abraham Lincoln or Hugo Black were seeking confirmation from these fellows if either could stand the scrutiny of these modern Jacobins.

Lincoln's own dreadful words would lash him like a whip . . . words so awful they could not be printed today without stirring pain and bitterness. Certainly Hugo Black, a former Klansman, could not have stood their test.

Yet one -- Mr. Lincoln -- many have said was this country's greatest president; the Great

Emancipator -- the man who freed the slaves and whose leadership maintained the Union. And the other, Justice Black, became one of the leading civil libertarians in U.S. history, rendering opinions whose breadth and majesty extended the rights of African-Americans to their most expansive state.

The young American nation often embraced the idea of redemption, a sense of charity that extends to those who have a change of heart, and who thereafter act in a way that is consistent with the "new way" they have embraced.

Charles Pickering should be confirmed because he is a good man whose past service is proof that he will render justice fairly to all, and whose personal courage and record have earned him not only the nomination of his president, but the approbation of his countrymen.

Interest Groups/Press Releases

Civil Rights Coalition Launches Campaign for Fair and Impartial Judiciary; Highlights Opposition to Charles W. Pickering Sr.'s Confirmation

http://www.fairjudges.org/

AScribe Newswire
Wednesday, February 20, 2002

The Leadership Conference on Civil Rights, the nation's oldest and broadest civil rights coalition, today launched a new outreach campaign designed to educate the civil rights community and the
American public about the importance of a fair and impartial judiciary.

In launching the new campaign entitled, "www.FairJudges.org ," Wade Henderson, LCCR's Executive Director stated, "LCCR strongly believes that the composition of the federal judiciary is a civil rights issue of profound importance because the individuals charged with dispensing justice in our society have a direct impact on civil rights protections for us all." Henderson added, "the FairJudges.org campaign will help to educate and mobilize the civil rights community and the American public in support of individuals who are the embodiment of fairness and impartiality." Specifically, the www.FairJudges.org campaign will:

-- Provide regular updates on the status of judicial nominations;
-- Serve as a clearinghouse for civil rights-related information regarding judicial nominations;
-- Help to coordinate local coalition building efforts around the nation; and
-- Mobilize support and/or opposition to those nominees officially endorsed/opposed by the Leadership Conference.

Charles W. Pickering Sr., President Bush's nominee for the U.S Circuit Court of Appeals for the

Fifth District, is the first nominee being highlighted in the www.Fair.Judges.org campaign. The Leadership Conference is opposing Judge Pickering's nomination because of his extreme views on important civil rights, women's rights and constitutional issues. The media, civil rights advocates, policy makers, and the American public can learn more about Charles Pickering's record as well as track the growing opposition to his nomination on www.FairJudges.org.

The Leadership Conference on Civil Rights is the nation's oldest, largest and most diverse civil and human rights coalition with more than 180 national organizations committed to the protection and advancement of basic civil and human rights for all persons in our society.

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Subject: judicial media review
Attachments: Judicial Media Review 3-18-02.wpd

Please see attached review

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Senate GOP Mulls Options on Judges

AP Online
March 18, 2002 Monday

Senate Republicans will do "whatever is necessary" to ensure that majority Democrats hold confirmation hearings for President Bush's judicial nominees, a leading GOP lawmaker said Sunday.

The comments from Sen. Don Nickles, the assistant minority leader, were the latest in the partisan bickering following the party-line defeat last week of a White House nominee for the U.S. Court of Appeals.

Nickles, R-Okla., said Democrats have been holding up the nomination process and 20 Bush nominees have not had hearings in the Senate Judiciary Committee. Some nominees have been waiting almost a year, he said. "We'll do whatever is necessary to get their attention to make sure that good nominees have a chance to have a hearing," Nickles said on "Fox News Sunday."

"We have to get some kind of agreement that we're going to take up these judges, or else Republicans are going to do something."

Nickles did not elaborate. His spokeswoman said the options include using Senate procedures to hold up Democrat nominees and legislation.

The Judiciary Committee voted 10-9 Thursday to against elevating U.S. District Judge Charles Pickering of Mississippi to the appeals courts.

Pickering was the first of Bush's judicial nominees to lose in the committee. After the defeat, Minority Leader Trent Lott of Mississippi, a longtime Pickering friend, said he would block one of Majority Leader Tom Daschle's aides from getting on the Federal Communications Commission.

Lott also blocked a Judiciary Committee request for $1.5 million to investigate the intelligence community's performance during the Sept. 11 attacks.

Lott has insisted his plan to block Bush's FCC nomination of 39-year-old Jonathan S. Adelstein, a legislative assistant for Daschle since 1995, has nothing to do with the Pickering vote.

"Adelstein had nothing to do with the Pickering nomination, so to lash out at him is an unfortunate set of circumstances that I hope that will cause Senator Lott to reconsider," Daschle said on CBS' "Face the Nation."

Daschle, D-S.D., said Democrats are "going to do the best we can to deal with all of the judges

that have been nominated."

When Democrats took over the Senate in June, they warned they would be tough on Bush's judicial nominees they thought too conservative. Democrats said Republicans had thwarted or stalled many of former Democratic President Clinton's nominees with similar tactics when they controlled the Senate.

The Judiciary Committee chairman, Sen. Patrick Leahy, D-Vt. has suggested he would not allow potentially controversial Bush choices to come before the committee until other nominees went through first.

Lott's Threat Isn't Seen Affecting Adelstein Appointment to FCC

Communications Daily
March 18, 2002, Monday

Industry and congressional observers expressed surprise that Senate Republican Leader Lott (Miss.) threatened to block President Bush's nomination of Jonathan Adelstein to Democratic seat on FCC. Lott said his plan to place hold on Adelstein's nomination wasn't because of Senate's rejection of Charles Pickering's appointment to federal appeals court. Instead, he questioned Adelstein's qualifications, saying he was "relatively young" and didn't have enough experience, although he's older than 2 Republican FCC commissioners. Adelstein is 39, turning 40 in Aug., which makes him about 7 months older than Chmn.
Powell, who will be 39 March 23. He's 4 years older than Comr. Martin, who turned 35 in Dec. Comr. Abernathy will be 46 in June. Supporters of Adelstein, legislative aide to Senate Majority Leader Daschle (D-S.D.), in the long run don't expect that Lott's threat will interfere with Daschle's selection for seat left vacant by former Comr. Gloria Tristani. Daschle spokeswoman said Senate Democratic leadership had no intention of responding in kind with threats to block Republican-backed political nominees. But she emphasized "there are a lot more nominees that they want than we want," and said she would "assume the
Republicans will take a long, hard look at this." She said it was unfortunate Lott "would lash out at someone totally uninvolved" in Pickering matter, and predicted situation eventually would blow over: "We fully expect Jon to be nominated and confirmed."

Sen. Dorgan (D-N.D.) expects Lott to "rethink this" threat and believes controversy "will play itself out," Dorgan spokesman said. Dorgan said Lott's vow to block Adelstein's nomination "is out of character" and "just doesn't sound like Senator Lott," according to staffer. Sen. Johnson (D-S.D.) also expressed disappointment that Lott "would play such petty politics with an important appointment like this position on the [FCC]." He said Adelstein was "eminently qualified" for seat and described Lott's opposition as "misguided retribution." Johnson said nomination was especially important for rural America: "Without his
appointment, the concerns of rural citizens will not be heard."

OPASTCO spokesman agreed Adelstein's credentials "speak for themselves" and said

association "strongly supports" his nomination: "We have a vacancy at the Commission... and Jon is the right person to fill it." Precursor Group analyst Scott Cleland said there was growing trend in Washington for nominations to become pawns in "bigger political wars." Cleland predicted Adelstein eventually would be confirmed because "this has nothing to do with his qualifications as a commissioner and everything to do with Senate politics." -- Steve Peacock

GOP Vow on Hearings

Newsday (New York, NY)
March 18, 2002 Monday

EXCERPT

Senate Republicans will do "whatever is necessary" to ensure that majority Democrats hold confirmation hearings for President George W. Bush's judicial nominees, a leading GOP lawmaker said yesterday.

The comments from Sen. Don Nickles (R-Okla.), the assistant minority leader, were the latest in the partisan bickering following the party-line defeat last week of a White House nominee for the U.S. Court of Appeals.

Nickles said that Democrats have been holding up the nomination process and that 20 Bush nominees have not had hearings in the Senate Judiciary Committee.

"We'll do whatever is necessary to get their attention to make sure that good nominees have a chance to have a hearing," Nickles said on "Fox News Sunday." "We have to get some kind of agreement that we're going to take up these judges, or else Republicans are going to do something."

The Judiciary Committee voted 10-9 Thursday against elevating U.S. District Judge Charles Pickering of Mississippi to the appeals courts. Pickering was the first of Bush's judicial nominees to lose in the committee.

He could be the next Supreme Court justice Alberto Gonzales has become a rising star by defending President Bush's conservative policies. He also has alienated key Democrats whose support he would need to be confirmed.

Joan Biskupic
USA TODAY
March 18, 2002, Monday

WASHINGTON -- When Texas state Sen. David Sibley was curious about the thinking inside then-Gov. George W. Bush's administration a few years ago, he would try to corner Alberto

Gonzales, the governor's lawyer.

"We good ol' boys 'ping' for information," says Sibley, a Republican from Waco, comparing his pursuit to using sonar. When a "ping" hits a target, it returns an echo -- or in Sibley's case, a clue as to which way the political winds are blowing.

"But with Al, you'd ping and nothing would come back," Sibley says. "I'd say, 'Wow, Bush was really mad at that guy.' Al would say, 'Oh.' Or I'd say, 'I'm thinking of adding this to a bill,' and he'd say, 'Ah.' " For Gonzales, now the White House counsel, the road to Washington was paved with discretion and loyalty to the man who would be president. As counsel to the governor, as Texas secretary of state and as a Texas Supreme Court justice -- jobs given to him by Bush -- Gonzales was cautious and had a knack for avoiding partisan conflicts. Those traits, along with his ties to Bush, helped land him on an informal GOP list of potential U.S. Supreme Court nominees even before he got here last year.

Now, White House sources and legal analysts say, Gonzales has emerged as a front-runner for a future Supreme Court nomination in an administration that is interested in appointing the nation's first Hispanic justice.

Gonzales' stock is up, the sources say, because in defending White House policies he has become an increasingly bold political player, impressing many influential Republicans who had questioned his conservative credentials.

"A lot of people thought, 'Who is this Gonzales guy? He's going to come to Washington and Washington will chew him up,' " says Charles Cooper, an assistant attorney general under President Reagan. "But he has done a great job . . . with Bush's very conservative outlook."

But Gonzales' actions also have led him into conflicts with Senate Democrats who oversee judicial nominations -- and who could play key roles in any confirmation for a Supreme Court nominee. It's all added a new plot line to the never-ending speculation here about when there might be an opening on the court and how Bush might change the court.

Bush's voice on the law

Since becoming White House counsel last year, Gonzales:

* Has annoyed Senate Democrats, who say he has given little ground in the White House's campaign to stock federal appeals and trial courts with conservatives who could influence the law for years to come. He also ended a half-century White House tradition of using the American Bar Association to screen nominees. (Republicans had long accused the ABA of being too
liberal.)

* Has been a key promoter of Bush's anti-terrorism agenda, staunchly defending plans to use military tribunals to try foreign terrorism suspects. He crafted the legal rationale limiting the

rights of al-Qaeda and Taliban fighters held in Cuba by classifying them as battlefield detainees, rather than prisoners of war.

* Become the point man for the administration's vigorous efforts to keep information secret and preserve presidential prerogatives.

That has included backing Vice President Cheney in his clash with the General Accounting Office. Cheney has refused to turn over records of meetings from a task force that devised national energy policy. At issue is the extent to which the policy was shaped by energy executives, among them some from troubled Enron Corp.

Gonzales also has surrounded himself with ideologically conservative lawyers who have been active in GOP causes. Among them: deputy counsel Timothy Flanigan, who clerked for former U.S. chief justice Warren Burger and was an assistant attorney general in the first Bush administration.

Such moves have won Gonzales support among conservative Republicans such as Orrin Hatch of Utah, the GOP's ranking member of the Senate Judiciary Committee. Gonzales would need his backing to ascend to the high court.

"I simply could not be more impressed," Hatch says.

Some Republicans initially feared that Gonzales might be a "stealth liberal" like David Souter, who was named to the Supreme Court 12 years ago by Bush's father. To the dismay of many Republicans, Souter, 62, has become one of the four liberal justices on the nine-member court.

There has been no indication that anyone on the court will retire soon, but most speculation focuses on the three oldest justices.

Sandra Day O'Connor, 71, the court's swing vote because she is the conservative most likely to vote with the liberals, recently said her retirement is not imminent. Conservative Chief Justice William Rehnquist, 77, has said that he has considered leaving but does not seem to have slowed down. Liberal justice John Paul Stevens, 81, has said nothing about retirement.

The court is deeply split on issues such as abortion, affirmative action and religious liberties, and any change among the justices could mean a difference in the law.

Besides Gonzales, those mentioned most frequently by GOP sources include U.S. appeals court judges J. Michael Luttig and J. Harvie Wilkinson III of Virginia, Emilio Garza of Texas, and Samuel Alito of New Jersey. Another candidate would be U.S. Solicitor General Theodore Olson, who represented Bush in the Florida election dispute and whose wife, Barbara, died aboard a hijacked jet on Sept. 11.

Several factors -- which justice retires first and the political currents of the day, as well as recent moves of potential nominees -- could alter the dynamics of any selection process. If Rehnquist

were to retire first, for example, the White House might seek a more experienced lawyer than Gonzales to replace the chief. But for now, many insiders believe Gonzales is on deck for a nomination.

Gonzales, the son of migrant farm workers who worked his way up to Harvard Law School, is "in as good of a position as anyone," says C. Boyden Gray, White House counsel to Bush's father.

"We think he's a leading contender," says Elliot Mincberg of the liberal People for the American Way.

"We're watching him."

Playing it close to the vest

Gonzales, 46, declined to be interviewed. He and other administration officials are reluctant to discuss anyone's prospects for the court. However, Gonzales acknowledged in an interview last year that it would be foolish for the White House not to be preparing for a vacancy on the court.

As Texas lawmakers such as Sibley learned, Gonzales is not easy to penetrate. In scripted speeches he has delivered recently, it's clear that despite his higher profile, the hard-to-read Al Gonzales lives on: the slight smile, the non-committal nod, the one-sentence answers.

In the interview last year, he was careful when discussing judicial philosophy. He declined to answer specific questions on controversial issues that inevitably confront Supreme Court nominees, such as abortion and affirmative action. He emphasized that his personal views might be different from how he would vote on a case.

Gonzales' two-year tenure on Texas' Supreme Court, which ended when he resigned so he could follow Bush to Washington, was too brief to offer much insight into his attitudes as a jurist. Texas lawyers regarded him as a moderate on a generally conservative court.

In Washington, Gonzales' close-to-the-vest manner hasn't always played well, particularly among Democrats who are pressing the administration for a more ideologically diverse roster of nominees for federal courts.

He has had a strong hand in crafting a roster of nationally recognized advocates for conservative causes. They include Jeffrey Sutton, an Ohio lawyer who has successfully argued several states' right cases at the high court, and Paul Cassell, a University of Utah professor known for his work against the "Miranda" rights that police read to crime suspects.

For months, Gonzales and Democrats have been at loggerheads over nominees to several courts, particularly in Midwestern and Mid-Atlantic states. Many Democrats report a pattern in their dealings with Gonzales: He is pleasant. He suggests differences can be worked out. Everyone walks away optimistic. Then nothing happens.

"I have heard of too many situations, involving too many reasonable home-state senators, in which the White House has shown no willingness to work cooperatively" on judicial nominees, says Senate Judiciary Committee Chairman Patrick Leahy, D-Vt.

GOP senators counter that it's Democrats who have been inflexible. Gonzales says the Democrat-led Senate "has not done enough to meet its constitutional responsibility" of voting on judicial nominees. He criticizes the Senate for not holding hearings on some nominees from last spring and says that he has been meeting with senators to break standoffs.

In the interview last year, Gonzales said he looks at character when he screens potential nominees for trial and appeals courts.

"Is this a good person? That's very important to this president."

He said the White House also focuses on competence and conservative judicial philosophy. He said society's problems are for elected lawmakers, not judges, to solve.

Gonzales was born in San Antonio to Pablo and Maria Gonzales, the second of their eight children. His parents, both children of Mexican immigrants, met as teenage farm workers. Pablo had finished only the second grade; Maria had made it to sixth grade.

The family settled in Houston, where Pablo became a construction worker. They lived in a two-bedroom house with no hot running water. Gonzales began dreaming of college when he helped with a neighbor's soda concession business at Rice University's football stadium. But with no money after high school graduation in 1973, Gonzales enlisted in the Air Force.

Stationed at Fort Yukon, Alaska, he met Air Force Academy graduates who urged him to apply to the academy in Colorado Springs. Gonzales was admitted in 1975 but left the academy for Rice in 1977, one of a string of occasions in which he reached a difficult goal, then left for another challenge.

After graduating from Harvard Law School in 1982, Gonzales went to work for the Houston-based law firm Vinson & Elkins, which long represented the energy giant Enron. (As a state court judge, Gonzales, like many Texas candidates, received campaign contributions from Enron).

Gonzales rejected a job offer from the first President Bush in 1988 to try to become one of Vinson & Elkins' first minority partners. He was made a partner in 1991, then left for Austin in 1995 to become the governor's counsel.

Got Bush off jury duty

One of Gonzales' most controversial actions in that post was helping to get George W. Bush excused from jury duty in 1996, a situation that could have required the governor to disclose his

then-secret 1976 conviction for drunken driving in Maine. Gonzales suggested to the judge and defense lawyer that if Bush served, he would not, as governor, be able to pardon the defendant in the future.

Whether Gonzales' rapid rise in government culminates at the high court remains to be seen.

Last year, the Hispanic National Bar Association gave Gonzales a list of prominent Hispanic judges and lawyers to try to show that there is a large pool of Hispanic candidates for a Supreme Court seat. Gonzales' name was on the list.

Carlos Ortiz, a former president of the bar, says Gonzales told him to take it off, that he did not want a seat on the high court.

Looking back, Ortiz says, "I wasn't sure whether he was really being serious or not."

A Wife's Tale

Michael Kinsley
The Washington Post
March 18, 2002, Monday

If you're not careful, you can squander an entire journalistic career swatting flies from the Wall Street Journal editorial page. But sometimes resistance to temptation is futile. The question ordinarily posed by these classics is whether the author is staggeringly disingenuous or sincerely addled by ideology. In the case of an op-ed published in the Journal Thursday, though, the explanation is more benign. This article was an attack on Democrats for opposing President Bush's nomination of Charles W. Pickering for a seat on the Fifth Circuit Court of Appeals. (The Senate Judiciary Committee killed the nomination later that day on a party-line vote.) The author was Virginia Thomas, wife of Supreme Court Justice Clarence Thomas, whose own confirmation ordeal has made him a martyr-saint of American conservatism. Thomas, as you will recall was pummeled so brutally by vicious gangs of Democrats and liberals -- who accused him of being a right-wing ideologue with a closed mind about abortion rights, among other vicious lies -- that he now lies comatose in the Supreme Court, able only to issue reliably right-wing opinions and vote against abortion rights. Naturally his wife is bitter, and self-righteous bitterness on behalf of an embattled spouse is forgivable, even appealing. Virginia Thomas is also "director of executive branch relations" at the Heritage Foundation, the right-wing propaganda machine that masquerades as a tax-exempt nonpolitical research institution. That a Supreme Court justice's spouse could write this article, and the nation's most influential conservative opinion forum could publish it, illustrates that, for all the talk of the insular liberal culture of Washington, the conservative Washington culture is large enough and insular enough for its members to live within an echo chamber of their own views.

Or maybe I'm the one who is divorced from reality. But here is reality as I see it. The Constitution gives the Senate the authority to "advise and consent" on the appointment of federal

judges. Whatever this means, it must mean more than the obligation to rubber-stamp the president's nominees or merely to pass on their basic competence. Since Ronald Reagan, presidents of both parties have become more careful to nominate judges who reflect their own judicial philosophy -- and there is nothing wrong with that. In response, the Senate -- especially when controlled by the opposing party -- has weighed judicial philosophy more carefully in exercising its advice and consent -- and there is nothing wrong with that, either. Both political parties oppose nominees from the other one and pompously deplore "politics" when the other party does the same.

Somewhat more tendentiously, Republican presidents have been more disciplined than the one recent Democrat, Bill Clinton, about nominating judges who won't surprise them, which makes the Republican indignation about "ideological" opposition to the president's choices more hypocritical. On the other hand, Democratic politicians and interest groups have been somewhat less principled about distinguishing judicial philosophy -- how a judge interprets the law and the Constitution -- from the vulgar question of whether they like the outcome. Meanwhile, though, Republicans pretend or imagine that a few magic words such as "judicial restraint" and "strict constructionism" add up to a philosophy beyond legitimate dispute -- that to believe otherwise is not just misguided but more like cheating -- even though it is a philosophy that even they don't apply with any consistency.

It seems to Virginia Thomas, by contrast, that anyone who opposes judicial nominees of Republican presidents -- people such as Tom Daschle -- represents the "hard left" that cares only "about abortion and homosexuality," and doesn't "think of [opponents] as human." Oh, yes, and these hard leftists "demonize" people they disagree with! "Senate Democrats are actually claiming that some views are so politically incorrect that judges (or others) cannot be allowed to hold them," she wrote, and her husband and Pickering are defending "a culture . . . tolerant of philosophical disagreement."

Unless I'm crazy, "hard left" is not an accurate description of the average Democrat on the Senate Judiciary Committee. In reality, both sides of these disputes care disproportionately about abortion. (Homosexuality seems more like a right-wing obsession.) That is why abortion is so contentious. If one side stood for single-issue "litmus tests" and the other stood for "tolerance of philosophical disagreement," we wouldn't be having these set-piece standoffs every few years. The battles happen because both sides have litmus tests, which is another way of saying these are issues they feel strongly about. In Virginia Thomas's opinion, should Republican senators vote to confirm a judicial nominee who believes that Roe v. Wade was correctly decided? Or is that view "so politically incorrect that judges (or others) cannot be allowed to hold" it -- which is just an overheated way of saying you disagree?

Looking around the real world, it is hard to see this martyrdom that Clarence Thomas supposedly has suffered for the sin of holding views that the all-powerful hard left wants to suppress. He had a rough confirmation battle, but now he is a Supreme Court justice, even though he clearly lied under oath -- or at the least willfully deceived -- in claiming he had never discussed Roe v. Wade and had no opinion about it. He probably lied about more notorious matters, too. If he's in pain, it must only hurt when he laughs.

Senate GOP Discuss Retaliation

AP Online
March 17, 2002 Sunday

Senate Republicans will do "whatever is necessary" to ensure that majority Democrats hold confirmation hearings for President Bush's judicial nominees, a leading GOP lawmaker said Sunday.

The comments from Sen. Don Nickles, the assistant minority leader, were the latest in the partisan bickering following the party-line defeat last week of a White House nominee for the U.S. Court of Appeals.

Nickles, R-Okla., said Democrats have been holding up the nomination process and 20 Bush nominees have not had hearings in the Senate Judiciary Committee. Some nominees have been waiting almost a year, he said. "We'll do whatever is necessary to get their attention to make sure that good nominees have a chance to have a hearing," Nickles said on "Fox News Sunday."

"We have to get some kind of agreement that we're going to take up these judges, or else Republicans are going to do something."

Nickles did not elaborate. His spokeswoman said the options include using Senate procedures to hold up Democrat nominees and legislation.

The Judiciary Committee voted 10-9 Thursday to against elevating U.S. District Judge Charles Pickering of Mississippi to the appeals courts.

Pickering was the first of Bush's judicial nominees to lose in the committee. After the defeat, Minority Leader Trent Lott of Mississippi, a longtime Pickering friend, said he would block one of Majority Leader Tom Daschle's aides from getting on the Federal Communications Commission.

Lott also blocked a Judiciary Committee request for $1.5 million to investigate the intelligence community's performance during the Sept. 11 attacks.

Lott has insisted his plan to block Bush's FCC nomination of 39-year-old Jonathan S. Adelstein, a legislative assistant for Daschle since 1995, has nothing to do with the Pickering vote.

"Adelstein had nothing to do with the Pickering nomination, so to lash out at him is an unfortunate set of circumstances that I hope that will cause Senator Lott to reconsider," Daschle said on CBS' "Face the Nation."

Daschle, D-S.D., said Democrats are "going to do the best we can to deal with all of the judges

that have been nominated."

When Democrats took over the Senate in June, they warned they would be tough on Bush's judicial nominees they thought too conservative. Democrats said Republicans had thwarted or stalled many of former Democratic President Clinton's nominees with similar tactics when they controlled the Senate.

The Judiciary Committee chairman, Sen. Patrick Leahy, D-Vt. has suggested he would not allow potentially controversial Bush choices to come before the committee until other nominees went through first.

Congress deals blows to Bush domestic plan; Anti-terrorism popularity not enough

Bennett Roth and Karen Masterson
The Houston Chronicle
March 17, 2002, Sunday

WASHINGTON - President Bush's wartime popularity has not yet translated into major success for his domestic agenda in Congress, where the White House has suffered legislative setbacks and clashed increasingly with lawmakers.

Even as Bush basked in the cheers of troops last week during a trip to Fort Bragg, N.C., administration officials were smarting from the Senate Judiciary Committee's decision to nix the president's choice for the U.S. Court of Appeals for the Fifth Circuit.

Despite last-minute lobbying by the president and the staff, the Democratic majority on the committee killed the nomination of Charles Pickering Sr., the Mississippi federal district court judge whose civil rights record was questioned.

The action was only the latest evidence that the president's sky-high approval ratings - stemming from public support for his handling of the anti-terrorism campaign - has not necessarily given him the upper hand with Congress. As lawmakers return to routine business after the shock of the Sept. 11 terrorist attacks wanes, analysts say that much of Bush's conservative domestic agenda remains as controversial as it was before the strikes. Furthermore, in an election year both parties are eager to point out ideological differences rather than reach consensus.

It is becoming increasingly unlikely that the Senate will approve major elements of the president's energy plan, including a provision to drill in Alaska's Arctic National Wildlife Refuge.

And last week, a House budget committee finished drafting a spending plan that excludes money Bush sought for oil exploration in the environmentally sensitive refuge.

Democrats scored a victory earlier this month when Bush signed an economic stimulus package

that was stripped of most of the tax cuts the president was seeking.

Even Republicans have lately grown irritated with a White House they claim is loath to share information with them.

Bush's budget director, Mitch Daniel, came under fire last week for the administration's refusal to let Homeland Security chief Tom Ridge testify about the details of the $ 38 billion proposed homeland defense budget for next year.

"I hope that the lack of information does not compel us to withhold funds for the priorities established by the president," said Rep. Ernest Istook, R-Okla., who heads a key House appropriations subcommittee.

Democratic Rep. David Obey of Wisconsin was more acerbic in his criticism, accusing Daniels and others in the administration of having a "severe attitude problem."

Obey, the ranking Democrat on the appropriations committee, threatened, "No information, no money."

Marshall Wittmann, a political analyst, said that in an election year, when the entire House and a third of the Senate is up for grabs, the parties are more eager to stress their differences than to reach agreement with the White House.

He and others said that outside of military buildup, Bush has not taken the lead on issues with broad voter appeal.

"The president's wartime popularity has not translated into traction for his agenda," said Wittmann, who works at the conservative Hudson Institute.

But Wittmann warned that Democrats may not be able to capitalize on Bush's setbacks because the president has been politically adept at embracing popular parts of their agenda.

He noted that Bush, for example, took credit for the slimmed-down stimulus package, which he quickly signed and promoted in his weekly radio address.

Furthermore, even though it has never been a priority for him, Bush has suggested he would not stand in the way of a campaign finance reform measure that the Senate may approve later this month.

Nevertheless, the Pickering defeat and increased tensions with Capitol Hill suggest the president will not have an easy time getting his budget enacted or pushing through other judicial nominees.

Thomas Mann, a scholar at the Brookings Institution, said that one reason for Bush's setbacks is that voters are as divided now over his conservative domestic agenda as they were before the Sept. 11 attacks.

Mann also said that the president's view of executive branch power has fueled tensions with lawmakers of both parties.

He said that Bush has displayed "almost a contempt of Congress. . . . I think he finds them a nuisance and is resentful they would try to oversee his presidency."

During a news conference last week, Bush disputed the contention that he was not keeping Congress informed, saying he frequently meets with lawmakers.

However, the president defiantly declared that he would not let Congress erode executive authority by giving into its demands that Ridge testify.

"He does not have to testify; he's part of my staff, and that's part of the prerogative of the executive branch of government. And we hold that very dear," Bush said.

Although he said it in a light-hearted manner, the president also underscored his displeasure with members of his own party who questioned his willingness to share information with Congress.

"I don't know what single Republican you're referring to," he said in response to a reporter's question about GOP criticism. "But if you give the name afterwards, I'll be glad to have him over for another consultation, if you know what I mean."

A number of Republicans have called on the Bush administration to let Ridge testify about his budget on Capitol Hill.

"There's no harm in it and it certainly would defuse unnecessary tensions between the White House and this house," said Sen. Gordon Smith, R-Ore.

Lawmakers have also announced they will challenge other aspects of the Bush budget. Rep. Henry Bonilla, R-San Antonio, indicated he will try to reverse the White House recommendation to cap funding for crop insurance.

A dispute over funding for Army Corps of Engineer projects that led to the recent firing of the agency's director has also fueled congressional anger toward the White House.

Former Mississippi congressman Mike Parker was abruptly dismissed by Bush as the corps' director after he disagreed with a White House budget proposal to eliminate projects in a number of congressional districts.

White House officials said Parker was out of line when he aired his disputes with them openly in testimony before Congress.

Daniels said last week that the Sept. 11 terrorist attacks have changed the way business is done

in Washington.

"There are transcendent priorities - the protection of America and the defeat of a foe that's out to harm us," the budget director said. "Individual and provincial and territorial priorities, however important they may be in isolation, they may have to give way this year, will have to give way."

Grover Norquist, head of Americans for Tax Reform and an administration ally, said it was not unusual for congressional appropriators to butt heads with White House budget officials.

"This idea that there was this warm 'give the president everything he wants,' it has never happened," said Norquist.

First Punch in the Revived Bench-Tipping Brawl

Neil Lewis
The New York Times
March 17, 2002, Sunday

The confirmation battle over Judge Charles W. Pickering Sr. signals an escalation in the long-running partisan and ideological fight between presidents and senators over the shape of the federal courts.

In a show of strength, Senate Democrats defeated the Pickering nomination this week and put in motion a carefully designed strategy of selective delay in hopes of persuading President Bush to be more moderate in future judicial choices. Under this approach, Senator Patrick J. Leahy, the Vermont Democrat who is the chairman of the Judiciary Committee, is moving quickly on those of Mr. Bush's judicial nominees the Democrats deem to be moderate to fend off criticism that they are blocking the president's choices.

At the same time, nominees who are regarded as highly conservative are being deferred indefinitely.

Even if it was unspoken, the message was clear that Democrats were ready to take the same approach in the likely event that Mr. Bush has the opportunity to nominate at least one Supreme Court justice.

In effect, they were telling the White House that even though their majority was slim, there was a new balance of power in the confirmation of federal judges. By controlling the Judiciary Committee, the Democrats were able to prevent Mr. Pickering's nomination from coming to the full Senate for a vote.

Senator Charles E. Schumer, a New York Democrat and member of the Judiciary Committee, said on Thursday that his principal reason for opposing Judge Pickering was to signal to the White House that it could not hope to send up legions of conservative judicial nominees and

expect the Democrats to accept them willingly. "This is about maintaining balance on our courts," Mr. Schumer said.

The modern era of pitched ideological confirmation battles began in 1987 when the Senate rejected the nomination of Robert H. Bork to join the Supreme Court. The Senate Judiciary Committee's rejection on Thursday of Mr. Bush's effort to elevate Judge Pickering to an appeals court demonstrated that the battle lines and intense emotions of 1987 remain largely in place and will shape the fight over the next Supreme Court nominee.

The fight over who gets to sit on the nation's top courts has its roots in the smoldering resentment among conservative legal theorists who believed that the nation's courts, and especially the Supreme Court of the Earl Warren period, had become too liberal -- by which they meant soft on crime and disrespectful of government authority. When Ronald Reagan was elected in 1980, he rewarded that group with the ability to reshape the courts, and those lawyers took to the task with great zeal.

In the 12 years of Republican rule under Mr. Reagan and the first President Bush, the courts were tilted distinctly rightward. Academic studies showed that the judges appointed by Presidents Reagan and Bush were far more likely to uphold restrictions on abortions, approve law enforcement practices and favor government authority than were judges appointed by previous presidents, including those named to the bench by Gerald R. Ford and Richard M. Nixon.

President Bill Clinton resolutely declined during his eight years in office to mount any liberal counter offensive. He generally named moderates who would be palatable to Republicans. When nominees encountered opposition, they were often quickly dropped, as Mr. Clinton seemed unwilling to expend any political capital on nomination fights.

But the Republicans have played the game differently and continue to do so. They willingly engage in fights, even losing ones, as part of their effort to place their kind of people on the bench.

President Bush did not put much effort into trying to persuade Democrats to relent and allow the Pickering nomination to go to the full Senate, where the judge might have been confirmed with the help of a few conservative Democrats. But Mr. Bush made two public appeals on behalf of Judge Pickering, not so much in the hope of saving the nomination but to charge his opponents with being unfair and to extract a price from the Democrats.

The Democrats' strategy of selective delay has meant that several of Mr. Bush's more conservative choices, especially those nominated for seats on the nation's 13 appeals courts, have been left waiting.

The appellate courts, the level just below the Supreme Court, have become increasingly influential as the Supreme Court decides fewer cases each year, leaving the appellate ruling as the final word on issues like abortion regulations, school prayer and the role of Congress.

Cornyn urges Senate contenders to denounce Pickering rejection

The Associated Press
March 16, 2002, Saturday

DALLAS (AP) - Republican U.S. Senate candidate John Cornyn on Friday urged his potential Democratic opponents to protest their party's unanimous decision to block the nomination of a Mississippi judge to a federal appeals court.

Thursday, the Democrat-controlled Senate Judiciary Committee defeated the nomination of U.S. District Judge Charles Pickering to the U.S. Appeals Court in New Orleans. Pickering was one of President Bush's nominees.

Cornyn, the Texas attorney general, won Tuesday's GOP nomination for the Senate seat being vacated by Sen. Phil Gramm. He'll face either Ron Kirk, former mayor of Dallas, or Victor Morales, a geography teacher. Both finished with 33 percent of the vote in the primary and are headed to an April 9 runoff.

"By remaining silent, my potential Democratic opponents are effectively endorsing a litmus test that eliminates qualified nominees unless they are liberal activists," Cornyn said in a news release.

Kelly Fero, a Democratic strategist and Kirk supporter, said Cornyn was confusing the matter at hand: finding a qualified judge for the job.

Morales, Kirk split on need for fuel-efficiency standards

Gary Susswein
Austin American Statesman
March 16, 2002, Saturday

Democratic Senate hopefuls Victor Morales and Ron Kirk are at odds over the proposed fuel-efficiency standards for cars, trucks and sport-utility vehicles that the U.S. Senate rejected this week.

Morales said Friday that he would have voted to require vehicles to meet specific mileage-per-gallon standards by a specific date to reduce emissions and help curb the country's dependence on foreign oil.

A measure proposed by Sen. John McCain, R-Ariz., would have raised the average fuel efficiency to 36 miles per gallon by 2016. Morales said he did not know the specifics of the proposal until he was contacted by a reporter.

"Based on what (you) told me, I would have voted for it," the Crandall schoolteacher said. "I am for tougher standards as long as it's allowed to be phased in to give the industry time."

Kirk, the former Dallas mayor, said he would have voted against the measure, which was defeated 62-38 Wednesday.

The Senate instead asked the Transportation Department to study the need for and potential impact of new fuel-efficiency standards.

"He feels we can accomplish the same things through the use of technology," Kirk spokesman Justin Lonon said. "There's a way to . . . improve fuel efficiency and conservation through technology -- through hybrid vehicles and that sort of thing -- that can protect jobs and still help the environment."

The proposal was crafted by a bipartisan group of senators and backed by environmental organizations.

It was opposed by the auto industry, automobile workers unions and senators who said the federal government has no right to tell people what kinds of cars to drive.

Texas Sens. Phil Gramm and Kay Bailey Hutchison were among 43 Republicans and 19 Democrats who voted against the plan.

The disagreement between Kirk and Morales, who will face each other in an April 9 runoff, is their first significant rift on policy issues.

Responding to another controversial measure in the Senate this week, Kirk and Morales said they support the Judiciary Committee's party-line rejection of Mississippi judge Charles Pickering's nomination for the 5th U.S. Circuit Court of Appeals.

Each candidate, though, emphasized that he hadn't reviewed Pickering's record as closely as the committee members did.

Pickering's stance on abortion and his commitment to civil rights have been questioned.

Attorney General John Cornyn, the Republican Senate nominee, on Friday criticized the committee's decision.

Thursday's "unanimous Democratic committee vote rejecting Judge Charles Pickering is an outrage," Cornyn said in a written statement.

"By remaining silent, my potential Democratic opponents are effectively endorsing a litmus test that eliminates qualified nominees unless they are liberal activists."

Morales and Kirk declined to respond to those charges.

Cornyn said he would have opposed the new fuel-efficiency standards.

Pickering Rejection Sets Off Nominee War

Susan Milligan
The Boston Globe
March 16, 2002, Saturday

WASHINGTON - Furious at the rejection of Charles W. Pickering for a federal appeals court seat, Senate minority leader Trent Lott said yesterday that he would block a Democratic choice for the Federal Communications Commission, while court-watchers prepared for a protracted, partisan fight over future nominees.

Lott, a Republican who represents Pickering's state of Mississippi, announced he would seek to obstruct the nomination of Jonathan Adelstein, an aide to Senate majority leader Thomas A. Daschle, Democrat of South Dakota.

Lott's office brushed aside suggestions that the threat was payback for Pickering, whose nomination was refused by a 10-9 party-line vote Thursday by the Democratic-controlled Senate Judiciary Committee.

But both Pickering's supporters and detractors said the salvo signaled the beginning of a long battle over President Bush's nominees to the courts, one that could paralyze the Senate, heighten tensions between the executive and legislative branches, and deprive the judiciary of needed judges. "It's out of control. It's become a political battle for who's going to control the courts," said Robert Bork, whose 1987 nomination to the US Supreme Court was defeated amid Democratic complaints about his conservative ideology.

"I think they burned [Pickering] because they were sending a message to the White House to not send up any conservative Supreme Court justices."

A spokesman for Lott, Ron Bonjean, said Lott opposes Adelstein because he is young and inexperienced. Adelstein is 39, slightly younger than FCC chairman Michael Powell, a Republican who turns 40 next week. Two seats on the five-member FCC are reserved for the party not in the White House.

Under Senate rules, any senator can block confirmation by a "hold" on a nomination. The votes of 60 senators would be needed to break the hold.

"It's really unfortunate that Senator Lott would try and take retribution on someone who was completely uninvolved," said a Daschle spokeswoman, Ranit Schmelzer.

Pickering, a conservative US district judge in Mississippi, underwent attacks from civil rights groups and some senators regarding his record on racial matters. And some Democratic senators said during debate over Pickering that they voted against him because of his conservative viewpoints.

And Democrats won't stop there. Staff members for Senator Edward M. Kennedy, Democrat of Massachusetts and a senior member of the Judiciary Committee, are already assembling background information on judicial nominees in the pipeline, and have raised questions about the nominees' records on civil rights, abortion, and rights for the disabled.

"Senator Kennedy will continue to fulfill his constitutional duty to advise and consent," said spokeswoman Stephanie Cutter.

Liberal interest groups that have played a strong role in defeating Republican appointments in the past are also gearing up for future fights. Expected targets include Fifth Circuit Court of Appeals nominee Priscilla Owen, a Texas Supreme Court justice whose decisions have concerned abortion-rights supporters; Paul G. Cassel, a nominee for a Utah judgeship who has challenged the Miranda ruling requiring police to read defendants their rights; and Michael McConnell, a 10th Circuit Court of Appeals nominee who is disliked by abortion-rights supporters.

Nan Aron, head of the Alliance for Justice, said that Bush has the right to nominate whomever he wants, but that the Senate has an obligation to screen the nominees.

"I think this demonstrates the Senate's independent role in scrutinizing these candidates," Aron said. "However much Senator Lott tries to blame the [opposing] groups or the politics, Judge Pickering's record was one that was so hostile to civil and women's rights that the public insisted he be defeated."

In the halls of the Senate, Pickering's supporters were outraged. Senator Zell Miller, Democrat of Georgia, warned that the committee's rejection of the Mississippi judge would have "political repercussions" for Democratic candidates in the South.

In another jab at the committee, Lott announced yesterday that he would seek to stop a Senate Judiciary Committee request for $1.5 million to investigate intelligence operations on Sept. 11.

"Holding hearings and votes on judicial nominees is arguably the most important responsibility" of the panel, Lott wrote to Senator Christopher J. Dodd, Democrat of Connecticut and chairman of the Rules and Administration Committee. "I am hard pressed to understand why the committee, under its current leadership, should be entrusted with further responsibilities and resources when they have failed to take action on their primary responsibilities."

As of yesterday, there were 94 vacancies for federal judgeships - an "extraordinarily high" number, but not a record, said White House spokeswoman Anne Womack. Republicans contend that the Democratic-controlled Senate is unusually slow in confirming judges - a complaint also

made by Democrats when Bill Clinton was in office and Republicans ran the Senate; William H. Rehnquist, chief justice of the Supreme Court, complained then that the Senate was not moving quickly enough.

The current Senate, which shifted from Republican to Democratic control in the middle of last year, has confirmed 41 judges; the 106th Senate, which coincided with the last two years of the Clinton administration, confirmed 73 nominees, according to the Judiciary Committee.

A spokesman for Judiciary Committee chairman Patrick Leahy, Democrat of Vermont, said the GOP simply refused to hold hearings or votes on numerous Clinton administration nominees. Leahy has held at least one hearing a month, the spokesman said.

Retribution Continues: Lott Strikes Again in Response to Pickering Defeat

John Bresnahan
Roll Call Daily
March 15, 2002

Angry over the defeat of his friend's judicial nomination, Senate Minority Leader Trent Lott (R-Miss.) is now blocking a $1.5 million request by the Judiciary Committee for additional funds to look into FBI intelligence failures related to the Sept. 11 terrorist attacks.

The Judiciary panel, which is chaired by Sen. Patrick Leahy (D-Vt.), on Thursday rejected the nomination of Judge Charles Pickering for a seat on the 5th U.S. Circuit Court of Appeals.

As a result, Lott on Friday informed GOP Sens. Orrin Hatch (Utah) and Mitch McConnell (Ky.), the ranking members on the Judiciary and Rules and Administration panels, respectively, that he would oppose new Judiciary money.

Under Senate rules, both McConnell and Rules Chairman Christopher Dodd (D-Conn.) would have to agree on requests for additional funding. With Lott now opposed to the request, McConnell will object as well.

This is the second action taken Friday by the Minority Leader in retaliation for the Judiciary Committee's vote against Pickering, a native of Lott's home state of Mississippi.

Earlier in the day, Lott blocked Majority Leader Thomas Daschle's (D-S.D.) nominee for the Federal Communications Commission.

In reference to the Judiciary funding request, Lott wrote to Hatch and McConnell:

"I fail to see how such an increase can be justified at this time. I am hard pressed to understand why the committee, under its current leadership, should be entrusted with further responsibilities and resources when they

have failed to take action on their primary responsibilities."

David Carle, a spokesman for Leahy, told Roll Call Daily: "It's a puzzling action. Senator Leahy and Senator Hatch will now have to consult on how the committee will proceed in its expanded oversight duties after 9/11, finding and correcting problems at the FBI and" Immigration and Naturalization Service.

Lott is under heavy pressure from conservatives to strike back at Daschle over Pickering.

"A test of Mr. Lott's leadership is whether he can hold his minority together to do what Mr. Daschle did," the Wall Street Journal wrote in an editorial Friday. "If he can't unite his party on this one, then he ought to
stand aside for someone who can."

Senate Rejection Disappoints Pickering

The Commercial Appeal (Memphis, TN)
March 16, 2002 Saturday

U.S. District Judge Charles Pickering says he worked in his chambers in Hattiesburg as the Democratic-controlled U.S. Senate Judiciary Committee scuttled his nomination for a federal appeals court post.

Pickering said Friday his immediate reaction to the vote was disappointment.

As for the immediate future, Pickering said he would "do the things I've been doing - I will continue with my judicial duties." Pickering said he would not withdraw his name from consideration for the appeals post. That could mean another vote in the future.

Senate Republican leader Trent Lott on Friday threatened to retaliate against Democrats for defeating President Bush's nominee to the 5th U.S. Circuit Court of Appeals in New Orleans.

"I'm not going to let go of it for a long time," said Lott.

The NAACP and other liberal rights groups, a core constituency of the Democrats, strongly disapproved of the nomination because they said Pickering supported segregation as a young man and had an ultraconservative voting record as a Mississippi lawmaker.

Rep. Bennie Thompson (D-Miss.) said it was these concerns that convinced a majority of the committee to reject the nomination.

"The vote not to confirm Pickering is evidence of the extensive record the judge has amassed

and his insensitivity to civil rights concerns," said Thompson.

Pickering said he refused "to let what has happened to me during this process embitter me or shape the balance of my life. Life is too precious."

"I am extremely disturbed that judicial confirmation has degenerated into such a bitter and mean-spirited process," he said. "I sincerely hope that no other nominee has to go through what has happened to me. The price of public service should not be so high."

State GOP Chairman Jim Herring said the rejection of Pickering would make Republicans campaign even harder to return the judge's son, U.S. Rep. Chip Pickering, to Congress.

Mississippi lost a congressional seat, and districts represented by Pickering and U.S. Rep. Ronnie Shows (D-Miss.) were combined. Both have qualified in the new district ordered by a federal three-judge panel.

Divisive Pickering Vote Has Parties Feuding

Jesse J. Holland
The Commercial Appeal (Memphis, TN)
March 16, 2002 Saturday

A Senate committee's party-line rejection of a Mississippi judge could endanger other nominees, lawmakers said Friday, with talk of retaliation from both Republicans and Democrats.

GOP leader Trent Lott called the defeat of U.S. Dist. Judge Charles Pickering of Mississippi for the U.S. Appeals Court "a real blow," and said he would block one of Majority Leader Tom Daschle's aides from getting on the Federal Communications Commission.

"I'm not going to let go of it for a long time," said Lott, a Pickering friend of 40 years who called the Senate Judiciary Committee's racially charged proceedings and its 10-9 vote Thursday a "slap at Mississippi." Daschle, in turn, warned an attack on his aide's nomination might prove dangerous for other Bush nominees in the Democrat-controlled Senate. "I don't know if they've given careful thought to that threat, because I think it could easily backfire in many ways," the South Dakota Democrat said.

Pickering was the first of President Bush's judicial nominees to lose in the Judiciary Committee.

Democrats criticized the 64-year-old judge's judicial temperament and judgment, with the committee chairman, Sen. Patrick Leahy (D-Vt.), saying Pickering "repeatedly injects his own opinions into his decisions on issues ranging from employment discrimination to voting rights."

Lott and other Republicans meanwhile said Pickering had been smeared by groups seeking to impose "an ideological litmus test" involving abortion, civil rights and other issues.

Republicans say liberal groups also used the Mississippi judge to test their strength for the next Supreme Court nomination battle.

"I think it is really aimed at the Supreme Court," Lott said. "That is the message, you send up a pro-life conservative man of faith for the Supreme Court and we will take care of him or her. That's what it's really about."

Bush wanted the committee to let the full Senate vote on the Pickering nomination, even after voting not to recommend him. The Democrats would not allow that unusual step.

Lott said that during President Clinton's term, Democrats slowed down the Senate to protest the treatment of Democratic nominees.

"I think we're fixing to see that same thing occur," he said. "We cannot let stand a plan to deny President Bush his nominees to the Supreme Court."

Lott insisted his plan to block Bush's FCC nomination of 39-year-old Jonathan S. Adelstein, a legislative assistant for Daschle since 1995, has nothing to do with the Pickering vote.

"He's relatively young," Lott said. "He doesn't have the experience."

FCC Chairman Michael Powell will be 38 until his birthday next Saturday.

Daschle called it unfortunate that Lott "would lash out at someone totally uninvolved with the Pickering nomination" and warned other nominees could get dragged into the argument.

Several other Bush judicial nominees also face tough confirmations before the Senate Judiciary Committee, including Bush favorite Miguel Estrada, a partner in a Washington law firm that represented Bush in his Supreme Court election fight against Al Gore.

"I would think they would want our cooperation in moving other nominees," Daschle said.

Leahy suggested that he would not allow potentially controversial Bush choices to come before the committee until other nominees go through first.

"I'm going to start looking for those that have consensus," he said.

Lott fired another shot at Democrats late Friday, blocking a Judiciary Committee request for $1.5 million to investigate the intelligence community's performance during the Sept. 11 attacks on New York City and Washington.

Lott said the committee has shown "a deliberate pattern of obstructionism" on Bush judicial nominees.

"I am hard pressed to understand why the committee under its current leadership should be entrusted with further responsibilities and resources when they have failed to take action on their primary responsibilities," he said.

Leahy spokesman David Carle called Lott's decision "rash" and said the Mississippi Republican was "going out of his way to intervene."

Lott vows to make Democrats pay for rejecting nominee

Craig Gilbert
Milwaukee Journal Sentinel
March 16, 2002 Saturday

Washington -- Fuming over the rejection of a Bush court nominee, the Senate's top Republican warned Friday that the fight has harmed relations between the parties and would prompt retaliation on other issues.

"This has really damaged the way we do business around here," said Trent Lott. "It affects everything."

The Mississippi Republican did not specify all of the steps his side might take, but he said, "You'll see it in a lot of ways and in a lot of days." When the Senate Judiciary Committee rejected federal judge Charles Pickering of Mississippi on Thursday for a seat on the appellate court, it marked the first defeat of a Bush judicial nominee.

All 10 Democrats on the panel, including Herb Kohl and Russ Feingold of Wisconsin, voted to kill the nomination.

Lott's comments to reporters Friday reflected a very personal bitterness. He was Pickering's friend, home-state sponsor and closest supporter in the Senate.

"I'm not going to let go of it for a long time," he said. "This is a real blow."

But the Pickering fight has raised bigger questions. One is how far the fallout will extend, as Lott predicted, to other issues before the Senate.

Lott said his relationship with Senate Majority Leader Tom Daschle has been damaged professionally and personally. He also insisted that his plan to block Bush's nomination of 39-year-old Jonathan S. Adelstein, a Daschle aide since 1995, to the Federal Communications Commission had nothing to do with the Pickering vote.

"He's relatively young," Lott said. "He doesn't have the experience."

FCC Chairman Michael Powell is 38, until his birthday next Saturday.

But Lott made another move Friday that he linked to what he called the Judiciary panel's obstructionism: He said he would block a $1.5 million request by Judiciary Democrats to investigate intelligence operations on Sept. 11.

Clashes to come

The other question is what the Pickering battle means for the current era of polarized judicial politics -- whether it represents more of the same or a true escalation. Activists on both sides saw it as a kind of dress rehearsal for clashes to come over the courts, including future Supreme Court vacancies.

Other Democrats warned the president that he can't expect to stock the judiciary with sharp conservatives; Republicans accused Democrats of smearing Pickering, changing the ground rules for judicial picks and causing an institutional crisis that has left the federal bench seriously understaffed.

Kentucky Republican Mitch McConnell said Thursday that there was a "meltdown going on in this committee."

In an interview Friday, Wisconsin's Kohl dismissed that notion.

"Just because one fellow got voted down?" Kohl said. "That's just not true."

He and other Democrats say they've voted for dozens of Bush-backed judges, and that GOP lawmakers had allowed numerous nominations to die under President Clinton.

"This is not too different from what's been going on for years, whether it's Democrats or Republicans," Kohl said. "These nominations have to be carefully calibrated. If the person is too far to the left or right, they're going to have trouble. That's just the way things are in Washington these days."

Greater scrutiny

Most of the Bush picks approved by the Senate have been federal trial judges. Action has been slower for nominees to the powerful appellate courts -- second only to the Supreme Court. Only seven of 29 appeals court nominees have been confirmed so far. Many await hearings.

Are there many more bitter clashes in the offing?

Democrats provided some clues Thursday.

Most of those on the committee offered specific objections to Pickering, based largely on his record as a federal trial judge in Mississippi. But they also made broader arguments that could be used against future Bush picks.

Some, including Feingold, said appellate nominees should expect greater scrutiny by senators than nominees for the lower district court. But Feingold added in an interview Thursday:

"We shouldn't be searching around for ways to kill other nominations."

At least one Democrat, New York's Charles Schumer, went beyond the traditional discussion of a nominee's "judicial temperament" and commitment to "constitutional values" and made an explicitly political case.

Calling Pickering a "rock-ribbed conservative," Schumer said, "We need balance on the federal courts.

"Our country is divided ideologically," Schumer said. "There's clearly no mandate from the American people to stock the courts with conservative ideologues. So if the White House persists in sending us nominees who threaten to throw the courts out of whack with the country, we have no choice but to vote 'no.' "

Time for 'armistice'

Pennsylvania Republican Arlen Specter, who sometimes breaks with his own party on judicial picks, said Thursday that it was time for an "armistice." But for many Democrats, the answer is for the president to offer less conservative nominees. For many Republicans, the answer is for Democrats to shun ideological "litmus tests."

"That is a very bad thing if they continue that pattern," said Lott, who added that Republicans would answer by picking and choosing their fights in this and other areas.

"This is not going to be a sledgehammer sort of thing. This is going to take time. There are a lot of things we can do," Lott said.

Daschle responded Friday that any retaliation might be self-defeating for the GOP minority in the Senate.

"I don't know if they've given careful thought to that threat because I think it could easily backfire in many ways that would adversely affect their own agenda," the majority leader said.

After Defeat of Judge, Lott Plans to Block Daschle Aide

Alison Mitchell
The New York Times
March 16, 2002, Saturday

The partisan battle over judicial nominations intensified today as Senator Trent Lott, the

minority leader, struck out at the Senate Judiciary Committee and moved to block an aide to Senator Tom Daschle, the majority leader, from filling a spot on the Federal Communications Commission.

A day after the Judiciary Committee, on a party-line vote, rejected the elevation of Judge Charles W. Pickering Sr. to an appeals court, Mr. Lott, a friend of the judge, threatened to slow the operations of an already slow Senate. He also announced his intent to stop the communications commission appointment of the Daschle aide, Jonathan Adelstein. Mr. Lott denied that his move was retaliation, saying he had questions about Mr. Adelstein's qualifications. "He's relatively young," Mr. Lott said. "He doesn't have the educational experience to be qualified for a position as important as that one is."

Mr. Adelstein is 39.

A few hours later Mr. Lott also announced that he would stop the Judiciary Committee from receiving an extra $1.5 million to investigate the performance of federal law enforcement agencies in the weeks leading up to the Sept. 11 attacks. Under Senate rules, such requests must be approved by both parties.

Mr. Lott, in a statement, said: "The Senate needs to focus its resources. Holding hearings and voting on judicial nominees is arguably the most important responsibility of the Senate Judiciary Committee. Overseeing our nation's intelligence operations is the most important responsibility of the Senate Intelligence Committee."

But an aide made clear that the action was related to the rejection of the judge. The struggle over Judge Pickering was part of a long-raging battle between the parties over the ideological direction of the federal courts. It was President Bush's first defeat in a judicial battle. Some Democrats said they were voting against the nomination to send a message to Mr. Bush that he would not automatically win if he nominated a legion of conservative judges.

Mr. Lott called the vote a slap at his and Judge Pickering's home state, Mississippi, and said, "I'm not going to forget it for a long time."

He recalled that when Bill Clinton was president and Republicans were in the majority, Democrats slowed the Senate to protest the treatment of nominees. "I think we're fixing to see the same thing occur," Mr. Lott said. "We cannot let stand a plan to deny President Bush his nominees to the Supreme Court."

Mr. Daschle warned that an attack on his aide's nomination could only escalate the struggle.

"I don't know if they've given careful thought to that threat," said Mr. Daschle, a South Dakota Democrat, "because I think it could easily backfire in many ways."

A spokesman for Senator Patrick J. Leahy, Democrat of Vermont, who is chairman of the Judiciary Committee, criticized Mr. Lott's intervention to stop the committee from examining

whether agencies "are doing their jobs skillfully as the war on terrorism unfolds."

Still, it was not clear just how intensely these partisan fires would rage in a Senate that is already tied in partisan knots and under Democratic control by just one vote.

One bill looked like it would escape without being singed. After weeks of stalling a vote on the overhaul of the campaign finance law, Republicans agreed to let it come to the Senate for debate on Monday, sidestepping a confrontation this morning.

Republican aides said that they expected the campaign finance bill to receive final passage and that even opponents of the bill did not want a long battle. Still, Mr. Daschle made a show today of having cots delivered to the Capitol to demonstrate that he was prepared to keep the Senate in session day and night next week if needed to beat back any delaying tactics. He has vowed that the Senate will give final passage by week's end.

The Judiciary Committee's vote on Judge Pickering, 64, came after weeks of emotional debate about his qualifications. Republicans contended that the judge was the subject of a smear campaign by liberal groups. The groups portrayed him as insensitive to racial justice, citing, for example, an article he had written at age 21 recommending changes that would make Mississippi law against racially mixed marriages more effective. His supporters countered with accounts of his efforts at racial reconciliation.

The rancor continued in the Senate today. Senator Orrin G. Hatch of Utah, the ranking Republican on the Judiciary Committee, accused the judge's opponents of an "attempt to open old, old painful wounds by using the all-too-familiar race card."

Senator Harry Reid of Nevada, the majority whip, criticized Mr. Bush for seeking a full Senate vote on Judge Pickering even if his nomination was rejected in committee.

"George W. Bush is president of the United States, not king of the United States," Mr. Reid said. "He's President Bush. He's President George. Not King George."

Lott Retaliates for Pickering Loss; Judiciary Panel's Funding, Daschle Nominee Targeted

Helen Dewar
The Washington Post
March 16, 2002, Saturday

Senate Minority Leader Trent Lott (R-Miss.) yesterday blocked a $ 1.5 million request from the Judiciary Committee for its post-Sept. 11 oversight operations as part of a retaliatory strike against Democrats for killing the judicial nomination of a fellow Mississippian.

Lott's reprisals, which also included a move to block a senior Senate Democratic aide's appointment to the Federal Communications Commission, signaled an escalation in the Senate's

long-running war over judicial nominations.

Democrats warned that GOP efforts to hold up legislation or nominations could hurt President Bush more than themselves. They noted that most matters on the Senate schedule are Bush priorities, such as energy, trade and nominations. Majority Leader Thomas A. Daschle (D-S.D.) said Lott's tactics could backfire by discouraging cooperation from Democrats. Republicans will "want our cooperation in moving other nominees," he said.

Furious over the Judiciary Committee's party-line vote Thursday to reject the nomination of U.S. District Judge Charles W. Pickering to the 5th U.S. Circuit Court of Appeals, Lott told reporters "the Senate is going to be in very bad shape" if Democrats continue to hold up or block Bush's judicial nominations.

He said Pickering's rejection had "damaged" his relations with Daschle, both personally and professionally. Daschle had opposed Pickering's confirmation and said he would put the nomination before the full Senate only if the Judiciary Committee approved such action. When the committee refused to do so, Pickering's nomination died.

Asked what he intended to do, Lott said there would be selective retribution, not "a sledgehammer kind of thing." He said he may try to force the Senate to vote on stalled nominations, and he suggested other, unspecified options for retaliation.

"You'll see it in a lot of ways in a lot of days," he said.

Lott had already let it be known he would use Senate rules to block the anticipated nomination of Daschle aide Jonathan Adelstein to one of the two seats reserved for Democrats on the five-member FCC. Lott said he believed Adelstein, 39, a Senate legislative aide for the past 14 years, is too young and inexperienced, although Michael Powell, the FCC's Republican chairman, is 38.

Daschle said, "It's unfortunate that he [Lott] is lashing out at someone totally uninvolved with the Pickering nomination."

A few hours later, Lott released copies of letters to leaders of the Senate Rules and Administration Committee, who handle requests for committee spending, strongly advising them to refuse to give the Judiciary Committee any more money. He said ranking Republican Mitch McConnell (Ky.) would block the panel's $ 1.5 million request.

In a news release, Lott said the House and Senate intelligence committees were already investigating terrorism-related intelligence operations and added: "One of the significant failures of the Senate this past year has been the Judiciary Committee's slow action on the president's judicial nominees. I am hard pressed to understand why the committee, under its current leadership, should be entrusted with further responsibilities and resources when they have failed to take action on their primary responsibilities."

Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) said the request for additional funds was made by both ranking Republican Orrin G. Hatch (Utah) and himself and was intended to "make sure that agencies like the FBI and INS are doing their jobs skillfully as the war on terrorism unfolds." It "has nothing to do with any 'parallel' investigation to the work of the Intelligence Committee," Leahy said.

Meanwhile, Democrats got a blast from one of their own. Sen. Zell Miller (Ga.), who is often at odds with his party's leaders, criticized his colleagues for blocking Pickering, whom he described as "a good and brave man." He said they may pay a high price in the South.

"Politically, this action may very well elect a Republican governor in Mississippi, and it will certainly make it even more difficult for Democratic candidates to be successful in the South," Miller said.

Miller says South will rise against Pickering's defeat; Fears losses of Democratic seats

Amy Fagan and Stephen Dinan
The Washington Times
March 16, 2002, Saturday

Senate Democrats' rejection of Judge Charles W. Pickering Sr. for a federal appeals court seat could cost the party governorships and seats in Congress, said Sen. Zell Miller.

"Politically, this action may very well elect a Republican governor in Mississippi, and it will certainly make it even more difficult for Democratic candidates to be successful in the South," the Georgia Democrat said Thursday.

President Bush had nominated Judge Pickering, of the federal district court in Mississippi, for the 5th U.S. Circuit Court of Appeals, but the Senate Judiciary Committee voted 10-9 on Thursday not to send his nomination to the Senate floor. All 10 Democrats on the committee voted against the nomination, and Senate Majority Leader Tom Daschle, South Dakota Democrat, said the nomination was dead. Senate Minority Leader Trent Lott, Mississippi Republican and longtime friend of Judge Pickering, retaliated yesterday by scuttling the committee's request for $1.5 million in additional funds and also promised to block the nomination of one of Mr. Daschle's aides to a position on the Federal Communications Commission.

Committee Chairman Patrick J. Leahy, Vermont Democrat, and ranking Republican member Sen. Orrin G. Hatch of Utah made the funding request in a Feb. 27 letter. They said additional money was needed to conduct important oversight of key agencies, like the FBI, in the wake of the September 11 terrorist attacks.

Mr. Lott said a joint House-Senate investigation was under way. Ron Bonjean, spokesman for the senator, said Mr. Lott "believes this funding should not be allocated because the funding

could potentially be used to block judicial nominations." The funds would have to be approved by leaders of both parties, and Mr. Lott's lack of support effectively has killed it.

David Carle, spokesman for Mr. Leahy, said the requested funds, which would be divided evenly between both parties on the committee, does not overlap with the House-Senate investigation and has "everything to do with the committee's added oversight responsibilities to make sure that agencies like the FBI and the INS are doing their jobs skillfully as the war on terrorism unfolds."

On the FCC nomination, Mr. Lott said his decision was not related to the Pickering vote. But an aide to Mr. Daschle said it is "awfully convenient timing" and a senior Republican aide said these retaliatory moves are just the beginning: "These initiatives will continue and the Daisy Cutters are coming."

Mr. Daschle responded yesterday to Mr. Lott's anger over the Pickering nomination by saying: "I think they would want our cooperation on moving other nominations and other legislation. The threat could easily backfire and in many ways hurt their own agenda."

Observers predicted immediate fallout in Mississippi, where redistricting has cast Rep. Ronnie Shows, a Democrat, in the same district as Judge Pickering's son, Rep. Charles W. "Chip" Pickering Jr.

"It underscores what somebody like Shows doesn't want the people back home to ever grasp about the national Democratic Party, and the fact that so often they're voting in the interests of the national Democratic Party and not conservative Mississippi values," said Henry Barbour, Mr. Pickering's campaign manager.

Brian Perry, editor of MagnoliaReport.com, which tracks Mississippi politics, said the Pickering issue will become a litmus tests for the state's conservative voters.

"In the past Republicans have had a hard time tying local so-called conservative Democrats to the national Democratic Party," he said. "Now I think they'll be able to say the so-called conservative Democrats here are fueling the power of Democratic Party people in Washington" who defeated Judge Pickering's nomination.

But Mr. Shows' campaign manager, Barry Butler, said the congressman did all he could for Judge Pickering: "I really don't think there's going to be a backlash - we came out in support of Judge Pickering, and that's really all we can do."

Lott issues warning after judge rejected

Jesse J. Holland
Chicago Tribune
March 16, 2002 Saturday

A Senate committee's party-line rejection of a Mississippi judge could endanger other nominees, lawmakers said Friday, with talk of retaliation from both Republicans and Democrats.

Senate Minority Leader Trent Lott (R-Miss.) called the vote against U.S. District Judge Charles Pickering for the U.S. Appeals Court "a real blow," and said he would block one of Majority Leader Tom Daschle's aides from the Federal Communications Commission. "I'm not going to let go of it for a long time," said Lott, a Pickering friend for 40 years who called the Senate Judiciary Committee's racially charged proceedings and its 10-9 vote Thursday a "slap at Mississippi."

Daschle, in turn, warned that an attack on his aide's nomination might prove dangerous for other Bush nominees in the Democrat-controlled Senate. "I don't know if they've given careful thought to that threat, because I think it could easily backfire in many ways," the South Dakota Democrat said.

Late Friday, Lott fired another shot, blocking a Judiciary Committee request for $1.5 million to investigate the intelligence community's performance during the Sept. 11 attacks.

"I am hard-pressed to understand why the committee under its current leadership should be entrusted with further responsibilities and resources when they have failed to take action on their primary responsibilities," Lott said.

Pickering was the first of President Bush's judicial nominees to be rejected by the Judiciary Committee.

The 64-year-old judge said Friday that he would refuse "to let what has happened to me during this process embitter me or shape the balance of my life. Life is too precious."

Democrats criticized Pickering's judicial temperament and judgment, with the committee chairman, Sen. Patrick Leahy (D-Vt.), saying Pickering "repeatedly injects his own opinions into his decisions on issues ranging from employment discrimination to voting rights."

Lott and other Republicans said Pickering had been smeared by groups seeking to impose "an ideological litmus test" on abortion and civil rights.

Senate Judges Glance

AP Online
March 15, 2002 Friday

Judicial nominees since 1977 who failed to get a favorable vote from Senate Judiciary Committee. Unless otherwise noted, all votes on nominees occurred in the same hearing:

-Robert Collins, nominee for the U.S. District Court for eastern Louisiana in 1978. First vote for favorable recommendation deadlocked, 5-5; second vote, a month later, to report the nomination to Senate favorably passed, 13-1; eventually confirmed by the Senate. -Charles Winberry Jr., nominee for U.S. District Court in eastern North Carolina in 1980. First vote to send to the Senate without a recommendation failed, 9-6; nomination defeated.

-Daniel Manion, nominee for the 7th U.S. Circuit Court of Appeals in 1986. First vote to send to Senate with a favorable recommendation deadlocked, 9-9; second vote to send without recommendation succeeded, 11-6; confirmed by Senate.

-Jeff Sessions, nominee for the U.S. District Court for southern Alabama in 1986. First vote to send to Senate with favorable recommendation failed, 10-8; second vote to send without recommendation deadlocked, 9-9; defeated in committee. He is now a Republican senator from Alabama and a member of the Judiciary Committee.

-Robert Bork, nominee for U.S. Supreme Court in 1987. First vote to send to the Senate with a favorable recommendation failed, 9-5; second vote to send with negative recommendation succeeded, 9-5; rejected by the Senate.

-Susan Liebeler, nominee for the U.S. Circuit Court of Appeals, Federal Circuit, in 1988. First vote to send to Senate with a favorable recommendation defeated, 7-6; second vote to send without recommendation succeeded, 8-5; nomination never received a Senate vote.

-Bernard Siegan, nominee for the 9th U.S. Circuit Court of Appeals in 1988. First vote to send to Senate with a favorable recommendation failed, 8-6; second vote to send without a recommendation deadlocked, 8-8; defeated in committee.

-Kenneth Ryskamp, nominee for the 11th U.S. Circuit Court of Appeals in 1991. First vote to send to Senate with a favorable recommendation defeated, 8-6; second vote to send without recommendation deadlocked, 7-7; defeated in committee.

-Clarence Thomas, nominee for the U.S. Supreme Court in 1991. First vote to send to Senate with favorable recommendation failed, 7-7; second vote to send without recommendation succeeded, 13-1; confirmed by Senate.

-Charles Pickering, nominee for the 5th U.S. Circuit Court of Appeals. First vote to send to Senate with favorable recommendation failed, 10-9; second vote to send to Senate without recommendation failed, 10-9; third vote to send with no recommendation failed, 10-9. Nomination defeated in committee.

Parties Tense After Divisive Vote

Jesse Holland
AP Online

March 15, 2002 Friday

A Senate committee's party-line rejection of a Mississippi judge could endanger other nominees, lawmakers said Friday, with talk of retaliation from both Republicans and Democrats.

GOP leader Trent Lott called the defeat of U.S. District Judge Charles Pickering of Mississippi for the U.S. Appeals Court "a real blow," and said he would block one of Majority Leader Tom Daschle's aides from getting on the Federal Communications Commission.

"I'm not going to let go of it for a long time," said Lott, a Pickering friend of 40 years who called the Senate Judiciary Committee's racially charged proceedings and its 10-9 vote Thursday a "slap at Mississippi."

Daschle, in turn, warned an attack on his aide's nomination might prove dangerous for other Bush nominees in the Democrat-controlled Senate. "I don't know if they've given careful thought to that threat, because I think it could easily backfire in many ways," the South Dakota Democrat said. Pickering was the first of President Bush's judicial nominees to lose in the Judiciary Committee.

Pickering, who still has his lifetime appointment as a U.S. District judge, said Friday he would refuse "to let what has happened to me during this process embitter me or shape the balance of my life. Life is too precious."

"I am extremely disturbed that judicial confirmation has degenerated into such a bitter and mean-spirited process," he added. "I sincerely hope that no other nominee has to go through what has happened to me. The price of public service should not be so high."

Democrats criticized the 64-year-old judge's judicial temperament and judgment, with the committee chairman, Sen. Patrick Leahy, D-Vt., saying Pickering "repeatedly injects his own opinions into his decisions on issues ranging from employment discrimination to voting rights."

Lott and other Republicans meanwhile said Pickering had been smeared by groups seeking to impose "an ideological litmus test" involving abortion, civil rights and other issues.

Republicans say liberal groups also used the Mississippi judge to test their strength for the next Supreme Court nomination battle.

"I think it is really aimed at the Supreme Court," Lott said. "That is the message, you send up a pro-life conservative man of faith for the Supreme Court and we will take care of him or her. That's what it's really about."

Bush wanted the committee to let the full Senate vote on the Pickering nomination, even after voting not to recommend him. The Democrats would not allow that unusual step.

Lott said that during President Clinton's term, Democrats slowed down the Senate to protest the

treatment of Democratic nominees.

"I think we're fixing to see that same thing occur," he said. "We cannot let stand a plan to deny President Bush his nominees to the Supreme Court."

Lott insisted his plan to block Bush's FCC nomination of 39-year-old Jonathan S. Adelstein, a legislative assistant for Daschle since 1995, has nothing to do with the Pickering vote.

"He's relatively young," Lott said. "He doesn't have the experience."

FCC Chairman Michael Powell will be 38 until his birthday next Saturday.

Daschle called it unfortunate that Lott "would lash out at someone totally uninvolved with the Pickering nomination" and warned other nominees could get dragged into the argument.

Several other Bush judicial nominees also face tough confirmations in front of the Senate Judiciary Committee, including Bush favorite Miguel Estrada, a partner in a Washington law firm that represented Bush in his Supreme Court election fight against Al Gore.

"I would think they would want our cooperation in moving other nominees," Daschle said.

Leahy suggested that he would not allow potentially controversial Bush choices to come before the committee until other nominees go through first.

"I'm going to start looking for those that have consensus," he said.

Lott fired another shot at Democrats late Friday, blocking a Judiciary Committee request for $1.5 million to investigate the intelligence community's performance during the September 11th attacks on New York City and Washington.

Lott said the committee has shown "a deliberate pattern of obstructionism" on Bush judicial nominees.

"I am hard pressed to understand why the committee under its current leadership should be entrusted with further responsibilities and resources when they have failed to take action on their primary responsibilities," he said.

Leahy spokesman David Carle called Lott's decision "rash" and said the Mississippi Republican was "going out of his way to intervene."

Senate committee sends Bush message with rejection of judge's nomination

Jesse Holland
The Associated Press

March 15, 2002, Friday

In rejecting President Bush's promotion of a Mississippi judge to a federal appeals court, Senate Democrats put the White House on notice they intend to block strict conservatives from key judicial positions, including the Supreme Court.

"If the White House persists in sending us nominees who threaten to throw the courts out of whack with the country, we have no choice but to vote no," said Sen. Charles Schumer, D-N.Y.

Democrats used their one-vote majority in the Senate Judiciary Committee on Thursday to kill Bush's nomination of U.S. District Judge Charles Pickering to the U.S. Appeals Court in New Orleans, one step below the Supreme Court.

"This cannot continue," said Senate Republican Leader Trent Lott of Mississippi, Pickering's friend of 40 years. "We cannot let stand a plan to deny President Bush his nominees to the court." Lott called the committee's racially charged proceedings and its 10-9 party-line vote a "slap at Mississippi." The NAACP and other liberal rights groups, a core constituency of the Democrats, strongly disapproved the nomination because they said Pickering supported segregation as a young man and had an ultraconservative voting record as a Mississippi lawmaker.

"This is people trying to use the ghost of the past to try to prevent us from rising up and going forward in a positive way," Lott said. He cited what he called Pickering's close ties to black leaders in Mississippi, some of whom supported his nomination.

Bush wanted the committee to let the full Senate vote on the nomination. Pickering probably would have won a majority there, because at least three Democrats in the 50-49 Senate had said they would vote for him. Majority Leader Tom Daschle, D-S.D., has said repeatedly he would block any attempt to vote on Pickering without committee approval.

Pickering "deserves better than to be blocked by a party-line vote of 10 senators on one committee," Bush said. "The voice of the entire Senate deserves to be heard."

One Democrats, Sen. Zell Miller of Georgia, attacked his colleagues. "This action may very well elect a Republican governor in Mississippi," he said.

Senate Judiciary Democrats, however, were united against Pickering. They repeatedly accused Republicans of mistreating many of the nominations made by former President Clinton, to the point of denying hearings for months at a time.

In addition, the committee chairman, Patrick Leahy, said Pickering "repeatedly injects his own opinions into his decisions on issues ranging from employment discrimination to voting rights."

Other Democrats referred to a case in which Pickering had sought a lighter sentence for a defendant on a cross-burning case, which Republicans contend was misinterpreted by the judge's

critics.

Pickering simply does not have "the temperament, the moderation or the commitment to core constitutional ... protections that is required for a life tenure position" on the appeals court, said Sen. Edward Kennedy of Massachusetts.

Republicans were equally united in their support of the judge. Sen. Orrin Hatch, R-Utah, argued that Bush's nominee had been victimized by a smear campaign by groups seeking to impose "an ideological litmus test" on abortion, civil rights and other issues.

Sen. Charles Grassley, R-Iowa, also praised Pickering for "moral courage on the issue of race," demonstrated in 1967 when he testified against a Ku Klux Klan leader in Mississippi.

Pickering was not present, but his son, Rep. Charles Pickering, R-Miss., had a seat in the front row of the spectators section. "What is happening to your father today is a great injustice," said Sen. Mitch McConnell, R-Ky., addressing his remarks to the young congressman.

"For those who opposed my father, who distorted his record or tried to use the process to extort political gain, I am deeply disappointed and saddened at their lack of character and their use of race to try to reopen old wounds," the younger Pickering said.

The committee's actions left the nomination all but dead. Lott could seek a vote by the full Senate, but Daschle insisted Thursday that he has enough votes to keep that from happening.

Panel blocks judicial pick; GOP judge rejected on party lines

Scott Shepard
The Atlanta Journal and Constitution
March 15, 2002 Friday

Washington --- President Bush lost a bruising fight over a federal appeals court nominee Thursday night when the Senate Judiciary Committee rejected Judge Charles Pickering of Mississippi on a party-line vote.

The battle over Pickering, widely viewed as a rehearsal for future Supreme Court nominations, resulted in all 10 of the committee's Democrats voting against him and refusing to send the nomination to the full Senate. All nine Republicans stood with the nominee.

It was the first major political defeat for Bush since taking office about 14 months ago. But in a statement released shortly after the committee vote, the president portrayed the setback in more sweeping terms. "It was unfortunate for democracy and unfortunate for America," he said. Pickering "deserves better than to be blocked by a party-line vote of 10 senators on one committee. The voice of the entire Senate deserves to be heard."

More stinging than the White House's words, however, were those of Sen. Zell Miller of Georgia, a maverick Democrat often at odds with his party on Capitol Hill.

"A good and brave man has been hurt, and that is what is most tragic here," Miller said.

Miller is not a member of the Senate Judiciary Committee, which has had the responsibility of reviewing judicial nominees throughout almost the entire history of the Senate.

But the Georgian is one of three Southerners the White House believed would support Pickering if the nomination ever came to a vote by all 100 senators. The others were John Breaux of Louisiana and Ernest Hollings of South Carolina.

In Mississippi, the 64-year-old judge responded to the committee vote: "I will not let what has happened to me during this process embitter me or shape the balance of my life. Life is too precious. My faith has not been weakened. I will not withdraw my name."

Senate Minority Leader Trent Lott (R-Miss.), who had recommended Pickering for the nomination, still could ask for a full vote by the Senate, a parliamentary procedure that is rarely successful.

After the committee vote, Lott marched to the Senate floor, where he defended his friend of 40 years. "I take it personally," he said of his friend's defeat, which he also labeled a "slap at Mississippi."

However, all 10 Democrats on the committee said they believed Pickering's 12-year record as a U.S. District Court judge did not merit promotion to the Fifth U.S. Circuit Court of Appeals in New Orleans, responsible for appeals from Mississippi, Louisiana and Texas.

Pickering's nomination ran into trouble over growing concerns among Senate Democrats that his judicial rulings had reflected insensitivity to civil and abortion rights.

In addition, public interest groups raised complaints about his actions as a prosecutor and state legislator during the years in which Mississippi often was at the eye of the political storm over civil rights.

Pickering's supporters countered with endorsements by minorities in Mississippi who praised the judge as a champion of civil rights who had courageously challenged the segregation traditions of his home state.

But such endorsements, as well as the president's political accusations, failed to sway any of the Democrats on the committee, who ranged in political temperament from the old-style liberalism of Edward Kennedy of Massachusetts to the New Democrat moderation of John Edwards of North Carolina.

Kennedy said he does not believe Pickering "has the temperament, the moderation or the

commitment to core constitutional and federal statutory protections that is required for a life tenure position" on a federal appeals court.

Edwards, reviewing Pickering's conduct in several cases, including one in which the judge tried to reduce the sentence for a man convicted of burning a cross on the property of an interracial couple, said the judge's actions were "way outside the norm . . . of what a judge should do."

The White House assault on the committee over the past week in an effort to resurrect Pickering's nomination left the Democratic chairman, Sen. Patrick Leahy of Vermont, in a testy mood, though he vowed to continue processing Bush judicial nominees as quickly as possible.

"In January, I extended an olive branch to the administration and suggested that we find ways for the Senate and the White House to work together more closely and efficiently with respect to filling judicial vacancies that had been perpetuated since 1996," Leahy said.

"I am disappointed that, instead, the president chose . . . to attack the members of the Judiciary Committee."

Sen. Orrin Hatch (R-Utah) accused the Democrats of being swayed by liberal groups opposed to the appointment of any conservative to the federal bench.

Senate Democrats torpedo U.S. Appeals Court nomination

Andrew Miga
The Boston Herald
March 15, 2002 Friday

WASHINGTON -- Senate Democrats, setting a combative tone for future Supreme Court confirmation fights, yesterday shot down President Bush's bid to elevate a conservative Mississippi judge to federal appeals court.

The 10-9 Senate Judiciary Committee vote aborting U.S. District Judge Charles Pickering's nomination to the 5th U.S. Circuit Court of Appeals in New Orleans was a bitter loss for Bush.

"It was unfortunate for democracy and unfortunate for America," said Bush. Democratic leaders rejected Bush's call for a full Senate vote.

Sen. Edward M. Kennedy (D-Mass.), one of Bush's closest Democratic allies and the second-ranking Democrat on the Judiciary panel, denounced Pickering as outside the judicial mainstream on civil rights and voting rights.

"I do not believe he has the temperament, the moderation or the commitment to core constitutional (protections)," said Kennedy. "He often shows hostility to important federal and statutory protections."

Kennedy accused Pickering of seeking to inject his personal views into the law. Kennedy, however, was not as vocal as he has been in past fights against such conservative nominees as Attorney General John Ashcroft.

Bush's first judicial nominee defeat was the opening salvo in what is likely to be a fierce war over the president's choice of conservative federal jurists.

"It boils down to a real desire to keep conservatives off the court as much as possible," said Sen. John Kyl (R-Ariz.).

Bush made a few last-minute phone calls to lobby senators, but came up short. Committee Republicans failed to win on three votes to revive Pickering's nomination.

Angry Republicans complained Democrats were imposing an "ideological litmus test" on conservative jurists, seeking to stack the courts with liberal judges instead.

Liberal activist groups branded Pickering, who backed segregation as a young man, racist.

Supporters cast Pickering as a progressive who eventually opposed bigotry, even testifying against a Ku Klux Klan imperial wizard in a racially charged trial four decades ago. Pickering won the American Bar Association's highest rating for judges.

"This good man has been subjected to character assassination," said Sen. Charles Grassley (R-Iowa). "Judge Pickering has been viciously attacked by outside liberal groups."

Senate Panel Rejects Bush Pick All 10 Democrats Oppose Pickering

Wayne Washington
The Boston Globe
March 15, 2002, Friday

WASHINGTON - Judge Charles W. Pickering of Mississippi became the first judicial nominee of President Bush to be rejected yesterday when the Senate Judiciary Committee voted against him on a strict party-line vote.

Pickering's nomination to the US Court of Appeals had been the subject of intense opposition from civil rights and abortion rights organizations, which said that the conservative judge is hostile to their causes. Pickering's supporters in the Bush administration and in Congress countered that he was being opposed on ideological rather than judicial grounds and that Democrats wanted retribution for the Republican rejection of many of President Clinton's nominees.

Political observers said Pickering's rejection is a sign of the partisan division in Washington

and an indicator of how demanding Senate Democrats will be of future Bush nominees to the federal judiciary. "I am deeply disappointed that Judge Charles Pickering, a distinguished judge who was unanimously confirmed by the Senate in the past, is being denied the opportunity to further serve his country," Bush said in statement. "The action of the Senate Judiciary Committee to refuse Judge Pickering a vote by the full Senate leaves another empty seat in the federal judiciary at a time when we face a vacancy crisis. It was unfortunate for democracy and unfortunate for America."

The 10 Democrats on the 19-member committee voted against the nomination.

Pickering did not attend the hearing, but his son, US Representative Charles "Chip" Pickering Jr., sat through it, shaking his head at what he later said were willful misrepresentations of his father's actions.

"I regret that an honorable man had to endure a dishonorable process," the congressman said. "My father has lost nothing today or throughout this process. His faith is strong, our family close, and his courage and character only strengthened."

When it became clear that his father's nomination would be rejected by the Judiciary Committee, Representative Pickering said all options remain open.

Senate Democrats, however, seem firm in their opposition to Pickering, and Republicans would need to get some support from their rivals as well as keep in line moderates from their own party to have any chance of success.

Senator Patrick Leahy, the Vermont Democrat who chairs the Judiciary Committee (which votes first on judicial nominations) said Pickering's actions as a district court judge show that moving him to a higher court would be inappropriate.

"His record on the United States District Court bench over the last 12 years, as reflected by a number of distressing reversals, does not commend him for elevation," Leahy said. "Instead, it demonstrates a habit of somewhat inattentive judging, of relying to his detriment on magistrates and of misstating and missing the law."

The American Bar Association gave Pickering a "well-qualified" rating, and Republicans lauded his testimony against and prosecution of the Ku Klux Klan in the late 1960s. They pointed to the support the judge got from blacks in Mississippi who know him well.

But civil rights groups, abortion rights organizations, and civil libertarians lobbied Democrats to reject Pickering's nomination. They said he was hostile to the Voting Rights Act and that he believed most employment discrimination cases filed with federal courts were weak.

Some of Pickering's past statements and rulings seemed to support those claims.

More than those rulings, however, two actions hurt him more yesterday: his decision to ask

lawyers who appear before him for letters of support for his nomination and his effort to lighten the punishment of a man convicted of burning a cross.

"The fact that Judge Pickering singled out this case, which involved a white defendant convicted of a criminal civil rights violation to challenge mandatory minimums and disparate sentencing raises serious questions," said Massachusetts Senator Edward M. Kennedy, a member of the committee.

Senate Panel Rejects Mississippi Judge; Democrats Defeat Pickering's Nomination for U.S. Appeals Court

Charles Hurt
The Charlotte Observer
March 15, 2002 Friday

The Senate Judiciary Committee voted Thursday to deny Mississippi Judge Charles Pickering a promotion to a higher federal court seat.

Pickering, a conservative politically, became President Bush's first judicial nominee to be rejected in the Senate.

The defeat for the Bush administration signals the Democratic-controlled Senate is willing to oppose nominees - possibly even candidates for the Supreme Court - who are viewed as too far to the right. The judge was denied elevation to the 5th U.S. Circuit Court of Appeals in New Orleans along a party-line vote, with 10 Democrats outweighing support from nine Republicans.

Sen. John Edwards, D-N.C., voted against Pickering, and Sen. Strom Thurmond, R-S.C., who didn't attend Thursday's hearing, had his vote cast in favor.

Opponents have painted Pickering as hostile to civil rights and cited his conservative voting record as a state legislator.

Edwards became a key detractor when he cross-examined Pickering and accused him of lacking judicial ethics in a racially charged case.

Thursday, however, Edwards said, "I do not think Judge Pickering is a racist. There are a lot of good people who support his nomination. But this is not a popularity contest."

Supporters point to Pickering's testimony against the Ku Klux Klan and other stands he took advancing the civil rights movement in Mississippi. They also point out that he got unanimous approval from the Senate when he joined the federal bench in 1990.

Senators on both sides of the vote said Thursday they regret the way Pickering was, in their opinion, smeared.

"There are some out there who have gone too far in characterizing Judge Pickering personally," said Sen. Charles Schumer, D-N.Y. "He's been unjustly branded as a racist."

Sen. Mitch McConnell, R-Ky., turned to Pickering's son, Rep. Chip Pickering, R-Miss., who was seated on the front row and said, "Your father is an honorable man. We deeply regret what has been done here."

Citing the cutthroat television series in which people are thrown out of the game by fellow contestants Sen. Arlen Specter, R-Pa., said, "There is no doubt Judge Pickering would lose a popularity contest in Washington on 'Survivor.' But there is equally no doubt that Judge Pickering would win a contest of his capabilities and qualifications."

The vote particularly angered Republicans because Democrats nixed Pickering in the committee instead of letting the full Senate vote on his confirmation, where most nominations wind up, and where he was expected to prevail.

As in previous hearings on the Pickering nomination, much of Thursday's hearing was spent squabbling among the senators over whether Democrats or Republicans stooped lower to block the judicial nominations whose politics they don't share.

At the heart of the political battle is Pickering, the 64-year-old judge from Laurel, Miss., who attracted a racially and politically diverse group of opponents - as well as supporters.

In an open letter to Pickering Thursday, Virginia Thomas recalled the painful experience she went through when her husband, Clarence, was appointed to the Supreme Court after a bitter fight in the Senate.

"You may have thought your reputation was something valuable - that you had led your life with integrity and honor - and that these attributes would be appreciated," she wrote. "But then you offered yourself for public office."

"Don't take the process personally. It's just Washington."

Committee Rejects Nominee For Appeals Judge

Jack Torry
The Columbus Dispatch
March 15, 2002 Friday

By rejecting the nomination of Judge Charles Pickering to the federal appeals bench, Senate Democrats have escalated the bitter struggle for ideological command of the U.S. Supreme Court and the 13 appellate courts across the country.

In a 10-9 vote along party lines, the Senate Judiciary Committee yesterday turned down Pickering's nomination to the 5th U.S. Circuit Court of Appeals, which covers Louisiana, Mississippi and Texas. The Democrats who control the panel also took the unusual step of blocking a floor vote by the full Senate, which likely would have confirmed the Mississippi federal judge.

By doing so, Democrats have delivered a clear signal that they plan to wage an aggressive campaign against many of President Bush's conservative judicial nominees, likely including former Ohio Solicitor Jeffrey S. Sutton and Ohio Supreme Court Justice Deborah L. Cook to the 6th U.S. Circuit Court of Appeals, based in Cincinnati. It also reflects a lingering resentment that when Republicans controlled the Senate during President Clinton's final six years, they routinely delayed or killed a number of nominations. Among those was Kent Markus of Columbus, who was nominated for a seat on the 6th Circuit.

Bush reacted with frustration. "The action of the Senate Judiciary Committee to refuse Judge Pickering a vote by the full Senate leaves another empty seat in the federal judiciary at a time when we face a vacancy crisis," he said. "It was unfortunate for democracy and unfortunate for America."

At stake is control of the federal judiciary, which has a large say on the future of federal and state laws on abortion rights, disability protections, civil rights and other important issues.

"(The battle) stops when this administration sends over to the Senate candidates over which there is consensus; people who are going to follow the law and not go against precedent, and respect the progress made in those areas," said Marcia Kuntz of the Alliance for Justice, a civil-rights legal organization.

Such a strategy infuriates Republicans. Sen. Orrin Hatch of Utah, ranking Republican on the Judiciary Committee, said Democrats are bluntly telling Bush: "We're going to play ideological politics, we've got litmus tests we're going to impose, and you're not going to get anybody on the Supreme Court who has any conservative credentials."

Bruce Fein, a conservative legal scholar in Washington, said Pickering, a friend of Senate Minority Leader Trent Lott, R-Miss., is a "very mediocre judge and thinker." But Senate Democrats "kicked him out to send a message because he was easy to pick on."

The struggle took place amid a growing number of federal-court vacancies. Half of the 16 seats on the 6th Circuit, which covers Ohio, Kentucky, Michigan and Tennessee, are unfilled.

Even members of the Judiciary Committee are urging both parties to tone down tensions. Sen. Arlen Specter, R-Pa., said, "It's time to call for a truce and an armistice."

Sen. Mike DeWine, R-Ohio, said that the rejection of Pickering should not be a "permanent poisoning of the waters. . . . We ought to step back from this whole thing and look at the process."

DeWine said the mood could continue to deteriorate if Senate Democrats reject other Bush judicial nominees. He conceded he is increasingly worried about Sutton and Cook, who have not even had a committee hearing.

"I don't know why I'd worry about a nomination that's been up since last spring and there's been no mention of it or no hearing," DeWine said sarcastically.

"The key is what happens with these circuit judges. That's where, apparently, the Democrats are drawing the battle lines."

The two parties have engaged in this testy struggle for so long that nobody is quite certain who fired the first shot. The Senate was torn asunder over the intense confirmation battles over Supreme Court nominees Robert Bork in 1987 and Clarence Thomas in 1991, both selected by Republican presidents. The Senate confirmed Thomas but rejected Bork.

The Senate confirmed 377 of Clinton's judicial nominees -- a number similar to the 382 confirmed during the eight-year presidency of Ronald Reagan. But in the final two years of Clinton's presidency, Senate Republicans delayed a number of nominations. One nominee to the 4th Circuit waited 1,033 days in vain for a hearing by the Judiciary Committee, then headed by Hatch.

Republicans argue that the numerous vacancies will create a backlog of cases.

Senate rejects Bush's choice of Pickering

Robert Dodge
The Dallas Morning News
March 15, 2002, Friday

WASHINGTON Democrats on the Senate Judiciary Committee handed President Bush his first judicial nomination defeat Thursday, voting down his choice of conservative judge Charles W. Pickering for a federal appeals court.

After the 10-9 vote cast along party lines, Democrats also turned back two Republican attempts to bring the Mississippi judge's nomination to the full Senate. If confirmed, Pickering, 64, would have taken a seat on the 5th U.S. Circuit Court of Appeals, which covers Texas, Louisiana and Mississippi.

The committee's emotional four-hour debate Wednesday was a continuation of a racially tinged confrontation over Judge Pickering, who has been on the federal bench for more than a decade. The first Bush judicial nominee to be rejected by the Senate, it brought an outpouring by conservative and liberal groups seeking to influence the committee. In a prepared statement, the president said he was "deeply disappointed" in the committee's vote.

"The action of the Senate Judiciary Committee to refuse Judge Pickering a vote by the full Senate leaves another empty seat in the federal judiciary at a time when we face a vacancy crisis," said Bush, who opened a news conference Wednesday by urging the committee to allow a full vote on the nomination. "It was unfortunate for democracy and unfortunate for America."

Republicans were confident that Judge Pickering would have been confirmed in the full Senate, where Democrats hold a one-vote margin. Southern Democratic senators John Breaux of Louisiana, Zell Miller of Georgia and Ernest Hollings of South Carolina have said they might vote for Judge Pickering.

But in the committee, the nomination fell to a bruising ideological battle that presages future fights over the makeup of the federal judiciary and, most importantly, the Supreme Court.

As Judge Pickering's son, a congressman from Mississippi, sat in a front row seat with his family, Democrats and Republicans debated the judge's fitness to be promoted to the appeals court. Democrats criticized Judge Pickering's judicial record, with Charles Pickering Jr. slightly but frequently shaking his head in disagreement.

Republicans accused Democrats of "borking" Pickering, a reference to the political attacks that scuttled the 1987 Supreme Court nomination of Robert Bork. That unsuccessful nomination by former President Ronald Reagan set the stage for more than a decade of ideological fights over court appointments, continuing through the first Bush and the Clinton presidencies.

More fights are expected as the Senate plans for hearings for other conservative judicial candidates. They include another 5th Circuit nominee, Texas Supreme Court Justice Priscilla Owen.

And Bush could face an even more heated battle if he nominates a staunch conservative to the Supreme Court. During his presidential campaign, Bush has said he intended to offer nominations such as conservative Justices Clarence Thomas and Antonin Scalia.

Sen. Edward Kennedy, D-Mass., said Judge Pickering lacked "the temperament, the moderation or the commitment to core constitutional . . . protections that is required for a life-tenure position."

Republicans countered that Pickering had been the victim of a smear campaign by liberal groups who want a litmus test on abortion, civil rights and other social issues.

"Opponents have sought desperately to find aggrieved litigants with an ax to grind," said Sen. Orrin Hatch of Utah, the committee's ranking Republican, who treated senators to a lengthy review of the nominee's judicial record. "Judge Pickering's record is clear and distinguished."

Republicans have suggested they may use a variety of procedural maneuvers to disrupt Senate deliberations and force Democrats to allow a full Senate vote on Pickering's nomination. But it

would take a 60-vote majority to force a vote on the judge's nomination.

Committee Chairman Patrick Leahy, D-Vt., rejected GOP charges that Democrats were using Pickering's nomination to settle political scores leftover from the Clinton administration, during most of which Republicans controlled the Senate. He said the judiciary panel had approved 42 nominations by Bush.

And other Democrats noted that Republicans had delayed many judicial nominations offered by former President Bill Clinton.

Sen. Arlen Specter, R-Pa., predicted the committee's vote would leave "very, very deep scars on the Senate." But he urged his Republican colleagues not to use procedural devices to snarl the Senate and called on lawmakers to end the ideological battle over judicial nominations.

"Anyone of us can throw a monkey wrench and tie the Senate into knots," Specter said.

Much of the opposition to Pickering was generated by the NAACP and other civil-rights groups that said he supported segregation in the 1950s and has expressed hostility to civil rights in more recent opinions. They raised specific questions about his intervention to provide leniency to a defendant in a 1994 cross-burning case.

In Wednesday's debate, Democrats stressed that they did not think that the judge was a racist. But they criticized his judgment for intervening in the 1994 case and questioned the quality of his rulings in other cases.

"He's been unjustly branded by some as a racist. That is not fair," said Sen. Charles Schumer, D-N.Y. "But we don't elevate a person to the second-highest court in the land just because he's not a racist. We must have a higher standard than that."

Leahy added that Pickering "repeatedly injects his own opinions into his decisions on issues ranging from employment discrimination to voting rights."

Supporters said Pickering had an excellent judicial record, arguing that he had fewer cases reversed by higher courts than the national average for federal district judges. They also pointed to his 1967 testimony against a Ku Klux Klan leader and his role in establishing the Institute for Racial Reconciliation at the University of Mississippi.

"I was impressed by Judge Pickering's lifelong commitment to reconcile racial differences in Mississippi," said Sen. Mitch McConnell, R-Ky. "My esteem for Judge Pickering, though, has only grown as I've watched what has happened to him during this sad process, particularly with respect to the savaging he has suffered at the hands of outside groups."

Hatch warns of retaliation after judge nominee rejected

Lee Davidson
The Deseret News (Salt Lake City, UT)
March 15, 2002, Friday

WASHINGTON -- After party-line votes killed the nomination of a judge whom critics painted as racist and sexist, Sen. Orrin Hatch, R-Utah, warned Democrats not to treat others similarly "or there really is going to be hell to pay."

Hatch accused Democrats and allies of a "smear campaign" and "character assassination" to derail Thursday the nomination of U.S. District Judge Charles Pickering, 64, of Mississippi to be elevated to the 5th Circuit Court of Appeals.

The Senate Judiciary Committee rejected Pickering's nomination on a 10-9 party-line vote. It then rejected motions to send his nomination to the full Senate anyway -- either with no recommendation or a negative recommendation -- also on 10-9 votes. Hatch, ranking Republican on the committee, said Pickering had enough support in the full Senate for confirmation.

He added that when Republicans controlled the committee, they forwarded some such nominees to the full Senate without recommendation. Instead, Pickering becomes President Bush's first judicial nominee to be rejected.

"There's a lot of bitterness over this, and rightly so," Hatch said after the vote. He said the "smear campaign" was "merely a warm-up battle" for liberal groups "to block any Supreme Court nominee" that Bush may propose.

Sen. Jeff Sessions, R-Ala., said Republicans might retaliate by using rules to slow Senate work or block nominees Democrats want. But Hatch said he doesn't expect any of that immediately.

But he said Democrats must treat other judicial nominees better. "If they don't, then there really is going to be hell to pay."

Pickering had been attacked by liberal groups and Democrats as doing too little against segregation early in his career; being soft on civil rights; being anti-choice on abortion; being reversed too often by higher courts; and being so extremely conservative that he was out of the judicial mainstream.

Hatch and Republicans attacked each of those assertions in four hours of debate Thursday, saying he had fought the Ku Klux Klan as a prosecutor at threat to his life and career; was reversed less often than average; and is fair. They accused critics of imposing religion and ideology tests on nominees.

"When one theory didn't work, they would go to another theory, then they would go to another and they just clouded the whole thing," Hatch said. "There wasn't a substantive reason for voting this man down at all."

He added, "The people in Mississippi are going to be outraged by this, because what they are trying to do is treat Mississippi like it's still in the Old South -- and it isn't. This man courageously stood up for civil rights."

Pickering's son, Rep. Charles Pickering Jr., R-Miss., sat on the front row watching the debate. He was upset at Democrats insisting that they were not calling the judge a racist, while still insisting he had a poor civil rights record.

The younger Pickering said, "They didn't call him a wife beater, either, I suppose. But not one (committee) Democrat ever put his life at risk for the right of African-Americans to vote. My father did. Not one member of the Democrats helped to integrate schools, and sent their children to schools that were majority African-American. . . . My father has a demonstrated record of being courageous on race."

Sen. Charles Schumer, D-N.Y., said during debate, however, "We don't elevate a person to the second-highest court in the land just because he's not a racist. We must have a higher standard."

Schumer said Pickering was too right-wing for an already too-conservative court, and moderates were needed for balance.

Committee Chairman Patrick Leahy, D-Vt., said it is his committee's role to advise and consent, not "advise and rubber stamp." He said Pickering had too often been reversed by higher courts, especially on civil rights.

Hatch countered that Pickering had been reversed on 26 cases out of 4,500 he had decided in 12 years on the federal bench. He said that reversal rate of 0.5 percent is "lower than the national average." He said it involved only a few civil rights cases, and they were reversed or remanded on issues unrelated to civil rights, such as the awarding of attorney fees.

The rejection pleased liberal groups. People for the American Way President Ralph G. Neas called it a "victory for Americans opposed to right-wing domination of the federal courts."

Marcia Greenberger, co-president of the National Women's Law Center, praised the vote, saying Pickering's record shows "he cannot be counted on to uphold the laws that guarantee constitutional rights."

Meanwhile, conservatives were outraged. A group of 39 House Republicans -- mostly from the House Judiciary Committee, including Rep. Chris Cannon, R-Utah -- wrote to the Senate complaining that Democrats are trying to impose "a religious test on judicial nominees."

They noted Pickering was attacked for comments about abortion and other issues made when he was president of the Mississippi Baptist Convention.

They said that critics therefore essentially argue "that a religious person is unqualified to serve in the federal judiciary because he cannot be trusted to separate his personal religious beliefs

from his official duties. This is nothing more than a religious test barring any person of faith from holding a judicial office."

Several Democrats including Leady said in the hearing that Republicans may have brought on the rejection of conservative Pickering by refusing to give hearings to many liberal nominees of former President Clinton when they controlled the committee.

Hatch and Republicans conceded that some Democrats had been treated poorly, but said Democrats are treating Republican nominees worse.

In 14 months, President Bush has nominated 29 circuit court judges -- and seven have been confirmed. University of Utah law professor Michael McConnell is among circuit nominees still awaiting a confirmation hearing.

In comparison in their first two years in office, President Bill Clinton nominated 22 circuit judges with 19 confirmed. President George H.W. Bush nominated 23 and 22 were confirmed. President Ronald Reagan nominated 20 and 19 were confirmed.

When Bush took office last year, 67 federal judicial vacancies existed. Now there are 96.

Senate committee rejects Pickering ; Party-line confirmation vote hands Bush first defeat on judicial nominee

Michael Petrocelli
The Houston Chronicle
March 15, 2002, Friday

WASHINGTON - The Democratic-controlled Senate Judiciary Committee on Thursday killed the nomination of Charles Pickering to a federal appeals court on a party-line vote after weeks of racially tinged debate.

The vote, twice delayed at the request of Republican senators scrambling to salvage the nomination, handed President Bush the first defeated judicial nominee of his administration.

As had been expected for weeks, all 10 Democrats voted against Pickering and rejected calls by Bush and other Republicans to send the nomination to a vote of the full Senate. All nine Republicans on the panel voted to approve Pickering. President Bush said he was deeply disappointed by Pickering's defeat.

"The action of the Senate Judiciary Committee to refuse Judge Pickering a vote by the full Senate leaves another empty seat in the federal judiciary at a time when we face a vacancy crisis," Bush said in a statement. "It was unfortunate for democracy and unfortunate for America."

Democrats said they opposed Pickering based on his record as a federal judge in Mississippi. They charged that he frequently ignored settled principles of law in making rulings, particularly in civil rights cases.

Several Democrats also cited Pickering's efforts in a case before his court in 1994 to get the Justice Department to reduce a mandatory sentence for a man convicted of burning a cross on the lawn of an interracial couple. Pickering has acknowledged contacting a Justice Department official to press the matter, an action Democrats called unethical.

The confirmation fight was tinged with allegations that Pickering had endorsed racially insensitive views early in his law career. Republicans said he was the victim of a smear campaign.

In a meeting last week, Sen. Orrin Hatch, R-Utah, the highest ranking republican on the committee, accused liberal interest groups of "lynching" Pickering by exhuming his record on civil rights in the 1950s and '60s.

Organizations including People for the American Way, the National Abortion and Reproductive Rights Action League and the NAACP challenged Pickering's commitment to upholding civil rights and abortion rights.

The Pickering battle was the first of what is expected to be a long list of difficult confirmation fights for Bush's most conservative nominees, and could be a warm-up should a vacancy come up on the U.S. Supreme Court while Bush is in office.

Judicial nominations have grown increasingly contentious in the past 15 years. Republicans still frequently cite the Democrat-controlled Senate's defeat in 1987 of Robert Bork, President Reagan's nominee to a vacancy on the U.S. Supreme Court.

Democrats still seethe over what they said were stall tactics on President Clinton's nominees when Republicans controlled the Senate from 1995 to 2000. Three of Clinton's nominations to vacancies on the 5th Circuit died without a hearing.

Democrats said that while they were not seeking revenge, Bush should not be allowed to fill the vacancies with overly conservative nominees.

"There's clearly no mandate from the American people to stock the courts with conservative ideologues," said Sen. Charles Schumer, D-N.Y. "So if the White House persists in sending us nominees who threaten to throw the courts out of whack with the country, we have no choice but to vote 'no.' "

Democrats derail Bush's judicial nominee

Charles Hurt
The Miami Herald
March 15, 2002 Friday

In the Senate's first rejection of one of President Bush's judicial nominees, Democrats on the Judiciary Committee denied Mississippi federal Judge Charles Pickering a promotion to a federal appeals court.

All 10 Democrats on the panel voted against Pickering, and all nine Republicans voted for him.

FORESHADOWING

The party-line vote signals that the Democrat-controlled Senate will oppose Bush nominees to the federal judiciary if they are deemed too conservative. Such partisan stands against judicial nominees are rare at the appellate level, but Pickering's rejection sends an unmistakable warning to Bush that any nominations he makes for the Supreme Court will be judged by the same standard.

Pickering, a conservative politically, was rated "well-qualified" by the American Bar Association, the legal group's highest rating. The full Senate had approved his 1990 appointment to the federal bench unanimously.

Liberal interest groups led by People for the American Way are fearful that Bush will stack federal appellate courts with conservatives who are hostile to their values on issues such as abortion rights and affirmative action. They led the drive to derail Pickering's promotion to the Fifth U.S. Circuit Court of Appeals in New Orleans, which oversees federal law in Texas, Mississippi and Louisiana.

FOR AND AGAINST

Opponents also tried to paint Pickering as "hostile to civil rights," questioned his judicial ethics and cited his conservative voting record as a state legislator.

However, Pickering's supporters, including African-American activists and Democrats from his native Mississippi, said that at key moments during the civil rights struggle he had testified against the Ku Klux Klan and had taken other stands in Mississippi that were bold in that time and place.

The vote particularly angered Republicans, because Democrats ended Pickering's nomination in the Judiciary Committee instead of allowing the full Senate to vote.

VICTORY DENIED?

Pickering might have won in the full Senate, because conservative Southern Democrats John Breaux of Louisiana, Ernest Hollings of South Carolina and Zell Miller of Georgia had indicated

they might vote for him, and all 49 Republicans probably would have. Fifty-one votes in the full Senate would have confirmed Pickering.

But Senate Majority Leader Tom Daschle, D-S.D., said he would not bring to the Senate floor any judicial nomination below the Supreme Court that the Judiciary Committee rejected.

The 64-year-old judge from Laurel, Miss., attracted a racially and politically diverse group of supporters.

A group of them, including Charles Evers, brother of slain civil rights legend Medgar Evers, traveled to Washington last week hoping to convince Senate Democrats on the committee that the Pickering depicted in hearings is not the Pickering they know.

Lott Blocks Daschle FCC Choice After Vote On Pickering

National Journal's CongressDaily
March 15, 2002

In a move that could have ramifications for the Senate' schedule and the progress of legislation, Senate Minority Leader Lott today said he will block Majority Leader Daschle's recommended nominee to serve on the FCC, in a sign that party relations have deteriorated in the wake of the Judiciary Committee's rejection Thursday of U.S. District Judge Charles Pickering for an appellate court seat. Lott told a group of reporters he planned to block the nomination of Jonathan Adelstein, who now serves as a legislative assistant to Daschle, and was born in Rapid City, S.D. "I don't think he's qualified," said Lott. "He's relatively young. He doesn't have the educational experience to be qualified for a position as important as that one is." Lott said he reached his decision to block the nomination two or three weeks ago after meeting with Adelstein. He said Daschle can try to force the nomination through, but warned, "It'll take a lot of time." Lott said the defeat of Pickering - the latter of whom is a long-time friend of Lott's - would damage his Lott's personal and professional relations with Daschle, although he failed to specify how it might affect the Senate agenda. "You'll see it in a lot of ways and a lot of days," he said. Daschle recommended
that President Bush make the Adelstein nomination last November. The president has not yet formally submitted it, although the administration traditionally follows such recommendations. There is currently a one-seat vacancy on the FCC. Lott denied his action had anything to do with Pickering's defeat; Lott lobbied hard on Pickering's behalf. Daschle responded to Lott by telling reporters: "It's unfortunate that he's taken it personally. It's also unfortunate that he would lash out at somebody that's uninvolved in the Pickering nomination. For [Adelstein] to be singled out in such a way is uncalled for." Daschle said
Republicans should refrain from making threats to hold up Senate action, since Bush has many legislative priorities in Congress. "I would hope that everyone would just cool down, think a little bit before we throw something, and try to work together," Daschle said.

Shortly after the vote, Rep. Charles (Chip) Pickering, R-Miss. - who is the judge's son - told

reporters that he did not hold most members of the Judiciary Committee responsible. "I will tell you who I do hold responsible - because he knowingly and willfully misstated the facts, and distorted the facts and the cases - and that's [Sen.] John Edwards [D-N.C.]. My view is, he sold his political soul to the special interest groups out of presidential ambition, and the price he paid was to smear a good man," the younger Pickering declared. In a floor speech following Thursday night's committee vote, Lott told colleagues he takes the elder Pickering's defeat "personally." Lott said of Judiciary Committee members, "I don't blame any one - I blame all 10, beginning with Daschle and [Judiciary Chairman] Leahy, right on down the line." Daschle, who does not serve on the panel, told reporters he did not lobby members of the committee.

In Mississippi, state Republican Chairman Jim Herring said Pickering's defeat would spur the GOP's effort to get his son re- elected to the House, the Associated Press reported. "I predict that this will make Republicans redouble their efforts in the coming congressional campaign to make sure our great congressman, Chip Pickering, is returned to congress by a wide margin in November," he said. Pickering's district was combined with that of Democratic Rep. Ronnie Shows were Mississippi lost a district due to reapportionment. - by Geoff Earle

Panel Rejects Bush Nominee For Judgeship

Neil Lewis
The New York Times
March 15, 2002, Friday

The Senate Judiciary Committee shut the door today on President Bush's efforts to promote Judge Charles W. Pickering Sr. to an appeals court post, as Democrats used their majority to reject his confirmation in the committee and then refused to send the nomination to the full Senate as the president had requested.

Judge Pickering, a trial judge in Hattiesburg, Miss., represented the Bush administration's first judicial confirmation fight and has now become its first defeat. Mr. Bush had been trying to name the 64-year-old conservative federal district judge to a seat on the United States Court of Appeals for the Fifth Circuit, based in New Orleans. The solid vote of the Judiciary Committee's 10 Democrats ended what Judge Pickering said were his hopes to cap his career with a few years on the appeals court. More important, the Senate Democrats said they had sent a message to President Bush that with their majority, they have the power to block his judicial choices. They said he should take that balance of power into account when he nominated judges and Supreme Court justices.

While much of the debate about Judge Pickering was over his record on racial issues and his performance in 11 years on the bench, some Democrats were straightforward in declaring that they were also voting against the nomination to discourage Mr. Bush from believing he could send up legions of conservative judicial nominees who would automatically win confirmation.

Senator Charles E. Schumer, a New York Democrat who is a member of the committee, said

Judge Pickering was a decent and honorable man and certainly not a racist, as he had been portrayed by some groups opposing his nomination.

"This is about what kind of appellate judge he would be and, most of all, about maintaining balance on our federal courts," Mr. Schumer said.

He noted that Mr. Bush had said during the presidential campaign that he would select judges in the mold of the conservative justices Antonin Scalia and Clarence Thomas, and said that trying to "stack the courts with Scalias and Thomases" was unacceptable.

After several hours of speeches, the committee voted 10 to 9 along party lines to reject the Pickering nomination. It then quickly voted the same way to reject two Republican proposals to send the nomination to the full floor, where as many as three Democratic senators had suggested that they might break party ranks and provide enough votes to confirm Judge Pickering.

Mr. Bush said tonight that he was "deeply disappointed that Judge Charles Pickering, a distinguished judge who was unanimously confirmed by the Senate in the past, is being denied the opportunity to further serve his country."

Before the Judiciary Committee vote, Senator Orrin G. Hatch of Utah, the panel's ranking Republican, complained that Judge Pickering was the object of an ugly smear campaign, largely conducted by liberal advocacy groups based in Washington. Mr. Hatch did not repeat his comment last week that Judge Pickering was being subjected to "a lynching," but he said the nominee's record was distorted beyond recognition.

Senator Edward M. Kennedy, Democrat of Massachusetts, said he believed that Judge Pickering did not have "the temperament, the moderation or the commitment to core constitutional protections that is required for a life tenure position" on the appeals court.

Judge Pickering was not in the committee room during the session but at his home in Mississippi. His son, Representative Charles W. Pickering Jr., a Republican Congressman from Mississippi, who is known as Chip, sat in the front row of the committee room, frequently wiping his brow and rubbing his hands. He shook his head "no" each time he had to endure criticism of his father from Democrats.

The campaign against the Pickering nomination switched directions weeks ago. Some advocacy groups first portrayed Judge Pickering as someone highly insensitive to racial justice. They cited his having written, when he was 21, an article recommending changes to strengthen the state's law against racially mixed marriages. They also pointed to his defection from the Mississippi Democratic Party in 1964, when it was forced to integrate its national convention delegation.

But after Judge Pickering's supporters countered with accounts of his efforts at racial reconciliation in Mississippi, the main dispute became his conduct as a judge.

Critics emphasized his actions when he presided over a 1994 trial involving a cross burning.

Judge Pickering aggressively promoted his views to prosecutors that the sentence for the one defendant who was convicted at trial was too severe, even though it was mandated by the law. In the end, he persuaded prosecutors to drop the charge that would have required the long sentence.

While the Pickering nomination fight had its own trajectory, people on both sides of the issue were keenly aware that they were testing the battle lines for future confrontations over the ideological shape of the federal courts.

The hearing also exposed a whiff of retribution as several Democrats complained that three of President Clinton's choices for the Fifth Circuit were not even given a hearing.

Senator Richard J. Durbin, Democrat of Illinois, said he would refuse to "reward the president's party for the vacancies created by their obstructionism during the last six years."

With an eye on future battles, Republicans were similarly working to establish ground rules for future confirmation battles to their liking, emphasizing that President Bush should be given great leeway in his choices to the federal bench.

Mr. Bush had appeared alongside Judge Pickering in the Oval Office last week to improve his confirmation chances, and on Wednesday issued an appeal at a news conference to send the nomination to the full Senate. Tonight Mr. Bush placed the bloc vote by Democrats in a more critical light, saying, "The action of the Senate Judiciary Committee to refuse Judge Pickering a vote by the full Senate leaves another empty seat in the federal judiciary at a time when we face a vacancy crisis."

The Pickering nomination fight included a reminder today of another battle, the 1991 confirmation of Clarence Thomas to the Supreme Court after he was accused of sexual harassment by a former associate. His wife, Virginia Thomas, published an open letter to Judge Pickering in The Wall Street Journal today that said he was being opposed "because you will not rule in favor of the hard left's political agenda."

Mrs. Thomas, an official at the Heritage Foundation, a conservative study group, also said, "The Democrats on the committee and the outside groups that egg them on don't think of you as a human right now."

Senate Dems Dash Dubya's Judge Pick
Vincent Morris
The New York Post
March 15, 2002, Friday

WASHINGTON - Senate Democrats ignored last-minute lobbying by President Bush yesterday and rejected his nomination of Charles Pickering to serve as a federal appeals court judge.

The defeat - the first for one of Bush's judicial picks - came on a 10-9 party line vote by the

Senate Judiciary Committee, which Democrats control. Bush and other Republicans argued that Pickering, 64, a district court judge, is honorable, though Democrats implied his past rulings and Old South sympathies were racist.

"[Pickering] went the whole nine yards and then some to get a lighter sentence for a convicted cross-burner," said Sen. Charles Schumer (D-N.Y.), a committee member who opposed the nomination

Schumer was referring to a 1994 case in which Pickering sought to use a plea bargain to help a man who had been convicted of burning a cross on the lawn of an interracial couple.

Sen. Charles Grassley (R-Iowa) countered that "liberal, left-wing interest groups" were out to sink Pickering and had twisted the judge's record.

Bush, who convinced the Senate to postpone the vote for two weeks, wanted Pickering, a Mississippi district court judge, to win promotion to the Fifth Circuit Court of Appeals, which covers Louisiana, Mississippi and Texas.

Partisan vote stops Pickering

Lawrence M. O'Rourke
The News and Observer (Raleigh, NC)
March 15, 2002 Friday

Washington -- In a sharp rebuff to President Bush, the Democratic-controlled Senate Judiciary Committee voted along party lines Thursday to reject the nomination of Judge Charles Pickering of Mississippi for promotion to a federal appeals court.

Ending a racially and politically charged confirmation battle, the committee cast three unusual 10-9 votes to reject Pickering, to refuse to send his nomination without a recommendation to the Senate floor and to refuse to send it to the floor with a negative recommendation.

Saying he was deeply disappointed, Bush declared in a statement that "the action of the Senate Judiciary Committee ... leaves another empty seat in the federal judiciary at a time when we have a vacancy crisis. It was unfortunate for democracy and unfortunate for America." The president said Pickering "deserves better than to be blocked by a party line vote of ten Democrats."

The judge's son, Republican Rep. Charles Pickering of Mississippi, lashed out at Senate Democrats and liberal groups that worked against his father, angrily singling out North Carolina Sen. John Edwards for major responsibility.

"Sen. Edwards distorted my father's record," Pickering said during an interview in the hearing room immediately after the vote. "Sen. Edwards misstated my father's position on mandatory

minimum sentences and one-man, one-vote.

"This battle was much larger than my father. It was for political and cultural control of this country," Pickering said. "My father's character and courage were tested and strengthened in a destructive process."

Sen. Mitch McConnell, R-Ky., said Pickering "will survive this crisis and continue his career as a federal judge in Mississippi." But McConnell warned that the debate had jeopardized the ability of the Senate, narrowly controlled by Democrats, to reach compromise with the White House and congressional Republicans.

Democrats countered that they have already approved several of Bush's judicial nominees. California Sen. Dianne Feinstein pointed out that when Republicans controlled the Senate during the last six years of President Clinton's administration, they would not approve Clinton's judicial nominees.

Although it has been clear for weeks that Senate Democrats would not elevate Pickering from the district court to the appeals court, Bush fought until the last minute for his nominee, telephoning senators as conservative groups aligned with the White House fought back against liberal groups that resisted
Pickering.

Republican senators used their final speeches, in the nearly five hours of debate leading up to the vote, to blast liberal groups, contending that they were unfairly depicting Pickering as a racist.

GOP also asserted that liberals were resisting Pickering in a "warm-up" for possible battles later in the Bush presidency for the U.S. Supreme Court.

Democrats repeatedly said they did not consider Pickering to be a racist, but they pointed to his record as a Mississippi state senator, Republican Party chairman and trial judge for 11 years. Democrats said he showed a pattern of disdain for the civil rights of African-Americans, job and legalized abortion rights for women, and prisoners' claims.

In perhaps the sharpest Democratic attack, Edwards declared that Pickering "put his personal beliefs above the law."

Edwards said Pickering as a judge improperly intervened with prosecutors to lessen the sentence of a man convicted of burning a cross on the lawn of an interracial married couple.

Following Edwards, committee chairman Sen. Patrick Leahy, a Vermont Democrat, read a letter from the wife in that case, asserting that Pickering's intervention had undermined her faith in the legal process.

Sen. Jeff Sessions, R-Ala., defended Pickering's conduct. He said that the man for whom the

judge intervened had received a lengthy prison sentence when two other participants had been let off lightly and that Pickering was looking for "a way to seek and improve justice."

Senators send a signal, reject judicial pick; In voting down a conservative judge for an appeals court seat, Democrats demonstrated the bar for Supreme Court jobs.

Charles Hurt
The Philadelphia Inquirer
March 15, 2002 Friday

WASHINGTON - In the Senate's first rejection of one of President Bush's judicial nominees, Democrats on the Judiciary Committee yesterday denied Mississippi Judge Charles Pickering a promotion to a federal appeals court.

The 10-9 party-line vote signaled that the Democrat-controlled Senate would oppose Bush nominees to the federal judiciary if it deems them too conservative.

Such partisan stands against judicial nominees are rare at the appellate level, but Pickering's rejection sends Bush an unmistakable warning that any Supreme Court nominations he makes will be judged by the same standard. The Judiciary Committee also snubbed Bush's request to let the full Senate vote on Pickering, 64, a federal judge for more than a decade.

Bush, in a statement, said he was "deeply disappointed" at the panel's action, calling it "unfortunate for democracy and unfortunate for America."

The American Bar Association rated Pickering "well-qualified," its highest rating. The full Senate unanimously approved his 1990 appointment to the federal bench.

But some liberal interest groups, led by People for the American Way, led a drive to derail Pickering's nomination for a seat on the U.S. Court of Appeals for the Fifth Circuit in New Orleans, which oversees federal law in Texas, Mississippi and Louisiana. They fear that Bush will stack federal appeals courts with conservatives who are hostile to their values on issues such as abortion rights and affirmative action.

Opponents also tried to paint Pickering as hostile to civil rights, questioned his judicial ethics, and cited his conservative voting record as a state legislator.

Pickering's supporters, including African American activists and Democrats from Mississippi, said that at key moments during the civil rights struggle, he had testified against the Ku Klux Klan and taken other stands in Mississippi that were bold in that time and place.

Senators from both parties said they regretted that Pickering had been smeared.

"There are some out there who have gone too far in characterizing Judge Pickering personally,"

said Sen. Charles E. Schumer (D., N.Y.), who voted against the judge. "He's been unjustly branded as a racist."

Sen. Mitch McConnell (R., Ky.) told Pickering's son Rep. Charles W. "Chip" Pickering Jr. (R., Miss.): "Your father is an honorable man. We deeply regret what has been done here."

Schumer added: "He's a decent and honorable man. But we don't elevate a person to the second-highest court in the land just because he's not a racist."

Pickering might have won in the full Senate, because conservative Southern Democrats John B. Breaux of Louisiana, Ernest F. Hollings of South Carolina, and Zell Miller of Georgia had indicated they might vote for him, as all 49 Republicans probably would have.

Majority Leader Tom Daschle (D., S.D.) said he would not bring to the Senate floor any judicial nomination below the Supreme Court that the Judiciary Committee rejected.

Pickering, from Laurel, Miss., attracted a racially and politically diverse group of supporters.

A group of those supporters, including Charles Evers, brother of the slain civil rights legend Medgar Evers, traveled to Washington last week hoping to convince Senate Judiciary Democrats that the Pickering depicted in hearings was not the man whom they know and support.

In an open letter to Pickering yesterday, Virginia Thomas recalled the painful experience she went through when her husband, Clarence, was appointed to the Supreme Court after a bitter confirmation fight in the Senate.

"You may have thought your reputation was something valuable - that you had led your life with integrity and honor - and that these attributes would be appreciated," she wrote. "But then you offered yourself for public office.

"Don't take the process personally. It's just Washington."

Pickering Loses on 10-9 Vote; Democrats Line Up-Against Mississippi District Judge

Ben Bryant
The Sun Herald (Biloxi, MS)
MARCH 15, 2002 Friday

WASHINGTON -- The Senate Judiciary Committee killed the nomination of South Mississippi Judge Charles Pickering to a federal appeals court post Thursday, dealing a defeat to President Bush in a bitter standoff tinged with accusations of race-baiting.

The vote against the nomination broke along party lines; all 10 of the committee's Democrats voted against it, and all nine Republicans voted for it. The committee's Democratic majority also

rebuffed two procedural attempts by Sen. Arlen Specter, R-Pa., to send the nomination to a vote in the full Senate.

Pickering, now a U.S. District Court judge in Hattiesburg, was not at the three-hour hearing, which saw each committee member voice his reasons for favoring or opposing the nomination. But U.S. Rep. Chip Pickering, R-Miss., the judge's son, spoke for his father afterward. Rep. Pickering blasted the Judiciary Committee Democrats, as well as Washington interest groups that opposed his father's nomination, as a threat to the civil rights of women and minorities.

"This was an attack on the South and an attack on Mississippi," Rep. Pickering said. The congressman joined Republican Party members of the Judiciary Committee in emphasizing his father's role in taking on the Ku Klux Klan as a prosecutor in the late 1960s.

"Not one member of that committee can say that they put their life on the line to secure the civil rights of African-Americans," he said. "My father can."

The Republican leader, Sen. Trent Lott, Pickering's friend and Mississippi patron, has authority to seek a vote by the full Senate, but such efforts are customarily settled on party-line votes.

Even so, Lott quickly went to the Senate floor, where he defended his friend of 40 years. "I take it personally," he said of the vote, which he also labeled a "slap at Mississippi."

One Democrat, Sen. Zell Miller of Georgia, attacked the committee. "This action may very well elect a Republican governor in Mississippi," he said, calling Pickering's rejection an example of "the Terry-tail wagging the Democratic donkey." That was a reference to Terry McAuliffe, the party's chairman.

Supporters and opponents of Pckering's confirmation filled the large committee room. Supporters wore pink badges that said "Stop the Bickering Confirm Pickering."

Opponents of the nomination said they were motivated by the judge's legal record, which they said displays his tendency to inject personal opinions into judgments.

"He has made clear that he would set aside well-established judicial rules to suit his own feelings," said Sen. John Edwards, D-N.C. Edwards was referring to a 1994 case in which Pickering tried to win a more lenient sentence for a young man convicted in his court of burning a cross on an interracial couple's lawn in Walthall County.

Sen. Patrick Leahy, D-Vt., the chairman of the Judiciary Committee, denounced conservative advocacy groups that charged that the panel's Democrats called Pickering a racist.

"That was never said, and I resent people distorting the facts to say that it was," Leahy said.

The Pickering nomination's defeat was the first setback for a judicial nominee since 1991, when the Judiciary Committee voted down the appeals-court nomination of Florida District Judge

Kenneth Ryskamp.

Though supporters of the Pickering nomination discussed a scenario in which 60 senators could vote to bring the nomination up for a vote by the full Senate in executive session, Sen. Orrin Hatch, R-Utah, discounted those plans.

"It's over," said Hatch, the Judiciary Committee's ranking Republican member. "President Bush should send us another name to vote on."

Forty of Bush's 92 judicial nominees have been confirmed, but only seven of his 29 nominees to federal appeals courts have been cleared by the Senate.

Senate panel rejects judicial nominee; Pickering refused in partisan vote

Bill Walsh
The Times-Picayune (New Orleans)
March 15, 2002 Friday

WASHINGTON -- The Democrat-controlled Senate Judiciary Committee blocked the nomination Thursday of Judge Charles Pickering to the 5th U.S. Circuit Court of Appeals in New Orleans, handing President Bush a stinging defeat in his
first major judicial nomination battle.

As expected, the committee voted along party lines against the 64-year-old Mississippi jurist who has been alternately portrayed as a throwback to the South's ugly segregationist past and a courageous defender of civil rights who took on the Ku Klux Klan at great personal peril.

Pickering does not have "the temperament, the moderation or the commitment to core constitutional . . . protections that is required for a life tenure position on the appeals court," said Sen. Edward Kennedy, D-Mass., a member of the committee.

The committee also rejected entreaties from Bush to refer the nomination to the full Senate so all 100 members would have a chance to vote. Democrats, who hold a one-seat majority in the Senate, said they were adhering to a long tradition -- followed by Republicans when they controlled the Senate -- of letting the Judiciary Committee have the final say on nominees. Bush and Senate Republicans argued that the committee is stacked with liberals and that a majority of the Senate supports Pickering. They accused the Democratic leadership of using the committee process to bottle up the conservative nominee.

"They have chosen a process that is a partisan one, that defies bipartisanship because they know, the Senate leadership does, that there are enough votes to pass Judge Pickering on the floor of the Senate," White House spokesman Ari Fleischer said.

Defending precedent

Sen. John Breaux, D-La., who is not a member of the Judiciary Committee, seemed to support Fleischer's theory, saying "there are a number of (Senate) Democrats who would support" Pickering. He declined to name them or even say whether he would vote for the nomination, but did add, "I would like to see that debate on the Senate floor."

Breaux also said he opposed any effort to circumvent the committee's decision.

"It would set a terrible precedent," Breaux said. "They have to go through the process and go through committee. I respect that. Republicans handled it that way, and Democrats are handling it that way now."

Fellow Louisiana Democrat Sen. Mary Landrieu agreed. She said there is "very limited precedent" for the Senate considering a nominee who has been rejected by the committee. According to the Senate Historian's Office, there have been two cases since 1945.

The Louisiana Republican Party, which is trying to unseat Landrieu in her re-election bid this fall, said she is "abandoning one of her most important duties as senator" by not calling for a full Senate vote on a judicial nominee. Landrieu said she thinks the committee should have final say.

"I respect the committee process in the Senate and believe that when a committee has held hearings and conducted a vote on a nominee, it should only be overturned by the full Senate for very specific or compelling reasons," she said in a written statement.

Checkered career

Pickering's critics had focused on his authorship of a 1959 law school article laying a legal foundation for opposition to interracial marriage, and his later law partnership with an avowed segregationist. They also cited his intervention with prosecutors in a 1994 case to decrease the sentence of a man convicted of burning a cross on the lawn of an interracial couple. They said he would move the 5th Circuit, an already conservative court with jurisdiction over Louisiana, Texas and Mississippi, dramatically to the right.

But Pickering's supporters say he was the victim of a political witch hunt. They point out that when he was appointed to the U.S. district bench in 1990, he was approved unanimously by the Senate. Pickering also has prominent African-American defenders, including James Charles Evers, brother of slain civil rights leader Medgar Evers. His supporters note that in 1967, he testified against Ku Klux Klan Imperial Wizard Samuel Bowers, an act, they say, that placed him at personal risk and cost him re-election as a local prosecutor in Mississippi.

The defeat of Pickering, father of Rep. Charles "Chip" Pickering Jr., R-Miss., is an indication of how much power changed hands last year when the Democrats took over control of the Senate

following Vermont Sen. James Jeffords' switch from Republican to independent.

Some saw the Pickering dispute as a preview of what Bush can expect if he has the opportunity to make a nomination to the U.S. Supreme Court.

Clinton era remembered

The scuttled Pickering nomination also laid bare the partisanship that has come to dominate the judicial-approval process. Without saying Pickering's defeat was payback for the dozens of Clinton appointees blocked by the then-Republican-controlled Senate, Democrats made the point that the party in power has the leeway to set the pace of approvals.

Landrieu noted that one of Clinton's appointees to the 5th Circuit, Alston Johnston of Baton Rouge, never got a hearing before the committee. Dozens of other Clinton nominees were similarly left stranded.

"Judge Pickering received a fair hearing and a vote by the Judiciary Committee some six months after he was nominated," Landrieu said. "I would like to point out that the previous Senate leadership let Alston Johnson sit for nearly two years after his nomination without either a vote or a hearing despite bipartisan support."

Rejecting GOP claims that they are being obstructionist, Democrats said they are moving much quicker in approving nominees. So far this year, the Senate has confirmed 40 of Bush's judicial nominees, seven to the appellate bench and 33 to district court.

Faceoff: Nit-Pickering?

Peter Roff
United Press International
March 15, 2002, Friday

Did U.S. District Judge Charles Pickering deserve a vote of the full Senate on his nomination? UPI National Political Analysts Peter Roff, a conservative, and Jim Chapin, a liberal, face off on opposite sides of this critical question.

Roff: There should have been a vote

Two important issues have intersected during the confirmation of U.S. District Judge Charles Pickering to a seat on the U.S. 5th Circuit Court.

The first is his qualifications. The second is the process itself. Pickering easily won confirmation to his current post in 1990. He is a qualified if not especially distinguished jurist who should have been a non-controversial choice for an appellate slot.

Partisan politics derailed the nomination.

Senate Majority Leader Tom Daschle, D-S.D., seems bent on stopping Bush's court nominees, likely fearing the Republican-appointees at the circuit level will turn back his party's ideological gains.

Pickering was subjected to a scandalous attack by self-anointed civil liberties groups based in Washington. Despite their claims to the contrary, groups like People for the American Way deliberately left the impression that Judge Pickering is a racist.

Even the liberal Washington Post editorialized against the attacks. "Opposing a nominee should not mean destroying him. And the attack on Judge Pickering has become an ugly affair. ... The judge's opponents ... have tried to paint him as a barely reconstructed segregationist. To do so, they have plucked a number of unconnected incidents from a long career: a law review article from 1959 on the state's anti-miscegenation statute; ... his incidental contacts as a state legislator in the 1970s with the Mississippi state Sovereignty Commission; and his handling of a cross-burning case in his court a few years back, to cite a few examples. None of these incidents, when examined closely, amounts to much, but opponents string them together, gloss over their complexities and self-righteously present a caricature of an unworthy candidate."

Blacks from Mississippi who know him well came forward to attest to his honor and strong character, whatever his partisan political views may be. Their support pitted them against Pickering critics like U.S. Rep. Bennie Thompson, D-Miss., a black Democrat, who called the judge's black supporters "Judases."

Judge Pickering was swept up in an ugly process, motivated by the idea that George W. Bush should not be allowed to reshape the federal judiciary because of the narrowness of his victory. Bush opponents have taken the stance that his nominees must be stopped using whatever means available. Never, in the eight years of the Clinton administration, did the Republicans treat judicially nominees as shabbily as this.

The Democrats wanted to vote down the nomination in committee and end it there yet, as the White House pointed out, a favorable recommendation is not required to send a nomination to the floor. Since 1938, only four judicial nominees prior to Pickering were denied -- if they wanted it -- the opportunity to have the full Senate vote after the Senate Judiciary Committee voted on them. Mere partisanship is not sufficient reason to break this precedent.

If, as Daschle says, the Senate is merely exercising its constitutional duty to advise and consent on these matters, then the full Senate should have been allowed to vote. The Constitution does not assign that responsibility to committees in lieu of action by the full Senate, no matter how Daschle reads it. If the committee votes on the nomination, then the full Senate should have its say as well.

Chapin: A bad result for a bad candidate

Let's be clear about this -- the defeat of Charles Pickering is not a loss for the 5th U.S. Circuit Court of Appeals. Pickering was a pedestrian candidate backed by the minority leader of the Senate, Trent Lott, R-Miss., for reasons of long-time friendship, and probably because his son "Chip" Pickering is sitting in the House of Representatives from the same state.

Mississippi is, notoriously, the most racially polarized state in the Union. In 2000, 96 percent of the blacks and only 17 percent of the whites in the state voted for Al Gore.

Pickering's long political/judicial career in the state has been built on that racial polarization. In every decade he appeared as a representative of white interests -- in a state in which such interests were built on oppressing blacks.

Let's review those "incidents" that the Washington Post thought were "incidental" in his career.

The 1959 law review article on the state's anti-miscegenation statute suggested ways in which the statute could be strengthened to make it more difficult for blacks to marry whites -- and it was immediately acted upon and passed. The Mississippi State Sovereignty Commission was, of course, the legal arm of state policy tied into repression of black political activity.

Unrelated? Gee, that ties right back into his first political intervention in 1959. It shows, in fact, a consistency that would be admirable if it were not in the service of so rancid a cause.

Pickering supplemented this consistent record with ex-parte remarks on subjects ranging from his opposition to "one-man-one vote" legislation (he no doubt misses the "good old days" when blacks didn't vote except at the risk of their lives) and disquisitions on liberals which no doubt go down well in the Republican country clubs of Mississippi, but hardly make him a sterling candidate for advancement on the federal bench.

Of course, the deeper issue behind Pickering's nomination fight is that President George W. Bush, with all the assurance of 47.9 percent of the American people having voted for him, thinks it is an insult that he shouldn't be allowed to reshape the federal bench in a hard-right direction.

Since his own party delayed, dismissed and dissed President Clinton's nominees during the six years that it controlled the Senate, it's kind of hard to make much of a case for Bush's "right" to turn the courts right, or for that matter, that that's what the country wants.

Bush appointees, for example, have to meet the litmus tests of Bush's buddies in the Federalist Society and the Christian Coalition, while, of course, the American Bar Association has been taken out of the review process.

We already know, from ample evidence, that this president believes in his right to do anything he feels like without even notifying the congress of his intentions. Unfortunately for him, the Constitution requires that his nominees for life-time appointees do get Senate approval, and the Senate rules, provide that nominations killed in committee are dead, dead, dead.

If the president wants to go to the country in the next election, outlining the ideological views that he expects his candidates for the judiciary to follow, such as clear-cut opposition to Roe vs. Wade, then he should do so. But if he plays the same games in 2004 as he did in 2000, winking and nodding to the right while telling the center that he wasn't interested in a radical overhaul of the American Constitution, then there is no particular obligation on the opposition party to give him the right to appoint judges without tough scrutiny.

Senate panel rejects Bush's judicial nominee 10-9*

Joan Biskupic
USA TODAY
March 15, 2002, Friday

WASHINGTON -- A bitterly divided Senate Judiciary Committee voted down the nomination of Mississippi judge Charles Pickering on Thursday, culminating a months-long political brawl over President Bush's choice for an important appeals court and possibly foreshadowing battles to come over other nominees.

The 19-member committee voted strictly along party lines to reject the nomination: the 10 Democrats against him, the nine Republicans for him.

Pickering, 64, has been a federal trial judge in Mississippi since 1990. Bush named him to the U.S. Court of Appeals for the 5th Circuit in May. Thursday, Bush issued a statement calling the committee's action, which also prevented a full senate vote, "unfortunate for democracy and unfortunate for America." Pickering said in a statement after the vote, "I am extremely disturbed that judicial confirmation has degenerated into such a bitter and mean-spirited process. I sincerely hope that no other nominee has to go through what has happened to me."

Democrats said Pickering's record in civil rights cases showed insensitivity to racial minorities. They particularly criticized his intervention with Justice Department officials to try to reduce the potential prison sentence for a man convicted of burning an 8-foot-high cross at the home of a mixed-race couple.

Republican senators countered that Pickering has been a fair trial judge and that he stood up for civil rights in Mississippi when it was politically unpopular.

Both sides agreed, however, that the fight was much bigger than one man's bid for elevation to the appeals court seat covering Texas, Mississippi and Louisiana.

"It definitely is not a comforting sign for what lies ahead," said Sen. Orrin Hatch of Utah, the ranking GOP member.

He said Democrats were imposing new ideological tests for nominees and were ready to object to anyone who disagrees with them on issues such as abortion.

Sen. Charles Schumer, D-N.Y., countered that the fight was about "maintaining balance" in the judiciary. He said the Bush administration was trying to "stack the courts" with conservative jurists in the mode of Supreme Court Justices Antonin Scalia and Clarence Thomas.

Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., said he had been seeking more cooperation from the White House on the nomination process. "Few of my suggestions to the administration have yielded results," he said.

The Constitution gives the president the power to make lifetime appointments to the federal courts with the "advice and consent" of the Senate.

Democrats have complained that the White House has spurned attempts to come up with "consensus" nominees.

Administration officials say their attempts for middle ground have been rebuffed.

The White House and Senate Minority Leader Trent Lott of Mississippi, a personal friend of Pickering, had urged the committee to allow the full Senate to vote on Pickering. But the committee defeated two separate Republican motions to allow the nomination to go to the floor, even with an unfavorable recommendation.

Democrats said it would have been unprecedented in recent history to allow an appeals court nominee a floor vote after he was rejected by the committee.

Bush said Pickering "deserves better than to be blocked by a party line vote of 10 Senators on one Committee."

On Thursday, Pickering's son, U.S. Rep. Charles "Chip" Pickering, R-Miss., sat in the front row of a special spectator section. He has been a tireless public advocate for his father. During the often testy meeting, Pickering, 38, nodded when senators praised his father and shook his head at some of the strong criticisms.

Appeals Court Choice Rejected; Senate Panel Hands Bush 1st Defeat on Judicial Nomination

Helen Dewar and Amy Goldstein
The Washington Post
March 15, 2002, Friday

The Senate Judiciary Committee yesterday rejected the nomination of U.S. District Judge Charles W. Pickering to the 5th Circuit Court of Appeals, handing President Bush his first defeat on a judicial appointment and putting the White House on notice to expect trouble over other conservative nominees.

In three party-line votes of 10 to 9, the Democratic-controlled panel spurned Bush's plea to endorse Pickering or to let the full Senate decide the issue.

Arguing for four hours before a standing-room-only crowd of Pickering supporters and opponents, senators portrayed the struggle as involving more than one judge's fate. Republicans accused Democrats of contributing to a vacancy "crisis" on the federal bench by delaying or blocking Bush's nominees. Democrats said the White House was hindering the process by seeking to "stack the courts" with conservative extremists. The vote was a blow to Bush and Senate Minority Leader Trent Lott (R-Miss.), who considers Pickering a friend and who led the fight on his behalf. After the vote, Lott said from the Senate floor that he took the judge's defeat "personally" and described it as a "slap at Mississippi."

Bush called the committee's action "unfortunate for democracy and unfortunate for America." He said Pickering "deserves better than to be blocked by a party-line vote of 10 senators on one committee."

The votes appeared to kill the nomination, although Republicans could try to revive it on the Senate floor. That would require 60 votes, and Democrats expressed confidence they could prevent such a move.

Faced with the inevitability of the committee vote, Bush had appealed to Democrats to let the full Senate decide Pickering's fate. At a news conference Wednesday, he said "a few senators are standing in the way of justice" by blocking the nomination in committee. Pickering appeared likely to pick up enough Democratic votes to prevail if his nomination reached the Senate floor.

But Senate Majority Leader Thomas A. Daschle (D-S.D.), relying on Senate precedents, said he would put the nomination before the Senate only if the Judiciary Committee voted out the

nomination.

In recent years, the Judiciary Committee has voted to kill nominations and to report them to the full Senate without recommendation. It last killed a circuit court nomination in 1991; it last reported out a circuit court nomination without recommendation in 1988. Daschle said the Senate has never insisted on voting on a nomination that was killed in committee.

In yesterday's votes, the committee first rejected a motion to send the nomination to the full Senate with a recommendation that it be confirmed. Then it voted down proposals to send the nomination to the floor without taking a position or with a negative recommendation.

The committee's decision came after weeks of emotional argument over whether Pickering, 64, was qualified for a judgeship one tier beneath the Supreme Court. Democrats contended he fell short in his 12 years as a district court judge in Hattiesburg, Miss., including letting his personal views color his opinions in cases involving the rights of minorities, women, voters and workers.

Pickering "failed to meet the kind of criteria in his core commitment to the fundamental values of our Constitution," Sen. Edward M. Kennedy (D-Mass.) said. He is a "very polarizing figure," Sen. Dianne Feinstein (D-Calif.) said.

Republicans argued he was well qualified by character, experience and temperament, and said he was being victimized for his conservative views. Sen. Orrin G. Hatch (R-Utah) said Pickering had been subjected to a smear campaign by liberal groups that are seeking an "ideological litmus test" to screen out judges who do not agree with them on issues such as abortion.

Looking beyond Pickering, Sen. Charles E. Schumer (D-N.Y.) warned the administration that Democrats will continue to oppose conservative nominees when they threaten to unbalance the courts.

"There's clearly no mandate from the American people to stack the courts with conservative ideologues," he said. "So if the White House persists in sending us nominees who threaten to throw the courts out of whack with the country, we have no choice but to vote 'no.' "

During lengthy speeches before yesterday's vote, Democrats on the Judiciary Committee said that they did not consider Pickering a racist but that they were disturbed by his record as a district court judge on civil rights and other issues. Democrats also cited the reversals by appeals courts of more than 24 Pickering rulings and what they called the judge's habit of supplanting his views for established law.

Democrats criticized Pickering's efforts that led to a shorter sentence for a man convicted of burning a cross on an interracial family's lawn.

But Republicans said Pickering has a sound record on the bench. They contended that Democrats were yielding to what Sen. Charles E. Grassley (R-Iowa) branded "guerrilla tactics" by liberal interest groups to "hijack the Senate."

Shortly before the vote, Sen. Mitch McConnell (R-Ky.) apologized to the judge's son, Rep. Charles W. "Chip" Pickering Jr. (R-Miss.), who sat through the deliberations.

"I hope . . . what is happening to your father isn't the first in a long line of judicial nominees who are going to be denied fair treatment," McConnell said.

Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) countered that since Democrats took control of the Senate in June, the committee, has been "restoring steadiness in the hearing process" after years in which the GOP blocked many of President Bill Clinton's judicial nominees. The Senate's constitutional role in selecting the judiciary, Leahy said, "is advise and consent. It isn't advise and rubber-stamp."

Panel kills Bush's court choice; Party-line vote derails Pickering nomination in Senate

Audrey Hudson
The Washington Times
March 15, 2002, Friday

Senate Judiciary Committee Democrats yesterday handed President Bush his first defeat on a judicial nomination, rejecting Mississippi District Court Judge Charles W. Pickering Sr. for an appeals court seat.

The panel rejected the nomination 10-9 in three party-line votes after the most bitter, partisan Senate fight since the confirmation of Attorney General John Ashcroft. The three failed votes were to report the nomination to the Senate floor favorably, unfavorably and without recommendation.

"I have concluded Judge Pickering's own record of performance does not merit his promotion to one of the highest courts in the land," said Sen. Patrick J. Leahy, Vermont Democrat and committee chairman. After four hours of partisan wrangling in the committee, the debate spilled onto the Senate floor, where Senate Minority Leader Trent Lott called the vote "a slap at Mississippi" and "a terrible miscarriage of justice."

"His character has been smeared," Mr. Lott said. "And it was wrong."

In a statement, Mr. Bush said he was "deeply disappointed" by the result.

Judge Pickering "deserves better than to be blocked by a party-line vote of ten senators on one committee," the president said. "The voice of the entire Senate deserves to be heard."

"Ghosts of the past" were used to tarnish the judge's good name without foundation because Judge Pickering is white, southern and conservative, Mr. Lott said.

"It's an attack on my state, his religion and race, which was inaccurate and really a tragedy," Mr. Lott said.

The judge's son, Rep. Charles W. "Chip" Pickering Jr. of Mississippi, sat quietly in the front row throughout the Senate committee hearing.

The younger Mr. Pickering said his father was watching the proceedings on television at the family's Mississippi home.

The contentious confirmation was dominated by liberal interest groups, who painted the conservative district judge as a racist, despite blacks in his home state who called him a defender of civil rights.

Mr. Bush pleaded with Democrats this week to treat his candidate fairly in a contest for a seat on the 5th U.S. Circuit Court of Appeals. Republicans called the battle a preview of any future Supreme Court nomination fights.

Sen. Charles E. Grassley, Iowa Republican, said special interest groups have tried to "hijack the Senate" and have called Judge Pickering a "racist, sexist, bigot."

"It was a well-coordinated guerrilla tactic. ... Shame on you for poisoning the confirmation process," Mr. Grassley said.

People for the American Way President Ralph G. Neas, whose group led the anti-Pickering forces, called it "a victory for Americans opposed to right-wing domination of the federal courts."

Panel Democrats said they did not believe Judge Pickering to be a racist but questioned his dedication to civil rights.

"Dr. Martin Luther King Jr. once said that the arc of history is long, but it bends toward justice," said Sen. Richard J. Durbin, Illinois Democrat. "When it comes to choosing judges to uphold our constitutional values, we should reject individuals who are behind that curve."

Sen. Charles E. Schumer, New York Democrat, called Judge Pickering a "decent and honorable man."

"But we don't elevate a person to the second-highest court in the land just because he's not a racist. We must have a higher standard than that," Mr. Schumer said.

Mr. Leahy said he opposed Judge Pickering to a higher bench for injecting his personal opinions into voting rights and employment discrimination issues and his overall judicial record.

"That record shows a judge inserting his personal views into his judicial opinions and putting his personal preferences above the law," Mr. Leahy said.

It is the constitutional responsibility of the Senate to advise and consent, not "advise and rubber-stamp," Mr. Leahy said.

Republicans say Judge Pickering's confirmation is not about qualifications but partisan payback.

"He is bigger than all of this, and he will continue to have an outstanding career," said Sen. Mitch McConnell, Kentucky Republican.

In the 14 months he has been in the White House, President Bush has nominated 29 circuit court judges, and seven have been confirmed. By comparison, in their first two years in office, President Clinton nominated 22 circuit judges with 19 confirmed, President George Bush nominated 23 circuit judges with 22 confirmed, and President Reagan nominated 20 circuit judges with 19 confirmed.

When Mr. Bush took office there were 67 judicial vacancies; today there are 96 vacancies.

Republicans called the vote a signal to Mr. Bush that other conservative judges will face the same character assassination and not be confirmed.

Democrats said the Bush administration bears some burden to consult with them before putting nominees before the Senate.

"Otherwise, we would simply be rewarding the obstructionism that the president's party engaged in over the last six years by allowing him to fill with his choice seats that his party held open for years, even when qualified nominees were advanced by President Clinton," said Sen. Russell D. Feingold, Wisconsin Democrat.

Republicans admitted that some of Mr. Clinton's nominees were not treated fairly but said the partisan deadlock must end.

"It's time for a truce," said Sen. Arlen Specter, Pennsylvania Republican.

In his floor speech, Mr. Lott said he had failed Judge Pickering but that his fellow Mississippian is not the loser.

"We are the losers, we have lost the service of a good man and demeaned the institution by what has happened."

Mr. Lott did not offer to withdraw the nomination and gave no indication what the next step will be.

"I'm not going to let go of this. This will stick in my mind for along time," Mr. Lott said.

The nine Republicans on the committee are Mr. Grassley, Mr. McConnell, Mr. Specter, Orrin G.

Hatch of Utah, Strom Thurmond of South Carolina, John Kyl of Arizona, Mike DeWine of Ohio, Jeff Sessions of Alabama and Sam Brownback of Kansas.

Besides Mr. Leahy, Mr. Durbin, Mr. Schumer and Mr. Feingold, the panel's other six Democrats are Edward M. Kennedy of Massachusetts, Joseph R. Biden Jr. of Delaware, Herbert Kohl of Wisconsin, Dianne Feinstein of California, Maria Cantwell of Washington and John Edwards of North Carolina.

One Democrat not on the panel, Sen. Zell Miller of Georgia, attacked the committee.

"This action may very well elect a Republican governor in Mississippi," he said, calling the vote an example of "the Terry-tail wagging the Democratic donkey," referring to Terry McAuliffe, the party's chairman.

Senate Democrats reject judge, place Bush on notice

Naftali Bendavid
Chicago Tribune
March 15, 2002 Friday

After a bitter fight replete with accusations and name-calling, the Senate Judiciary Committee on Thursday rejected the nomination of Charles Pickering, handing President Bush his first defeat of a judicial candidate and setting the stage for other bruising nomination battles.

Bush had lobbied hard for Senate approval of the Mississippian, but Democrats prevailed 10-9 on party lines, arguing that Pickering regularly lets his conservative beliefs take precedence over the law. Pickering is a federal judge, and Bush was seeking to elevate him to the 5th Circuit Court of Appeals. "Judge Pickering has a disturbing habit of injecting his own personal opinions about the civil rights laws into his opinions," said Sen. Russell Feingold (D-Wis.).

The vote suggested that despite Bush's popularity, Democrats will be willing to vote down his nominees if they are controversial enough. Throughout the process, Bush and other Republicans have portrayed Democrats as beholden to special interests and destroying a good man's reputation.

Pickering is a friend of Senate Minority Leader Trent Lott (R-Miss.), and Republicans twice delayed the committee's vote in an attempt to rally support.

Bush reacted with frustration to the outcome.

"The action of the Senate Judiciary Committee to refuse Judge Pickering a vote by the full Senate leaves another empty seat in the federal judiciary at a time when we face a vacancy crisis," Bush said.

In one sense, the vote was merely the latest chapter in a pitched partisan battle over judicial

nominees. For six years under President Bill Clinton, Democrats grew upset at what they saw as Republican stalling of Clinton's nominees.

The vote was also a test of wills for future nominations, including those to the Supreme Court.

"It is definitely not a comforting sign for what lies ahead for Circuit Court nominees, let alone Supreme Court nominees," said Sen. Orrin Hatch (R-Utah), the committee's top Republican.

Republicans could still try to force Pickering's nomination to the floor for a vote by the Senate, where he would be far more likely to win than in the polarized Judiciary Committee. This appears unlikely.

Still, some Republicans have raised the possibility of what they call the "nuclear" option--retaliating for Pickering's defeat by stalling Senate business.

Threat from Republican

"The feelings are running so deep on these issues, that that may well happen," said Sen. Arlen Specter (R-Pa.). "Any one of us can tie the Senate in knots."

It was evident throughout the hearing that Democrats and Republicans are convinced the other party has been grossly unfair to its judicial nominees.

Drastically different views of Pickering also emerged. Opponents cited an article he wrote four decades ago suggesting ways to strengthen Mississippi's law against interracial marriage, and they said that as a state senator he voted to fund the notoriously segregationist Sovereignty Commission.

Pickering's supporters painted a different image. They said he had been a progressive in 1960s Mississippi, noting that he testified against a grand wizard of the Ku Klux Klan and more recently has acted to foster racial reconciliation.

Senators also debated the significance of the fact that Pickering had been overruled by an appeals court 26 times in his 12-year term on the bench.

Hatch said Pickering was reversed fewer times than the average judge is.

Senators at the hearing focused also on liberal groups like Alliance for Justice and People for the American Way, which had worked hard to defeat the nominee.

"Judge Pickering has been viciously attacked by leftist, liberal groups," said Sen. Charles Grassley (R-Iowa). "He has been called a sexist, a racist, a bigot, and unfortunately, the Democratic Party has been more than willing to do the bidding of these groups."

Democrats cite right to oppose

Democrats countered that these groups had a right to express their views. They focused instead on Republican tactics during the Clinton years, when they said the GOP refused to even hold hearings for many nominees.

Sen. Charles Schumer (D-N.Y.) said Bush has adopted a strategy of appointing highly ideological judges, honoring his campaign promise to appoint jurists in the mold of Supreme Court Justices Antonin Scalia and Clarence Thomas.

"The administration is willing to take some casualties in this fight," Schumer said. "They are sending up waves of Scalias and Thomases. If a couple of controversial nominees get shot down, it's a small price to pay because they still win, they still stack the courts."

Some observers wondered why Bush would spend political capital on such a controversial nominee. Standing up for Pickering risks alienating minority voters, whom Bush has tried hard to court, but it could prove him to a more fundamental Bush constituency, religious conservatives.

Leahy Urges The White House To Investigate Owen Ties To Enron

The Bulletin's Frontrunner
March 18, 2002 Monday

Reuters (3/16, Ferraro) reports, "US Senate Judiciary Committee Chairman Patrick Leahy said on Friday he has urged the White House to look at campaign donations from Enron Corp. to one of its judicial nominees, Texas Supreme Court Justice Priscilla Owen. 'I have heard from a lot of Republicans who are concerned about her Enron connections,' said Leahy, a Vermont Democrat. 'I mentioned...to the White House it may want to look into it.' . A hearing date has not yet been set for Owen, nominated to the 5th U.S. Circuit Court of Appeals. But the committee is expected to hold one sometime next month, aides said. According to Texans for Public Justice, a private group that tracks campaign donations to elected Texas officials, Owen has received $8,600 in donations since 1993 from Enron, the one-time Texas energy giant that recently collapsed. In 1996,according to the group, Owen wrote a majority opinion that overturned a lower court ruling and saved Enron about $250,000.Leahy said on Friday he was first advised about the Enron donations to Owen by concerned Republicans and relayed the information to the White House."

Op/Eds

OUR OPINION: Judiciary can't evade political viciousness

JIM WOOTEN
The Atlanta Journal and Constitution
March 17, 2002 Sunday

The stakes in this year's U.S. Senate race in Georgia? They became dramatically clearer last week. At issue is whether the lockstep allegiance that the national Democratic Party has to its most liberal wing will continue to wag the dog. Or, to use the more clever phrase of U.S. Sen. Zell Miller, whether the nation will continue having "the Terry-tail wagging the Democratic donkey."

Miller's reference is to the chairman of the National Democratic Committee, Terry McAuliffe, a bitter partisan and prolific fund-raiser who took office last year vowing to "raise hell" with a four-year campaign to defeat President Bush. In McAuliffe's view, Al Gore really won. McAuliffe's scorched-earth strategy was evident last week in the party-line defeat of President Bush's choice of Judge Charles Pickering of Mississippi for a vacancy on the 5th Circuit Court of Appeals. After an incredible smear orchestrated from the interest groups on the party's left wing, all 10 Democrats on the Senate Judiciary Committee voted against Pickering. The nine Republicans voted to confirm.

The viciousness of the campaign attracted an extraordinary public response by Virginia Thomas, wife of Supreme Court Justice Clarence Thomas, who wrote an open letter to Pickering published last week in The Wall Street Journal. It should be required reading. Wrote Thomas:

"You are but a pawn in a much larger battle over whether an independent judiciary will prevail, or whether a liberal judicial litmus test will transform our courts into another political branch with an activist bent."

Thomas is on target. The nation sadly has entered an era of the perpetual political campaign. It never ends. And the judiciary is being drawn in. Activists who either don't trust democracy to work, or who think they would be unsuccessful in pushing their agendas in the legislative arena, often use the courts as alternative legislatures.

The judiciary, as well as the state and federal regulatory agencies, thus become political battlegrounds. We have seen in Georgia, for example, interest groups advocating "environmental justice" who bypass the Legislature and head directly to the courts to, in effect, pass their legislation.

Pickering, 64, has served 11 years as a district court judge. Groups on the Democratic left, such as People for the American Way and the National Abortion and Reproductive Rights League, believe him to be unsympathetic to their causes.

The result has been a shameful smear. The distortions, the pejorative summaries create a caricature --- and "you end up asking the senators to vote against a caricature," says one who has

been through it, U.S. Sen. Jeff Sessions (R-Ala.). Sessions in 1986 was a nominee to the U.S. District Court for southern Alabama, who like Pickering, was defeated in committee.

The object is to intimidate Bush to keep him from nominating a conservative to the U.S. Supreme Court. Pickering is the first nominee who came along who could be hijacked and caricatured to deliver the message.

After Pickering's defeat, Zell Miller spoke. "A good and brave man has been hurt, and that is what is most tragic here," said Miller in a prepared statement. He predicted the treatment of Pickering would "make it even more difficult for Democratic candidates to be successful in the South."

Comes now the re-election campaign of U.S. Sen. Max Cleland (D-Ga.). Until six months ago, Cleland's voting record was party-line. Since, he's begun to fudge a bit, but he is still a reliable party vote. Democrats control the U.S. Senate by one.

The stakes for the country in Cleland's race? You saw them last week.

Charles Pickering: Rejection a backhanded slap at South

The Atlanta Journal and Constitution
March 18, 2002 Monday

The Democratic members of the Senate Judiciary Committee reached a new low. Not only did they reject Judge Charles Pickering for not meeting some amorphous, left-wing litmus test, but the Democrats in the Senate also played the Southern card while doing so. Their actions were not only a slap at comity but also a backhanded slap at the South in general.

Hidden in their smears of racism and judicial temperament was the implicit belief that no person of Caucasian and Southern ancestry would be qualified to sit on the bench today. Forgotten were the years of brave men on both sides of the racial issue trying to reach middle ground, one of whom was Pickering.

Their first attempted assault on this man was to indict him because he was white and from Mississippi. Because of this background, they used a stereotype to make their constituents believe he must therefore have been a racist. It mattered little to them that he had the support of the African-American community in Mississippi.

They believed that even in the face of overwhelming evidence to the contrary, their constituents would believe the worst of a white Southerner. Unfortunately, they were correct.

Pickering's defeat is less a defeat for the president than it is for the Democratic Party. It is but one more indication that northern liberal senators still have no clue, nor do they care, about the South, its people or our rich heritage in positive racial relations. GEORGE MORTENSEN,

Roswell

Georgia needs Republican senators

So it looks as if the national Democratic Party succeeded in not allowing Judge Charles Pickering, who enjoyed a bipartisan and biracial support in his home state of Mississippi, to be voted on by the entire Senate for a seat on the 5th Circuit Court of Appeals.

To prevent this from happening again, we just need to elect more Republican senators.

Starting this fall in Georgia. LARRY BRANTLEY, Marietta

BUSH'S ROUGH CUT; Culling the less-than-true believers

Ryan Lizza
The San Diego Union-Tribune
March 17, 2002, Sunday

For all his "change-the-tone" rhetoric, there are some forms of bipartisanship President Bush will not tolerate. Just ask Mike Parker, the erstwhile head of the Army Corps of Engineers.

Parker, a balding, rotund former Mississippi congressman with a bushy mustache and a heavy drawl, was on Capitol Hill two weeks ago testifying before the Senate Budget Committee. Republican Kit Bond, Democrat Kent Conrad, and Parker himself all agreed on one thing: The budget for the Corps proposed by the White House was a joke. Bond spent five minutes gesturing wildly and railing against the invisible staffers at the Office of Management and Budget who drew up the numbers. Conrad, the Democratic chairman of the committee, agreed that the budget was ridiculously low. That is not surprising, considering how important Corps projects are to members who need to secure federal pork for their districts.

But in his response, Parker, an ex-lobbyist and a buddy of Senate Republican Leader Trent Lott, did the unthinkable: He told the truth. Instead of defending the numbers cooked up by OMB, he winked and hinted that, like last year, the White House would eventually cave in and approve the money needed to pay for all those wasteful Corps projects. It didn't take long for OMB to strike back. Furious, Budget Director Mitch Daniels wrote Bush's senior White House aides a scathing memo about Parker's performance on the Hill. Parker was forced to resign the following week. Anonymous Bush aides said the president was sending a signal: Stray too far from administration dogma, and you'll get kneecapped.

Given the Bush administration's reputation for stability, Parker's firing was big news. Compared with the revolving-door Clintonites, the Bush White House has been remarkably stable; in fact, Bush's entire original Cabinet remains intact. But now that the president has been in office for more than a year, this spring may offer disgruntled (or disgruntling) Bushies the first acceptable moment to head for the door. And as they do, it will become ever more clear which kind of

people thrive in this administration and which don't.

The most precarious set of appointees are those with patrons other than the president or vice president themselves. Nobody thinks Bush had a personal role in Parker's hiring; he handed off the patronage to Lott.

Consider Paul O'Neill. When Bush tried to sell his tax cut as a fiscal stimulus last year, his famously off-message Treasury secretary expressed doubt that it would speed up the economy. In January, after Bush accused Tom Daschle of wanting to raise taxes, O'Neill went on television and pronounced that Daschle "has not called for raising taxes this year." Bush promoted the House stimulus package after Sept. 11; O'Neill dismissed it as "show business."

And how has O'Neill been punished for all this double-crossing? At most, he's been asked to lay low; but he has never been publicly reprimanded, let alone asked to resign.

The administration has been happy to abandon Lott's candidates and blame him for their failures. In fact, from the White House's point of view, the Senate minority leader's personnel recommendations have been one disaster after another. Curtis Hebert, a Lott protege whom Bush made chairman of the Federal Energy Regulatory Commission, resigned and told The New York Times that he was pushed aside because of Ken Lay's influence over the White House, a story that still dogs Bush. Lott crony Parker turned out to be a debacle. And Lott's friend Charles Pickering, nominated to a federal appeals court, has become an albatross around Bush's neck. As with Hebert and Parker, the White House doesn't blame Pickering; it blames Lott.

The second group unlikely to thrive in the Bush White House -- even if Bush chose them and even if they remain loyal to his agenda -- are intellectuals. Maybe it's their characteristic desire to speak out that gets them into trouble; maybe it's their tradition of freewheeling debate. Whatever the reason, they've tended to annoy the White House even when they generally promote the party line. The first high-profile brain to depart was University of Pennsylvania Professor John DiIulio. He and Bush were friends, and Bush made DiIulio's ideas about faith-based anti-poverty work a cornerstone of his presidency. But that didn't stop DiIulio from flaming out after public fights with the religious right -- "Bible-thumping doesn't cut it," he said during one famous row -- and conservatives on the Hill. "The sort of people who are good about thinking up ideas are not necessarily the sort of people who are good at getting them done," says a Bushie about DiIulio's exit.

So who will be next to leave? In a recent interview, Cabinet punching bag Christine Todd Whitman refused to say that she would stick out Bush's full term. Andy Card has always said 18 months is the average tenure for a White House chief of staff. Paul O'Neill continues to disappoint tax cutters by undermining Bush's fiscal arguments (though he is getting credit for hunting down terrorist assets). Norm Mineta, the lone Democrat in the Bush Cabinet, remains on everyone's list for early retirement.

But the Bushie least likely to survive doesn't fit into any of the above categories. In fact, he is a former corporate chieftain: Secretary of the Army Thomas White, the 11-year Enron executive

who joined the administration last June. If he goes, it will have nothing to do with this White House's quirks. Rather, it will be for that timeless Washington reason: scandal.

White has been mired in the Enron scandal since the company went bankrupt. From 1998 to 2001, he was vice chairman of Enron Energy Services (EES), which seems to have cooked its books as much as the rest of the company. On top of that, he's got serious conflict-of-interest problems. At EES, White lobbied members of Congress to privatize utilities on military bases, which could have helped Enron reap billions in government contracts. And sure enough, in his first weeks on the job as secretary of the Army, White began pushing the privatization plan. Recently, White revealed that, as secretary, he has had 29 phone calls or meetings with Enron executives. And the bipartisan leaders of the Senate Armed Services Committee have accused White of giving them an "inaccurate representation" of his Enron holdings during his nomination process.

White House support for White seems to be eroding. A reporter asked what Bush thought about the fact that White has failed to divest himself of certain Enron holdings even though he promised the Senate Armed Services Committee he would do so as a condition of his confirmation. Ari Fleischer declined to make even a perfunctory declaration of presidential support. Rather, he read a legalistic statement that strained to point out that White hadn't run afoul of any federal ethics rules; he just didn't comply with his promise to the Senate.

And now another shoe seems ready to drop. Public Citizen says it is about to release a report that will essentially accuse White's Enron division of price gouging during California's energy crisis last year, something that would have been prevented by the price caps that Enron and the Bush administration so vehemently opposed. Public Citizen says it will call for White to resign. It may be the first Naderite proposal that this president adopts.

Editorial; Bush must fight for his judgeships

The Boston Herald
March 16, 2002 Saturday

The defeat of Charles Pickering for a seat on the 5th U.S. Circuit Court of Appeals by the Senate Judiciary Committee is a warning shot across President George Bush's bow. Unless the president acts forcefully the next time around, he will have no influence on the selection of federal judges.

By their single-vote majority, Democrats refused to report Pickering's nomination to the floor. Though he could have allowed a floor vote anyway (there is precedent for this), Senate Majority Leader Tom Daschle declined to do so. Democrats indulged in flagrant misrepresentation. Senator Ted Kennedy said Pickering lacked judicial temperament and was hostile to civil-rights protections. Strange talk in light of Pickering's unanimous confirmation as a U.S. district judge in Mississippi.

Both Kennedy accusations are untrue. Based on his record on the lower court, the American Bar Association gave the nominee its highest rating. As a county prosecutor in the 1960s, Pickering risked his career by testifying against a Klan leader. Testifying on his behalf, black leaders in his home town said he's gone out of his way to help create opportunities for the minority community.

Race was the excuse to defeat a conservative jurist who would have brought respect for the original intent of the Constitution to the 5th Circuit bench. Democrats have made it quite clear: Qualifications are irrelevant. They will do everything up to and including character assassination to block the confirmation of nominees who pose a threat to judicial activism.

With Pickering, Bush got involved far too late. The president must act early and forcefully the next time. That means intense lobbying combined with appeals to the American people at the first hint of trouble. It also means active campaigning for GOP Senate candidates. The president's palsy-walsy approach won't work with political street fighters like Daschle and Kennedy.

Unappealing Judges

The Boston Globe
March 16, 2002, Saturday

MEMBERS OF THE Senate Judiciary Committee should prepare for a political marathon. They'll need stamina to make sure the country gets the best federal judges.

The first fight is over. On Thursday the committee wisely rejected the nomination of Charles Pickering, a federal district judge whom President Bush wanted to place on the Court of Appeals for the Fifth Circuit in New Orleans. Pickering has a weak record on civil rights and employment law. Still, the work continues. Senators cannot relax and let other troublesome nominees slide through.

Republicans have been increasing the pressure. Borrowing from Clarence Thomas, Senator Orrin Hatch of Utah said the scrutiny of Pickering amounted to a "lynching." Out of respect for a particularly vicious strain of American history, it must be said that Pickering is in little danger of being hunted by a mob and hung until dead. But senators who challenge other nominees may still be accused of lynchings or worse. All the nominees' records should be scrutinized.

There's Judge D. Brooks Smith, a federal district judge and Bush's nominee for the Third Circuit Court of Appeals in Philadelphia. His record includes a history of being reversed by higher courts on consumer and employment cases, and he has criticized the Violence Against Women Act.

Jeffrey Sutton is a lawyer and the nominee for the Sixth Circuit Court of Appeals in Cincinnati.

He is also a states' rights advocate who told the Associated Press in 2000 that the Americans with Disabilities Act is not needed because states have laws banning discrimination. That's a harsh judgment about a law that has opened doors for many people.

When she was part of the Reagan administration, Carolyn Kuhl was a champion of restoring tax-exempt status to segregated schools such as Bob Jones University. But in 1983, in an 8-1 decision, the Supreme Court ruled that these schools are not entitled to tax-exempt status. Now Kuhl is a Los Angeles Superior Court judge and a nominee for the Ninth Circuit Court of Appeals.

Republicans say that delaying Bush's nominees is a nasty political game, even though this is what the Republicans did with President Clinton's nominees.

Bush could end the squabbling by consulting with Democrats on his nominees. This should be easy for Bush, who said during his campaign that he would shun partisan bickering and bring civility back to Washington.

Candidates with broad appeal can be found. In 2000 President Clinton made Judge Roger Gregory a temporary recess appointment to the Fourth Circuit in Richmond, Va. Last year Bush renominated Gregory, and he was confirmed by the Senate.

The country needs capable, independent judges, not political wars over their selection.

Time to Call Timeout in War Over Judges

The Commercial Appeal (Memphis, TN)
March 16, 2002 Saturday

NEITHER OF the major political parties can be blamed more than the other for the stalemate in the judicial nomination process that has left so many federal court vacancies unfilled. The confirmation rate has decelerated through a succession of Democratic and Republican administrations, particularly when one party is in the White House and the other controls the Senate.

The Senate Judiciary Committee's rejection this week of U.S. Dist. Judge Charles Pickering of Laurel, Miss., President Bush's nominee to the Fifth U.S. Circuit Court of Appeals, is a product of this standoff. The vote may suggest there is no redemption for white Southerners who have less than perfect histories during the civil rights movement. Pickering is a conservative, albeit mainstream, jurist whose record includes enough material for a generalized assault on the Bush administration's commitment to the rights of minorities and women. He has made a number of questionable choices during his career - as in 1994, when he pressured Justice Department prosecutors to drop a charge against one of three defendants convicted in a cross-burning case.

But his opponents often failed to examine those decisions within the context of Pickering's overall record on civil rights. That record is impressive as well. It includes negative testimony he offered about the reputation of Ku Klux Klan leader Sam Bowers in a 1966 firebombing and murder case that probably cost Pickering re-election as county prosecutor.

It includes his service on the board of directors of the Institute for Racial Reconciliation at the University of Mississippi. It includes the support he enjoys among many white Democrats and African-Americans in his community and state.

The civil rights movement sought, with great success, to advance the social and economic prospects of African-Americans. It also tried to bridge the fundamental historic gaps between black and white Southerners, and dislodge whites from some of the prejudices that permeated the culture into which they were born. Pickering seems to have been one of the beneficiaries of the movement's progress.

But the judicial confirmation process has become less of a forum for careful consideration of a candidate's qualifications and more of a battleground for settling partisan scores. The Republican-led Senate was no less arbitrary toward President Clinton's judicial nominees than they accuse Judiciary Committee Democrats of being toward Pickering. The Pickering nomination was a convenient way to resume this battle of retribution.

Some of the judge's allies suggest that his deconstruction and ultimate defeat served as a warmup for President Bush's first Supreme Court nominee - a flexing of muscles by liberal organizations to show what they could do, for instance, to a nominee who has strong anti-abortion views.

Such a reckless course would only lead to similar treatment by right-wing groups when the next Democratic president presents judicial nominees to the next Republican-controlled Senate. It will be payback time again, and the war will go on, inflicting collateral damage on qualified judges. Meanwhile, good lawyers become less interested in setting themselves up for this kind of scrutiny.

The 12 federal appellate courts have 30 vacancies, or about 18 percent of their judgeships, according to White House figures. Chief Justice William Rehnquist reported in January that there were 94 vacancies on district and appellate court benches, the most in eight years.

At some point the White House and Senate must negotiate a truce, or the federal judicial system will simply break down under the weight of too many cases for the available workforce to handle.

Pickering nomination: Gamesmanship is souring the process

The Dallas Morning News

March 16, 2002, Saturday

The following editorial appeared in the Dallas Morning News on Thursday, March 14:

The hopelessly soured Senate confirmation battle over the nomination of Mississippi Judge Charles Pickering to the 5th Circuit Court of Appeals has taught us less about this particular nominee than it has about the process.

It is unrealistic to believe that the confirmation of judges would not be heavily affected by politics. Both parties will, now and again, engage in payback by smearing each other's nominees. Still, even with politics and payback, why the poison? Why must the process for confirming federal judges digress into race baiting? Back in 1999, supporters of Ronnie White a black who sits on the Missouri Supreme Court claimed that race was at the center of the Senate's rejection of his nomination for the federal bench. Among the concerns raised by Republicans was Judge White's support for racial preferences and a judicial
record they labeled "pro-criminal."

Now the tables are turned. Republicans are accusing Democrats of playing the race card against Judge Pickering, whose judicial record according to some Democrats shows an insensitivity to racial issues. Republicans disagree and point to considerable local black support for Judge Pickering. Still, the fact that he has a positive community record does not erase the questionable judgment in some of his rulings. He does not appear to be a bigot as claimed, but he also does not appear to be a stellar jurist.

What does seem clear, however, is that Judge Pickering may not have been the best choice for this position. Surely, the administration could have found a stronger and less controversial candidate somewhere in the three-state region encompassed by the 5th Circuit.

Nonetheless, the Pickering nomination should not be bottled up in the Judiciary Committee in a way that spares the rest of the Senate from having to go on the record with its ayes or nays. It is on the Senate floor where the judge's entire record can be treated to a robust discussion and where voters can hold their elected officials accountable.

Judge Pickering deserves a full and fair hearing. President Bush deserves to have his other nominees, who have been delayed by the Pickering debate, brought up for discussion. And, most of all, the American people deserve more from the confirmation process.

While a nominee's temperament is fair game, the public is growing weary with the partisan attempts to conquer by dividing. The names of defeated nominees fade quickly from memory, but the residue left behind by this ugly gamesmanship is not easily wiped clean.

Look for another judge

Kansas City Star

March 16, 2002, Saturday

Nomination of U.S. District Court Judge Charles Pickering of Mississippi to a federal appeals court seat was doomed from the start, for solid reasons involving his record.

On Thursday, in a party-line vote, the Senate Judiciary Committee narrowly blocked the nomination from getting a full Senate hearing. The rejection is not entirely the fault of Pickering, whose personal and legal opinions revealed he has been hostile to civil rights and minorities.

The fault lies primarily with President Bush, who underestimated the opposition to Pickering's extreme conservative record.

Pickering has criticized "one-person one-vote," the fundamental principle behind the 14th Amendment. He has admonished civil-rights plaintiffs in several cases involving employment discrimination and alleged rights violations.

People for the American Way pointed out that Pickering, in a case involving a cross burned in the yard of an interracial couple and their young child, was more sympathetic to the perpetrators than the victims.

The bellicose conduct of Republican Senate Leader Trent Lott of Mississippi also didn't help the nominee. Lott's conduct throughout the nomination process was unbecoming for someone of his stature.

President Bush should return to the Senate with a moderate nominee or at least one with a less incendiary judicial record.

..Laudable stand

The News and Observer (Raleigh, NC)
March 16, 2002 Saturday

Regarding a quoted comment in your March 14 article "Stance on judges erodes good will":

So "Dickie" Scruggs (a Mississippi trial lawyer and Democrat), puffed-up and feathers ruffled, is vowing not to support U.S. Sen. John Edwards in 2004 because of Edwards' spirited opposition to Judge Charles Pickering's promotion to U.S. Circuit Court of Appeals. Surprise, surprise. Any time anything concerning "race" is injected into Southern politics, all the so-called Southern "Democrats" show their true colors -- red, "white" and blue. Thanks to Edwards for having enough backbone to take a stand on important issues like this. It's about time that a Democrat from the South stepped forward to expose this "Southern thing" that's been going on way too long.

Ray Hoke

Raleigh

Sen. Edwards: Partisan rejection

The News and Observer (Raleigh, NC)
March 16, 2002 Saturday

John Edwards, since arriving in the U.S. Senate, has claimed to represent North Carolinians and their values. But on viewing his voting record I could have sworn he was a senator from Vermont, Massachusetts or even maybe New York. On most social issues, Sen. Edwards has shown his alignment
with the liberals on the Democratic side, evidenced most recently with Judge Charles Pickering's rejection by the Senate Judiciary Committee (news story, March 15). This fine, qualified man was smeared and character-assassinated because he's a pro-life conservative.

Edwards suggested that the judge allowed his personal views to interfere with impartiality. I find that argument interesting in light of the judicial activism infesting our courts and infecting many judicial rulings.

Several years ago, Sens. Joseph Biden and Sen. Pat Leahy stated that judicial nominees should be voted on by the entire Senate, but I suppose things have changed, evidenced by their preventing the Pickering nomination from ever reaching the floor.

I guess for folks like Sens. Ted Kennedy, Leahy, Biden and Edwards, and those they truly represent, judges must maintain certain views to even be considered. If Edwards wants to really represent North Carolinians, he needs to vote like we would.

Scott Williams

Raleigh

Thinking Right: Justice and biscuits

Jim Wooten
The Atlanta Journal and Constitution
March 15, 2002 Friday

Thinking Right on the week gone by: It's an indecent society that amuses itself by pitting two broken lives in a boxing ring. I join Islamic fundamentalists and the French in protesting the globalization of the American culture --- or at least the Tonya Harding and Paula Jones spectacle. Don't do that anymore, even for fun. Justice? Amazing how few people who are demanding it actually want justice. What they want is their preferred outcome. The word rapidly

loses all meaning. President Bush doesn't help, either. It's justice we want for Osama bin Laden, says the president. Surely that means dead. It's justice he wants for Judge Charles Pickering. That means confirmed for the 5th Circuit U.S. Court of Appeals. Sometimes taxpayers simply luck out. It happened with the old First National Bank building at Five Points. In the late '80s, the state considered buying the 41-story tower for about $80 million. At the time, it was thought to have a $15 million asbestos removal problem. The state passed. In 1992, the Woodruff Foundation bought the building for $13.2 million and gave it to the state. For free. Good thing, too. The renovation cost is now $112 million. After redoing the building, we should redo the trashy area around Five Points. This city's pre-Olympic improvements have not held up well. State Rep. Charles Bannister (R-Lilburn) is darn persistent in his effort to make certain that a handful of legislators are allowed to join the state retirement system --- and, perhaps more important, qualify for its health insurance. He offered a bill two years ago to give those who had declined participation a one-time right to rejoin. Gov. Roy Barnes vetoed it. But Bannister is back. He says it's not a Republican colleague he's looking out for, but declines to name the Democrat. Can't be a constituent he's helping, though. The bill that unnerved retired teachers and other state employees, Senate Bill 163, will not pass this year. It would allow a portion of the funds to be invested in "private equity, buyout and leveraged buyout funds, mezzanine debt and venture capital, through participation in limited partnerships, limited liability companies . . . and timberland." But the idea has not gone away. The powerful Rep. Calvin Smyre (D-Columbus) has introduced a resolution to create a "Joint Study Committee on Economic Development Through the Investment of State Pension Funds into Private Equities." It is to report back to the General Assembly just after this year's elections. The union dispute at Lockheed looks like the flailing of a dinosaur in the muck. Job guarantees, a core issue in the strike, is an alien concept to most of us. Pensions would seem to be more important to the 2,700 members of the International Association of Machinists Local 709. The average IAM member at Lockheed is 53. Their pension is now $47 per month, per year of service. The company has offered to raise that to $56. For comparison, state legislators, who work part time, get $32 per month per year of service, two-thirds of the Lockheed workers' pension for working full time. Doesn't quite seem equitable.

I'm not inclined to pile on the Lockheed machinists, though. The private sector and its unions are on relatively equal footing. The real concern is the public sector. In the 1950s, public employees accounted for about 5 percent of the unionized work force. In 1983, they accounted for 32.4 percent. By 2001, their number was 44 percent. In praising corporate biscuit-makers last week, I inadvertently established the standard as Mama's. The better biscuits, of course, are those prepared by my wife. While their memories had grown cold --- such is the infrequency of their visitation upon our table --- I am now reminded that they are, indeed, thin, light, flaky and superior to all corporate recipes. Except, maybe, for Hardee's. A few more exposures should remove lingering doubt.

Jim Wooten is associate editorial page editor. His column appears Fridays, Sundays and Tuesdays.

REGRET

The Richmond Times-Dispatch
March 15, 2002 Friday

The Capitol Hill debate regarding the judicial nomination of Charles Pickering has partisans on the left up in arms. According to his oppenents - who include the NAACP's Julian Bond, Congressman Bobby Scott, a unanimous cohort of Democrats on the Senate Judiciary Committee, the People for the American Way's Ralph Neas, and others - Bush's pick for the federal appellate bench has a checkered past, chock full of positions defying civil rights.

Pickering's detractors allege he had ties to the Mississippi Sovereignty Commission - which defended the "Southern way of life," i.e., segregation and Jim Crow - as a state legislator. They also have trotted out a piece he wrote as a law student in 1957, describing how to fix an anti-miscegenation law by closing a certain loophole. Those who know him - those not on lofty perches in the nation's capital - like him. Those include blacks and whites. As The New York Times recently reported:

Though few black residents here sub scribe to Judge Pickering's staunchly Republican politics, many say they admire his efforts at racial reconciliation, which they describe as highly unusual for a white Republican in the state.

"I have never seen Trent Lott open his arms to the black community the way Charles Pickering has," said Larry E. Thomas, owner of Thomas Pharmacy, referring to the Senate minority leader, who is Judge Pickering's friend and patron. "Over the years I've seen him work with black leaders and really try to make an effort to understand and help the community. That's a progressiveness that we need to see more of in this state."

Pickering's many supporters include Thaddeus Edmonson, a former NAACP leader in eastern Mississippi and a current city councilman in Laurel, three of the other four black city councilmen, and James Charles Evers - brother of slain civil rights activist Medgar Evers.

* * *

In his vigorous defense of Pickering, the President's spokesman Ari Fleischer said, "If actions taken by people 40 years ago were the criteria, there would be some Senators who are voting on this nomination whose very history would come into play."

The Washington Post mentioned two such examples: South Carolina Republican Strom Thurmond and Alabama Republican Jeff Sessions. The paper seemingly - lamentably - forgot all about West Virginia Democrat Robert Byrd and South Carolina Democrat Fritz Hollings.

Byrd joined the Ku Klux Klan in the 1940s, and as a 29-year-old man and organizer for the Klan in West Virginia, wrote a letter to the Imperial Grand Wizard in Atlanta: "The Klan is needed today as never before and I am anxious to see its rebirth here in West Virginia." Hollings, as a lawyer for South Carolina during the Brown v. Board of Education case, fought hard to preserve school segregation. While running for governor in 1959 he vowed to defend "the Southern way

of life [against] the dictation of a power-hungry federal government." The Democrat also campaigned against Lyndon Johnson's Great Society programs and was one of 11 Senators to vote against confirmation of Thurgood Marshall. (He said the vote was "political," not racial.)

Both men reportedly regret their pasts, and continue to be nominated by their party every six years.

* * *

The other day one black Laurel, Mississippi, councilman told a reporter, "There are many people in Mississippi who made these same mistakes early in life, but their strong Christian character brought them closer to God and helped them change." Charles Pickering was one of those people, the councilman said.

In a Judiciary Committee hearing, Wisconsin Democrat Russell Feingold asked Pickering, "Do you regret [your actions in the Fifties and Sixties]?"

"I do," Republican Pickering replied.

Democrats Hollings and Byrd regretted theirs, too.

What's so hard about finding a good judge?

USA TODAY
March 15, 2002, Friday

Today's debate: Judicial nominations

Our view: Ideological infighting again leaves a court seat vacant.

Charles Pickering is not a name most people know or will need to remember, but on Washington's ideological battlefields, he is the star of the moment. Or, as of Thursday, fallen star.

Senate Democrats rejected the controversial Mississippi judge's nomination to a key federal judgeship on a 10-9 party-line vote in the Judiciary Committee. This, they say, spared the nation a judge who misunderstands the law, who was insensitive to civil rights and lacked the temperament required for a lifetime appointment. President Bush, who nominated Pickering, responded that the rejection is "unfortunate for democracy and for America."

In fact, neither Bush's nor the Democrats' motivation is quite as high-minded as they would have it. Nor is the rejection of Pickering of any great significance. A qualified but undistinguished nominee, Pickering can be easily replaced.

What's important is that the politicization of the courts is only gaining steam, and with Supreme Court vacancies likely in the next few years, that is ominous. The credibility of the federal judiciary is already badly tainted by years of ideological bickering over nominees and by the Supreme Court's decision ending the 2000 presidential election.

In the past two decades, presidents have increasingly tried to shape the law through the ideology of their court appointees. And when the opposing party controlled the Senate, it has tried to derail that strategy.

For the past six years of President Clinton's term, a Republican-controlled Senate blocked a large number of his appellate nominees, 35% by some counts. Now, Bush wants to seat a conservative majority on as many of the 13 appellate courts as possible, and Democrats see this as payback time.

While they battle, about 10% of federal judgeships are vacant, 17% on the appeals courts -- vacancies that slow the delivery of justice.

This may sound arcane, but in recent terms, the Supreme Court has reviewed fewer than 100 cases a year, giving the 13 federal appeals courts the final say in more than 99% of federal disputes on issues ranging from the environment to abortion, from criminal law to civil rights.

When Bush sought to elevate Pickering to the 5th Circuit, an appellate court that covers Louisiana, Texas and Mississippi, Democrats saw an opportunity. Pickering's nomination failed not because he was unqualified to preside at that level, but because he is the latest target of opportunity -- a flawed nominee whose weaknesses could be exploited. Liberal, women's and civil-rights groups labeled him a "throwback" to the "segregated South."

In fact, he is not the racist they claim. Supporters included civil-rights leaders who said he acted admirably, testifying against a Ku Klux Klan leader in 1967. But, in his rulings, he has a record of insensitivity to racial issues that makes him a dubious nominee.

With so much at stake, compromise is needed to bridge this wide ideological gulf.

The White House will need to choose nominees who are in the mainstream of legal thought. Senate Democrats will need to honestly rate candidates on their merits. If some potential judges are lost -- those ideologically driven to bend outcomes to fit their legal philosophies -- it will be no loss to the judiciary. Brains, tolerance and open-mindedness are the marks of a desirable judge.

If both sides can't find some common ground, nominees will languish, vacancies will grow, and Americans seeking justice in the courts will find a long wait.

Let president choose

Bruce Fein
USA TODAY
March 15, 2002, Friday

Today's debate: Judicial nominations

Opposing view: Constitution gives him, not Senate, key role in picking judges.

To paraphrase Oliver Cromwell's famous scolding of Britain's 17th-century Long Parliament, it's time for the Senate Judiciary Committee to be done with its endless partisan maneuvers to block judicial nominees of a president of the opposite party.

The Constitution clearly gives presidents primary authority to appoint judges. As Alexander Hamilton wrote in The Federalist No. 76, the Senate's role was intended to screen only for competence, cronyism or corruption. Philosophical or political leanings were not intended as fair game; that would smack of usurping the appointment power itself. The Founders conferred this power because the president is uniquely accountable to a national constituency. And federal judges expound law for the nation, not for particular states. A president also enjoys a popular mandate for judicial appointments, since the issue is regularly a part of presidential campaigns, most recently the Bush-Gore election in 2000. Senate races, in contrast, seldom pivot on philosophy in confirming federal judges.

Finally, concentrating accountability for nominees on the presidency inspires judiciousness in the choices that are made. The hydra-headed Senate evades popular wrath or punishment for its irresponsible shipwrecking or "Borking" of nominees because when all senators are responsible, none are. Such mischief-making has mushroomed since the infamous 1987 hearings over Judge Robert Bork's Supreme Court nomination. And both parties are culpable. President Bill Clinton was as vexed by Senate
Republicans as President Bush is by Senate Democrats.

This unseemly tit-for-tat vendetta and standoff with successive presidents must end. Judicial vacancies are mounting. Justice in federal courts is slowing from lead-footed to glacial. Mediocrity and a vanilla-ice-cream mind are the sole guarantee of confirmation, yet galaxies short of the intellect needed for knotty and pioneering constitutional questions. Judicial giants such as John Marshall, Charles Evans Hughes, Oliver Wendell Holmes or Louis Brandeis would have been stillborn by the contemporary Senate.

The risk of a misguided appointment because of senatorial deference to the president is vastly outweighed by the knowledge that overreaching Senates have become cemeteries for gifted and talented jurists.

Bruce Fein, a former associate deputy attorney general, is general counsel for the Legal Affairs Council in McLean, Va.

Transcripts/Members of Congress

ABC News
SHOW: This Week
March 17, 2002 Sunday

EXCERPT

DONALDSON: All right. Let's move to a different type of confrontation: the United States Senate. Charles Pickering, the judge, denied, on a straight party line vote in committee, the opportunity to go to the floor. George Bush, of course, nominated him for the court of appeals. And now the Republican leader in the Senate, Trent Lott, has retaliated, denying a position on the FCC for one of Tom Daschle's people.

ROBERTS: Well, I actually do think that the effect on the Senate is going to be pretty damaging because it was not just turning down a Bush appointee as a judge, but it was turning down Trent Lott, the minority leader's good friend, as a judge. In fact, Judge Pickering was Trent Lott's paper boy in college. But the fact is that that kind of courtesy is usually afforded, not to the Supreme Court, certainly, or not even to a cabinet position, but to a lower court, when the home state senator, particularly a leader, says 'This is my guy. I want him,' usually you see the Senate going along.

DONALDSON: But Senator Schumer of New York, of course, let it out of the bag by simply saying, 'Charles Pickering was a fine man, but this is about future Supreme Court nominations.'

STEPHANOPOULOS: But not--not only to Supreme Court judges, appeals courts. The Democrats do believe the appeals court positions are very, very important and they--they play dirty at the beginning. At least Schumer is straight about it. He says, 'Listen, we're not going to do anything that upsets the balance on the courts.' This was a wake-up call to the White House, they're now going to put a full-time person on coordinating judge nominations. And secondly, there's a formula there for how to fix this. The state of California has two Democrats senators. They've agreed to have bipartisan committees pick the judges. When that happens, they sail through. And the Bush administration ought to look at that.

WILL: Well that--that's a proposal for essentially amending the Constitution, which says 'the president shall nominate,' and if you have to pre-clear this with various state parties...

STEPHANOPOULOS: But that's always happened.

WILL: Not necessarily. I mean, presidents have had different latitude, but clearly the Constitution, I think, does not envision a thing like this.

What's important about this, Sam, is it was killed in committee. That is, they knew that if this came to the floor, with Zell Miller and Fritz Hollings, it would have passed. Now, one of the reasons...

ROBERTS: Speaking of Southern senators.

WILL: One of the reasons you pick one presidential nominee or another is you trust or distrust their nominees. Because anyone who is president for eight years is going to appoint approximately half the federal judiciary. This matters terribly to liberals because they advance their agenda more by litigation than legislation in this case.

DONALDSON: I want to come back to the Supreme Court. There may be a vacancy or two--or, who knows, three--in this term. And I think the Democrats, don't you, are determined to try to prevent someone who gets on there, joins Antonin Scalia, and...

ROBERTS: Sure. Sure.

STEPHANOPOULOS: No question.

ROBERTS: Absolutely.

DONALDSON: ...and drill away history.

ROBERTS: And--and they--and--and--and the president will learn that--that--that as long as they keep the numbers that they have in the Senate, that they won't be able to do it in the same way that President Clinton was unable to send up the kinds of liberal judges he would have liked to have sent up. He ended up with Stephen Breyer, a judge who was much more moderate than--than Bill Clinton would have liked to have seen on the court. But that's--that's the Senate. That's the reason for advise
and consent.

STEPHANOPOULOS: And Cokie's exactly right. Early on in the Clinton administration, he looked at Mario Cuomo, he looked at Bruce Babbitt, but we--he heard from Republicans in the Senate, 'Listen, they're not going to get through.' And he chose candidates who were much more consensus candidates. I think they both--both passed 100-to-nothing.

ROBERTS: (Unintelligible)

STEPHANOPOULOS: (Unintelligible) Yeah.

DONALDSON: So what does a president do when he has the opportunity? Does he send up a hard conservative that he thinks will do the things in the court--you can't ever be certain, of course--that he would like to see, or does he send up some sort of a moderate that can get through?

WILL: I think he should send up no one over 55 years old, so that whoever gets on will be there for a long time. Living long is the best revenge in these cases. And second, send up conservatives.

ROBERTS: But, you know...

WILL: Let them keep knocking them down.

ROBERTS: But--but the living long, as Sam alluded to, can surprise you, Hugo Black and Earl Warren being very good examples.

STEPHANOPOULOS: David Souter...

WILL: Justice Thomas is working out just fine.

DONALDSON: All right. Let's just get to one before we leave, one final thing--Tipper Gore. Is she going to run for the Senate from Tennessee? George:

STEPHANOPOULOS: Well, I--I probably sat here two years ago or three years ago and said there's no way Hillary Clinton was going to run.

ROBERTS: You did.

STEPHANOPOULOS: I probably did. And I--I don't think so, but it was amazing to watch on Friday when this news first came out, everybody thought it was something of a joke. But all day long, Gore associates were saying, 'No it's real. No, it's serious. Yes, she wants to consider it.' There is a practical deadline. Congressman Bob Clement says he's going to announce Democrat tomorrow at 1:00. Tipper has to decide by then.

ROBERTS: I think she'd be a great candidate. She has known the state for years. She has talked to the voters, had town meetings, gone all over the state, and she is very comfortable with who she is. You know, we wouldn't need to see a makeover of her--of her persona.

DONALDSON: But her husband lost that state.

ROBERTS: Yes, that was him. This is her. Two different people. And...

DONALDSON: You're not just simply saying this because you're supporting another woman are you?

ROBERTS: No, I would--I would be happy to do that, and I'm--particularly support congressional wives, but I think that Tipper Gore would be such a good candidate that we're probably not going to see it happen.

DONALDSON: George:

WILL: Well, it do--it does seem as though the Democratic Party of Tennessee must feel as though the state's become a family fiefdom, and they're supposed to tug their forelocks and say,

'Yes. Another Gore wants the seat, who are we to get in the way of private property?'

ROBERTS: Or another Clinton, or another Ford.

WILL: Yes. So it--I mean, it doesn't indicate the vigor of the Democratic Party in Tennessee.

STEPHANOPOULOS: There...

ROBERTS: Well, wait a minute...

STEPHANOPOULOS: There is a danger...

ROBERTS: ...there's nothing wrong with people who have been raised in the business, meaning running for the office.

WILL: She may have been raised in the business. She was not raised in Tennessee. She's about as connected to Tennessee--slightly more, but not much more--than Mississippi, Illinois and Arkansas.

STEPHANOPOULOS: Well, then--but she's lived there for a long time.

ROBERTS: No. Considerably more than Mrs. Gore--or Mrs. Clinton.

STEPHANOPOULOS: But there--there's a danger here for the vice--for vice--former Vice President Gore. If--if Mrs. Gore runs and loses, that will really hurt his chances in 2004. And secondly, even I agree. Mrs. Gore could be a great, charming, candidate, but she is even more liberal than her husband. I mean, she's, like, for gay rights. A and I think that could hurt in Tennessee.

ROBERTS: Except--except on issues having to do with children, and those are very popular issues.

DONALDSON: All right. That's it. And I will just simply say as a last word, I am not running for any political office. Thank you.

When we come back, the George Will commentary. Please stay with us.

(Commercial break)

ROBERTS: Well George Will, we have very romantic notions of the American yeoman farmer.

WILL: Cokie, you may think you know an American farmer when you see one. You may think a farmer looks like the ones in this Thomas Hart Benton painting, or like Grant Wood's farm couple, or like this farmer in a Walker Evans' photograph.

Well, here is a picture of an American farmer: the Chevron corporation. In a recent five-year period it received more than a quarter of a million dollars in farm subsidies. John Hancock Insurance Company received more than $211,000 for its farm holdings. Dupont received $188,000, Caterpillar, $171,000. Fifteen corporations on the Fortune 500 list received farm subsidies.

Welcome to the era of agribusiness in which one Arkansas farm corporation got almost $24 million of subsidies between 1996 and 2000. And now Congress is increasing farm subsidies to $17 billion a year, and Senators Feinstein and Boxer of California, a big agribusiness state, are angry because the bill would limit the subsidies any farm can receive to only--only--$207,000.

It is nonsense for supporters to justify subsidies as a safety net for poor farmers. In fiscal year 2000, 157 farms received at least a million dollars a piece in subsidies. And the notion that subsidies are supposed to save small family farms is nonsense on stilts. When farm families started in the 1930s there were almost seven million farms. Today, after hundreds of billions of subsidies, there are fewer than two million farms. The more a farm produces of a subsidized commodity, the bigger its subsidies. So subsidies encourage consolidation of farms. That is why subsidies mean, 'Goodbye Grant Wood,' and 'Hello John Hancock.' Remember that the next time you hear Washington rhetoric about farm subsidies being 'safety net for small family farms.'

ROBERTS: Thank you, George. Sam and I will be right back.

(Commercial break)

ROBERTS: So Sam, what's on the webcast?

DONALDSON: Well, Senator Bill Frist, who's also a medical doctor, a surgeon, has written the book that tells us everything
we need to do about how to keep ourselves safe if there is a bioterrorism attack, from a medical standpoint. Just log onto
sam.abcnews.com.

ROBERTS: And tomorrow on "Good Morning America," an exclusive interview with the family of Andrea Yates.

DONALDSON: That's true. And finally this morning, we honor our colleague and friend, Jerusalem producer Ali Qadan
Rabaia who passes away last week at age 44. Ali was of enormous help to this program on many occasion, most recently in
Ramallah last Sunday.

And from all of us, until next week, that's THIS WEEK.

Senator Orrin Hatch discusses Pickering nomination

CBS News Transcripts
SHOW: Face the Nation

March 17, 2002 Sunday

With us now, the ranking Republican on the Judiciary Committee, Senator Orrin Hatch.

Senator Hatch, President Bush's nominee for the appellate court, Mr. Pickering, has been turned down. What's going to be the fallout from that?

Senator ORRIN HATCH (Republican, Utah): Well, it's a real tragedy because here was a man who really was rated well qualified by the organization the Democrats called the gold standard--that's the American Bar Association. That's the highest rating they give. This fellow had served 12 years with distinction in Mississippi and had a reputation as being one who, when--when it was really tough to do, lived up to civil rights and then... SCHIEFFER: So why did they do it?

Sen. HATCH: Well, I think a lot of it comes down to they want to continue the Old South reputation. I think it's a branding of the whole--whole--the whole South. They want to keep that up because by doing so, they can rally their very liberal forces in a whole wide variety of ways.

Secondly, they're--these outside groups, you heard Tom Daschle say that the outside groups didn't like him. Well, these outside groups are all Washington based. They're all far-left groups that never surface until there's a Republican president. And I have to say that, you know, when I was chairman, we had some right-wing groups come in and start making a lot of noise. I told them to get lost. I made a lot of enemies. But that was where they belonged. They belonged to get lost because we ought to make these decisions based upon the facts. And in this particular case--here's a man who sent his kids to inte--to integrated schools, primarily African-American schools, at a time when other people in the South were avoiding pr--public schools and--and going to private schools. I wonder how many members of our Judiciary Committee and members of the Democrats are sending their kids to private schools today here in Washington, DC, because they don't think the schools are good enough for their--for their white kids, do you see? Now this is a man who really lived right, did what was right?

SCHIEFFER: What is--what's going to happen as a result of this?

Sen. HATCH: Well, it's irrit...

SCHIEFFER: Senator Lott is now talking about payback. He's blocked a--a nominee that Senator Daschle has sent to the FCC...

Sen. HATCH: Well, that was done far ba--in a--in advance to this.

SCHIEFFER: ...funding.

Sen. HATCH: I--I don't think that has any relationship to this. But...

SCHIEFFER: Oh, come now.

Sen. HATCH: Well, Senator Lott does not feel that person is...

SCHIEFFER: OK.

Sen. HATCH: ...is qualified for that job. And I--I heard that before this came up. But, you know, w--f--in my wildest dreams I didn't think that they would vote a man of Charles Pickering's qualifications down with his son sitting there. I mean, it wa--and Chip Pickering, I have a lot of--I give him a lot of credit. He's one of those who came in and advocated for Margaret Morrow, a very liberal judge in California that I had to ram through over objections because it was the right thing to do.

GLORIA BORGER (CBS News): But he is holding up--Senator Lott is holding up $1 1/2 million for committee funding to look into FBI counterterrorism. Don't you believe the committee ought to be doing that?

Sen. HATCH: Well, of course I do. I--I jointly signed the letter, but I have to admit our committee is heavily financed, and I think--I think with the partisanship that Senator Lott is seeing, he doesn't see any reason to give another million and a half dollars to a group that won't treat a decent man like Pickering right.

SCHIEFFER: Senator Nickles said this morning that if something doesn't happen, if we're not able to resolve this divide here, Republicans are going to have to do something to get the attention of the Democrats. What--what does that mean?

Sen. HATCH: Well, it can mean any variety of things. I can't speak for Senator Nickles. You know what I'd prefer? I'd prefer that we treat people with dignity and decency. Do you realize since 1950, there have only been four people--I mean, we've never had a person stopped in committee unless the Democrats were in control. But last time we did was 1991 when Judge Ryskamp was stopped in committee and not given a chance on the floor. In my six years as chairman on the Judiciary Committee over the prior six years, everybody went to the floor. And that's what's irritating a lot of Republicans.

BORGER: Senator--Senator, Democrats point out that three of President Clinton's choices for this Fifth Circuit were not even given a hearing, meaning they didn't even get as far as the committee.

Sen. HATCH: Well, first...

BORGER: So how do you respond to that? They say Judge Pickering at least got his hearing in committee.

Sen. HATCH: Well, first of all, they were put up quite late. Secondly, there were objections to them. And thirdly, there was--there were some objections by--by the senators involved who do play a very important role in this process and, thirdly, there were some who didn't make it. But I have to say we did a far better job than the Democrats are doing.

SCHIEFFER: What about--let's talk a little bit about this Ridge situation. Should Mr. Ridge have to come up and testify before Congress?

Sen. HATCH: Look, he's--he's an--he is the president's right-hand person. He is a member of the administration. It would be highly unusual to demand--it is highly unusual to demand that--that a person who has no formal office other than as an adviser to the president has to come up and testify to Congress and especially Tom Ridge, who's handling some of the most intricate, difficult problems in our society today, problems that all of us are worried about.

SCHIEFFER: But...

Sen. HATCH: And once that starts, he'll be up there spending all his time on Capitol Hill rather than doing his job.

SCHIEFFER: But unlike--unlike Condoleezza Rice and some of the other advisers, he is asking the Congress for appropriated money to--to go to various agencies and he's deciding which agency gets it.

Sen. HATCH: No, he isn't. The president is asking and the president is taking his recommendations and saying, 'This is my program. I'd like to protect America. I'd like to make sure we s--we do something about terrorism. I'd like to have the cooperation of the Congress. I don't want my right-hand person that I have doing this all day long every day up there in front of a--a Senate or House committee every day. I want him doing his job.' And, you know, I kind of agree with the president on that.

SCHIEFFER: All right, Senator, I think you do. Thank you so much for being with us and...

Sen. HATCH: Well, I certainly do and he's doing a good job, this president.

SCHIEFFER: ...we'll--we'll be back in a minute with a final word.

Senator Tom Daschle discusses violence in the Middle East, Tom Ridge, Charles Pickering, campaign finance reform, Tipper Gore

CBS News Transcripts
SHOW: Face the Nation
March 17, 2002 Sunday

EXCERPT

BORGER: Let me just switch for a moment if I might to another controversy on Capitol Hill last week. Democrats voted down along party lines the judicial--judicial nominee Charles Pickering. And the Senate Republican leader, Trent Lott, says that that nominee should have gone to the floor, yet it was stopped dead in its tracks in the committee. Senator Breaux this morning, a Democrat, said that it should have gone to the Senate floor as well. Is there any chance that you will let this nomination proceed to the floor of the Senate?

Sen. DASCHLE: Well, Gloria, that's unprecedented. I think maybe what Senator Breaux said is that the committee should report out--or should have reported out the--the nomination without recommendation. But there is no precedent in all the history of the United States for us to circumvent the Judiciary Committee on judicial nominations at the district and circuit levels. That has never happened before. You could--you could virtually eliminate the Judiciary Committee if--if we were to adhere to that practice. So what we have said is that the Judiciary Committee ought to have the autonomy, ought to have the responsibility to make the right decision. And in this case, they've made it, and I'm going to respect it.

SCHIEFFER: Senator Daschle, you have said before that the American Bar Association recommendations ought to be taken into consideration. And the American Bar Association in this case says that Judge Pickering was well qualified. Why are you saying that their recommendations ought to be considered in one case, but not in this case?

Sen. DASCHLE: Well, I think they ought to be considered, Bob, but that ought not be the only criteria by which we judge the qualifications of a judge. In this case there were very concerns--very serious concerns about perhaps the--the possibility of some ethical lapses. There's some real question about whether he was willing to uphold civil rights and voting rights laws in this country. And so I think it was on the basis of those concerns, very serious ones. We got a good deal of--of information from legal analysts from all over the country, who shared the view that--that in this case Judge Pickering was not qualified to be a circuit court judge. So while we look at the ABA, there are a lot of other experts and a lot of other sources we have to consider as well.

SCHIEFFER: What Republicans would say would fly in the face of that was that there was a multiracial delegation from his home state, including Medgar Evers' brother--and he was a great civil rights leader--who came to Washington. That delegation also included Mike Moore, the Democratic attorney general in Mississippi. These people all said that he is well qualified and that he has had the proper view on civil rights issues. What do you say in response to them?

Sen. DASCHLE: Well, we respect their--their opinions a great deal, but we also respect virtually every single civil rights organization in the country who came out in opposition to Judge Pickering. Virtually every women's rights organization came out in opposition to Judge Pickering. So there was a substantial degree of opposition from the organizations representing African-Americans and--and Americans of all backgrounds, who came out very strongly in opposition. That was part of the record as well, and of course we have to take all of the recommendations and ideas and opinions into account as these decisions are made.

BORGER: Senator, we seem to now be getting into a bit of a tit-for-tat situation as a result of this, that Senator Lott has now held up a $1 1/2 million budget request from the Judiciary Committee to look into FBI counterterrorism. He's also holding up the nomination for an FCC seat of a former staffer of yours. How do you react to--to Senator Lott doing these things?

Sen. DASCHLE: Well, Gloria, I think it's very unfortunate. Jonathan Adelstein had nothing to do with the Pickering nomination. So to lash out at him is an unfortunate set of circumstances that I hope will cause Senator Lott to reconsider. We're going to do the best we can to deal with all of the judges that--that we--that have been nominated. You know, we've dealt with 41--we've confirmed 41 nominations. That is more than what the--the--the Republicans did when they were in the majority for an entire year in many cases. In 1996, not one circuit courj--cour--court--circuit court judge was--was confirmed, not one. We've already confirmed seven in nine months. So we're doing the best we can. We're going to continue to do more. We're going to build on the tremendous progress we've made so far. And I hope that people will judge us by that progress and by our intent to continue to--to confirm both circuit and--and district court nominees.

SCHIEFFER: Another subject: Campaign finance reform finally comes up this week in the Senate. What do you hear? Will the Republicans try to filibuster it, because we hear that you say you have the votes to pass it.

Sen. DASCHLE: Well, we think we have the votes to pass it, but the Republicans have yet to--to agree to a unanimous consent agreement that would allow us to vitiate the--the cloture votes. In other words, we expect right now that there will be a filibuster, which is why I brought the cots in last week. If we have a filibuster, we're going to do it around the clock, beginning on Wednesday, because I need to get this done by Friday. And I believe we will get it done, either the easy way or the hard way, but it will be done by Friday.

CNN
SHOW: CNN LATE EDITION WITH WOLF BLITZER
March 17, 2002 Sunday

EXCERPT

CHARLES PICKERING: I am extremely disturbed that judicial confirmation has degenerated into such a bitter and mean-spirited process. I sincerely hope that no other nominee has to go through what has happened to me.

(END VIDEO CLIP)

BLITZER: Mississippi Judge Charles Pickering commenting on the Senate Judiciary Committee's rejection of his nomination for the federal circuit court.

Welcome back to Late Edition.

The Pickering vote was strictly along party lines with all Democrats on the committee voting against the nomination, the Republicans supporting the nomination. The Republican leader Trent Lott is promising to retaliate.

Joining us now to talk about the return of partisan politics in the U.S. Congress is Republican strategist Ed Gillespie and Democratic strategic Peter Fenn.

Thanks to both of you for joining us.

Peter, let me start with you. The American Bar Association said he was well-qualified. Why did the Democrats decide to introduce politics in rejecting Judge Pickering right now?

PETER FENN, DEMOCRATIC STRATEGIC: Well, listen, these are always political of course. But the key point here was that you had a judge who was extreme right- winger. Twenty-four of his opinions were overturned by the appeals court. They looked into his record, and they gave him a hearing, and they found him not to be ready for prime time when it comes to that, a critical, critical judgeship.

And at least he got a hearing. Three of the Clinton nominees to that same bench did not even get a hearing. They deep-sixed them, so at least he got a hearing.

BLITZER: On that point, Ed, as you know, the Democrats have been arguing they only did what the Republicans did when Clinton was in White House.

Let me read to you from the Los Angles Times on Friday. "After the GOP took control over the Senate in 1995, the Republicans blocked a series of Clinton's court nominees, especially racial and ethnic minorities and especially in the South. The 5th Circuit was a particular battleground. In 1997 Clinton nominated Jorge Rangel (ph), an attorney from Corpus Christi, Texas, to the 5th Circuit. He withdrew in frustration two years later. Clinton then chose Enrique Moreno, a Harvard-educated lawyer from El Paso. He also nominated H. Alston Johnson (ph), a Louisiana law professor, for the same court. But the Republicans refused to allow a hearing for any of those nominees."

ED GILLESPIE, REPUBLICAN STRATEGIST: The fact is, Wolf, the Republican Senate moved much more quickly and deliberatively on President Clinton's nominees than has this Senate on President Bush's nominees.

And, in fact, of the 11 nominees to the federal bench that President Bush submitted almost a year ago, last May, two of them were nominees that President Clinton had submitted and there hadn't been time to act. And in spirit of comity, President Bush put forward and resubmitted the Clinton nominees. Well, guess what? Out of those 11, only three have been confirmed. And guess what else? Two out of those three were the Clinton nominees.

This was ridiculous. This was a ritual slaying to appease the national organizational for women and other liberal interest groups done by 10 of the most liberal members of the United States Senate. This man never got a hearing on the floor of the Senate, which he clearly deserved.

The ABA, which is not a conservative by any stretch of the imagination, Peter, said this man was a well-qualified jurist. And this is simply an effort by these guys to have liberal activists on the judge, and nothing more.

FENN: I find it kind of ironic that the Republicans are now touting the ABA, which they wanted to get rid of.

GILLESPIE: I wasn't touting them. I said...

FENN: This administration wanted to get rid of their recommendation.

GILLESPIE: What we're saying even they, who we don't consider to be a conservative group by any stretch of the imagination, said he was well-qualified.

FENN: He seems well-qualified, but they didn't talk to him about his ideology.

The other question here, I think, and to set the record straight. Look, the average time it took to confirm a judge under Ronald Reagan was six weeks. The average time under George Bush the first was eight weeks. The average time under Bill Clinton was 20 weeks -- 20 weeks. I mean, they held these nominations...

GILLESPIE: This is a year.

FENN: ... and in some cases deep-sixed it.

But the problem with this -- and I think this is where we get into partisan politics. Look, I think we have step back, take a deep breathe. We've got to confirm judges. You know, I don't think we can use, you know, the Clinton experience...

BLITZER: All right, Peter, a lot of Southern Democrats, Democrats, moderate Democrats are concerned by what happened. Zell Miller, Democratic Senator from Georgia, said this after Pickering went down. He said, "The political repercussions are too obvious to ignore. Politically, this action may well elect a Republican governor in Mississippi and will certainly make even more difficult for Democratic candidates to be successful in the South."

FENN: I mean, I don't think this was a political consideration. This was as question of, what kind of judges are you going to submit?

You know, Bill Clinton submitted moderate judges. And these folks, if they're going to put forth these judges that are extreme, they're going to get shut down.

BLITZER: We're going to move on, but go ahead and get a last word.

(CROSSTALK)

GILLESPIE: ... mainstream jurist, and the fact is that this is an effort to have only judicial activists who believe that they should raise taxes from the bench, you should confiscate private property, and you should care more about criminals' rights than victims' rights. That's where this Senate is trying to take the federal bench, and it's a shame.

BLITZER: Another issue coming to the floor this coming week, campaign finance reform. Whether or not it's going to get to the floor and all that, a little bit up in the air.

But we did see in a remarkable picture -- beds, cots being brought into the U.S. Senate this week. Let's show some of those cots and put them up on our screen.

What is going on, what is Tom Daschle threatening to do, the Senate majority leader?

PENN: Well, what he is saying, of course, Wolf, is that -- is if they're going to filibuster this then they're going to play it all night. He wants this voted on by next Friday.

And to be honest with you I think it's going to be voted on. It is going to pass. They're going to have the 60 votes that they need to pass this bill, and the president is going to sign it into law.

BLITZER: What do you think?

GILLESPIE: I suspect that's all right.

But let's face something. Campaign finance reform is not going to create one job in this country. It is not going to ease the backlog in the federal bench and confirm any judge. It is not going to reduce our dependency on foreign oil by one barrel. It is not going to get one senior citizen help with prescription drugs.

It is going to help every incumbent member of Congress get reelected, because it is an incumbent protection measure, as The Washington Post learned and said, "One of the unanticipated consequences of this bill may be that it will be harder for challengers to run against the incumbent members of Congress." What a shock.

BLITZER: There was a shock this week when we heard that Tipper Gore, the wife of the former vice president, is thinking about running for the Senate for the seat being vacated by Fred Thompson.

Is that likely to happen?

PENN: I'm not shocked at all by it. I think she's giving it serious consideration, from what I understand. There's conversations going on today and tomorrow.

I think she'd be an excellent candidate, to be honest. I think she knows the issues. She's been out front on the whole mental health question. She's been out front with homeless folks. She's been out front on lyrics in songs. She's just a very capable individual, and I think she would make a terrific candidate in Tennessee.

And I think it might be one of those races that Ed doesn't like to see, because it's going to keep Deemocratic control of the Senate.

BLITZER: Tipper Gore, let's assume -- and this is obviously a long ways down the road -- Tipper Gore versus Lamar Alexander in Tennessee. Where do you put your money?

GILLESPIE: I'd put my money on Lamar Alexander, assuming he's the nominee on our side. The fact is, if Al Gore couldn't carry Tennessee in the presidential election, I'm not sure that Tipper Gore is going to be able to carry it in the senatorial election.

BLITZER: If Tipper were to lose the election, what would that say to Al Gore's prospects in 2004, if she couldn't carry his home state, her home state of Tennessee?

FENN: Elections are risky business. And folks run, they win, they lose. You know, I think this is her own race. She'll run it like her own race.

And to be honest with you, I think they'll have a tough Republican primary. I'm not sure there would be Democratic primary, if she decided to run. And I think she'll be a terrific candidate and a terrific senator.

BLITZER: What do you think about Dan Burton's committee this past week, coming out with his, in effect, indictment of former President Bill Clinton, saying, among other things -- let me read to you what his final report of his House Government Committee did include.

"President Clinton," he says, "encouraged his half-brother, Roger Clinton, to capitalize on their relationship. The beginning of the second term, President Clinton instructed Roger Clinton to use his connections to the administration to gain financial advantage."

President Clinton strongly denies this, of course.

GILLESPIE: Well, the Burton committee had an obligation, obviously, to investigate the pardons, and they fulfilled their obligation and issued their report. And it seems like forever ago since all of that was in the news, since all that's happened since then.

You know, I'm not sure what more you can add to it. The fact is that it reinforces, I think, why so many of us who helped get this president elected are glad that he has been good to his word to change the tone and to restore some dignity to White House.

BLITZER: Peter?

FENN: Well, I don't think this is changing the tone much. Look, he's the Energizer bunny, when it comes to investigating the Clintons. He's going to go on and on forever with this. You know, the notion that Bill Clinton would say to Roger Clinton, "Go out there and make money and sell pardons," is absurd. I mean, there is no evidence for it. It's an absolutely ridiculous charge. You know, I rode up in the elevator this show with Elvis, right? I mean, come on, this is ludicrous.

And you know, it just shows how ridiculous Dan Burton's investigations have been, all along. He starts by shooting a watermelon in his backyard to, you know, to demonstrate how in touch he is with scandal, and now he ends it with this ridiculous charge. He ought to get off it and get a life.

BLITZER: I mean, it's wasn't a winning political issue, obviously, when Clinton was in the White House. This is not a political issue that's going anywhere, is it, trying to revive Bill Clinton as a sort of the enemy of the American public?

GILLESPIE: No, I don't think there is much interest in that in, certainly, in the Republican Party.

BLITZER: That's history, and now it's time move on. Unfortunately, it's time to move on for us, as well.

Thanks both of you. Ed Gillespie, Peter Fenn, always good have you on the program.

GILLESPIE: Thank you, Wolf.

BLITZER: Appreciate it very much.

And just ahead, Bruce Morton on the strategy behind going nuclear. Will the United States be the first to drop the bomb again?

Late Edition will be right back.

CNN SATURDAY EDITION
March 16, 2002 Saturday

EXCERPT

SNOW: Let me ask you about another issue that came up this week, Charles Pickering -- big issue in Senate. He was shot down for an appointment to federal circuit court of appeals, an old friend of Senator Trent Lott from Mississippi, Republican. And he is out of there.

Did Democrats do the wrong thing in taking him on?

HAGEL: Well, I think the Democrats did wrong thing in voting down the nomination. But even worse, I think it was not a smart move, wise move, responsible move, not to allow a vote to happen on the floor of the Senate for Judge Pickering.

SNOW: Listen to what Senator Lott had to say about this incident, about Charles Pickering and Charles Pickering not being allowed a vote. Let's listen to Senator Lott this week.

(BEGIN VIDEO CLIP)

SEN. TRENT LOTT (R-MS), MINORITY LEADER: I think this is, you know, payback. The problem with payback is where does it every end? You know, we paid you back, you pay us back. Now we're going pay you back. Where does this end? Is this the way for the United States Senate to act? Is this the process that we should use in confirming judges?

(END VIDEO CLIP)

SNOW: And Senator Lott saying he is going to block money that the Judiciary Committee wanted, the committee that voted out, voted down Charles Pickering. He's going to block one of Daschle's picks for another appointment. When does it end?

HAGEL: Well, Senator Lott's point was correct. We can't continue to ratchet this up. This is irresponsible. This is no way to govern.

First, I think, let's put perspective on this. As much of a big mistake, I think as the Democrats made here on Pickering, this isn't the first time. It's not going to be last.

I remember in the '70s big fight over Carswell (ph) and Hainesworth (ph), the Supreme Court nominees with Nixon, Clarence Thomas. Unfortunate that we get into these things. We define down our conduct, the Senate, and I don't think we look very good, not responsible. We didn't do the right thing here. At least give the guy a vote.

But the better way to handle this is Daschle and Lott have to sit down and in quiet moment next week, and maybe get the president into this, and say, "Listen, let's stop this. Now, this is nonsense. This is like the Middle East. We will kill more of your guys than you kill of ours." That is irresponsible, and America deserves better than that.

And there will be retribution at polls in November, if this doesn't get straightened out.

SNOW: We've a phone call on the line, I think, from Tom Daschle's home state of South Dakota.

HAGEL: OK.

CNN
SHOW: CNN CAPITAL GANG
March 16, 2002 Saturday

EXCERPT

SHIELDS: Welcome back. President Bush made a final appeal to the Senate to confirm Federal District Judge Charles Pickering of Mississippi to the 5th Circuit Court of Appeals.

(BEGIN VIDEO CLIP)

BUSH: A handful of United States senators on one committee have made it clear that they will block nominees, even highly-qualified, well-respected nominees who do not share the senator's view of the -- of the bench, of the federal courts.

(END VIDEO CLIP)

SHIELDS: The Judiciary Committee voted 10 to nine against sending the Pickering nomination to the Senate floor.

(BEGIN VIDEO CLIP)

SEN. CHARLES SCHUMER, (D), NEW YORK: The administration is willing to take some casualties in this fight. They're sending up waves of (UNINTELLIGIBLE) and Thomas's. They still staff the courts. It's a bad strategy, both for the courts and for the American people.

SEN. TRENT LOTT, (R-MS), MINORITY LEADER: It's really aimed at the Supreme Court. This is a message, you know, you send us a pro life, conservative, man of faith for the Supreme Court, and we will take care of him or her.

(END VIDEO CLIP)

SHIELDS: Al Hunt, is Senator Lott correct that this is really about the Supreme Court?

HUNT: Mark, I'll get to that in just a second. One of the truly impressive moments, though, was to watch Congressman Chip Pickering sit there while the committee voted on his dad for hours. We all should hope our children would be so devoted.

But Trent Lott is right. It's about the Supreme Court and it's about politics, just as it was during the Clinton years when the Republican-controlled Senate rejected 53 judges that Clinton -- excuse me, they didn't reject them, they wouldn't even hold hearings on 53 judges. Forty percent of those were there for three years or more.

Judge Pickering had two hearings, had an up and down vote, was given far more courtesy than most nominees were given, and as for the president's claim about the Judiciary Committee

bottling it up, I don't think ever in the history of the Republic has a nominee gone to the Senate floor that was -- that was -- that was -- that was voted negatively by a majority of the -- of the Senate Judiciary Committee.

(CROSSTALK)

NOVAK: Can I correct you on that, please? Do you mind?

HUNT: Yes, and then I'll come right back, yes.

NOVAK: I correct you. Bork was voted negatively by the Judiciary Committee and was sent to the Senate Floor.

HUNT: Well they went and they voted to send him out, but this is -- this is -- they're trying to change the rules, and you can't change the rules, and they're -- and they're taking shots to Pat Leahy -- they're highly unfair, and so I think ...

(CROSSTALK)

HUNT: ... this is about politics, but it's been about politics for a long time -- nothing new Mark.

NICKLES: Well, I think ...

SHIELDS: Don Nickles.

NICKLES: ... take big issue with that. This is a very sad day in the Senate. The Senate is not working very well as we speak. For example, we have an energy bill on the floor, it wasn't even marked up by the Energy Committee. You have tax committee, Finance Committee, it's become very partisan -- Ag, we've never had a partisan Ag bill.

We finally do, and it's just not working. And now we have a straight partisan attack, and Senator Schumer said something about trying to stack the courts, well what happens, we now have a Judiciary Committee that's stacked with liberal Democrats that have now have litmus tests. It used to we throw -- we don't want to have litmus tests on judges.

We didn't have litmus tests on past judges, but all of a sudden the Democrats do. And they're trying to kill, and did, in this case, stop the elevation from a district court of an individual that was confirmed unanimously 10 years ago in 1990 -- 12 years ago, and now gets no votes from the Democrats. We had the votes on the floor of the Senate. The Constitution says the Senate shall confirm -- you had the Judiciary Committee that I think treated Judge Pickering and frankly Senator Lott very unfairly.

CARLSON: During those 12 years, he was reversed 26 times since his last confirmation. He intervened in a cross burning case to try to get the mandatory sentence reduced and there were good reasons to reject this nominee. It doesn't mean that it wasn't revenge for what happened

during the Clinton administration and it doesn't mean that the Senate is not involved in this tit for tat, that, you know is making it so ugly and partisan that people like Senator Fred Thompson are leaving the Senate ...

NOVAK: Let me ...

CARLSON: ... because it's so bad and Senator Daschle is having his nominee -- Senator Lott came right back out and said I'm going to stop your nominee to head up the Federal Communications Committee ...

(CROSSTALK)

CARLSON: ... and put tops (ph) in the Senate because we're staying here all night.

NOVAK: Because the only resource Republicans have is retaliation. Let me tell you what this is -- this is all about. This is Chuck Schumer of New York. He's the one guy who's very honest. He says there is an ideological test. We don't want Scalias and we don't -- we don't want Clarence Thomas's on the appellate -- on the appellate bench, and the -- and they took Judge Pickering because he is a distinguished judge.

He has a lot of Democratic friends in Mississippi. His son is a congressman, and they said, this is the test case. If you name anybody as conservative as Pickering, he is going to -- he is going to get the same treatment and the question is not how many times he was reversed, Margaret, it's abortion, because he's pro life. The women's activists have said we've got to stop him, and they have stopped him.

(CROSSTALK)

HUNT: The problem with that is ...

(CROSSTALK)

CARLSON: I don't think ...

(CROSSTALK)

HUNT: ... we've already confirmed the number of judges who are -- who are pro life. There have been -- of those 40 judges, they've confirmed a number of judges are pro life, so that has not been a litmus test and but, Bob, I agree with the overall point, but that was the same exact test that the Republicans had to Clinton. And why Allen Snyder ...

(CROSSTALK)

HUNT: ... who was a law clerk to Judge Rehnquist nominated in September 1999 and Trent Lott and Don Nickles wouldn't let him come up for a vote. Why? I don't know, but to ...

(CROSSTALK)

HUNT: ... pretend there's some kind of new litmus test -- why wouldn't you let Allen Snyder come up for a vote?

NICKLES: I'm not familiar with the Snyder case. But let me ...

(CROSSTALK)

HUNT: Judge Rehnquist nominated ...

(CROSSTALK)

NICKLES: Well, let me give you ...

(CROSSTALK)

NICKLES: ... the real stats. The real stats are that Bill Clinton and George Bush and Ronald Reagan got 97 percent of their judges in the first two years -- 97 percent.

HUNT: When the Democrats controlled the Senate, yes.

NICKLES: Well, Democrats and Republicans, if you add all three administrations. In other words, the past three presidents got 97 percent of their judges the first two years and we only have 24 percent of the circuit court nominees this time, and they've held up 22.

SHIELDS: I'll just point out that the first two years of each of those president's terms, the Democrats did control the Senate in each case.

NICKLES: Well, there's 22 out of 29 ...

(CROSSTALK)

CARLSON: The last two years it points ...

(CROSSTALK)

NICKLES: Twenty-two out of 29 circuit court judges haven't had a hearing. Twenty haven't even had a hearing.

SHIELDS: Don Nickles, we'll be back with a CAPITAL GANG classic to mark another Clinton anniversary.

Reactions to Judge Pickering's Rejected Nomination

CNN
SHOW: CNN DAYBREAK
March 15, 2002 Friday

Partisan politics still alive and well in the Senate. Many say the defeat of Charles Pickering's appeals court nomination could be a sign of future battles over the Supreme Court.

CAROL COSTELLO, CNN ANCHOR: Partisan politics still alive and well in the Senate. Many say the defeat of Charles Pickering's appeals court nomination could be a sign of future battles over the Supreme Court. CNN congressional correspondent Jonathan Karl has the details for you.

(BEGIN VIDEOTAPE)

JONATHAN KARL, CNN CONGRESSIONAL CORRESPONDENT (voice-over): From the steps of his courthouse in Mississippi, Judge Pickering blamed his defeat on partisan politics.

JUDGE CHARLES PICKERING (R), MISSISSIPPI: I am extremely disturbed that judicial confirmation has degenerated into such a bitter and mean spirited process. I sincerely hope that no other nominee has to go through what has happened to me.

UNIDENTIFIED FEMALE: Mr. Feingold.

SEN. RUSSELL FEINGOLD (D), WISCONSIN: No.

UNIDENTIFIED FEMALE: Mr. Schumer.

SEN. CHARLES SCHUMER (D), NEW YORK: No.

KARL: Immediately following the party line vote, President Bush put out a sharply worded statement calling the action "unfortunate for democracy and unfortunate for America." But Democrats put the blame on the White House for nominating somebody they believe is out of the mainstream, especially on civil rights.

SCHUMER: There's clearly no mandate from the American people to stock the courts with conservative ideologues. So if the White House persists in sending us nominees who've threatened to throw the courts out of whack with the country, we have no choice but to vote no.

KARL: The rejection won't help what President Bush calls a vacancy crisis in the federal courts. There are now 96 federal vacancies, which means more than 1 out of every 10 federal judgeships is vacant.

SEN. MITCH MCCONNELL (R), KENTUCKY: We have a crisis, and both sides can spin the

statistics any way they want to, but the fact of the matter is there are more judicial vacancies today than there were when President Bush took office.

SEN. PATRICK LEAHY (D), JUDICIARY CHAIRMAN: We've had a great deal of talk about vacancies during this hearing. Many of those vacancies, nominees were made for them by President Clinton. This committee refused to allow them to come to a vote before the committee or to even come, in many case, even to have a hearing.

KARL: Some Democrats believe rapid approval of Bush's nominees would only reward Republicans for a problem they created by blocking President Clinton's nominees.

SEN. TRENT LOTT (R), MINORITY LEADER: But I think this is a -- this is you know payback. And the problem with payback is where does it ever end? You know we paid you back, you pay us back, now we're going to pay you back. Where does this end? Is this the way for the United States Senate to act? Is this the process that we should use in confirming judges?

KARL: Senator Lott took personally the rejection of Pickering, a fellow Mississippian he asked the president to nominate. Also taking it personally was Charles Pickering Jr., the judge's son, better known as Congressman Chip Pickering. He lobbied hard on his father's behalf.

REP. CHIP PICKERING (R), MISSISSIPPI: I couldn't be prouder of my father. He is an honorable man who has had to go through a dishonorable process. But we do hope that the senators can find some way to bring dignity and decorum back to the senate, to the confirmation process.

KARL (on camera): And this battle may be a foreshadowing of things to come. President Bush has another 50 judicial nominees pending before the Senate, many of them considered by Democrats even more controversial than Judge Pickering.

Jonathan Karl, CNN, Capitol Hill.

Fox News Network
SHOW: FOX SPECIAL REPORT WITH BRIT HUME
March 15, 2002 Friday

EXCERPT

CAMERON: Hours after Democrats voted against Judge Charles Pickering, giving President Bush his first defeat on a judicial nominee, the GOP blow back began. Republicans plan to hold up some judiciary committee funds. And Democratic leader Tom Daschle's pick for the FCC will now be blocked by Trent Lott, who recommended Pickering to the president and has all but promised more reprisals.

LOTT: I'm not going to let go of this. This is going to stick in my mind for a long time.

CAMERON: Some judiciary committee Democrats like Dick Dervin admit opposing Pickering to even the score for the way Republicans blocked some of President Clinton's nominations in the '90s. The No. 2 Democrat in the Senate, however, says Democrats have legitimate problems with some of Bush's picks, and they're not going to back down.

SEN. HARRY REID (D), NEVADA: George W. Bush is president of the United States, not king of the United States. He's President Bush. He's President George, not King George.

CAMERON: Judiciary committee Democrats like Charles Schumer have said they will not confirm Bush nominees if, like Pickering, they're conservative. Republicans say it's really all about the Supreme Court. And the paramount issue for Democrats is abortion.

LOTT: I think it's really aimed at the Supreme Court. This is a message. You know, you send us a pro-life conservative man of faith for the Supreme Court, and we will take care of him or her. That's what it's really about.

CAMERON: When it has suited them in the past, lawmakers in both parties have argued that judges are able to separate the personal politics from their court rulings and the law. But Republicans say, when it comes to abortion, Democrats are now saying just the opposite.

SEN. ORRIN HATCH (R), UTAH: To impose an abortion litmus test on private views, call it ideological if you want to, is to exclude from our judiciary a large number of people of religious conviction, who are perfectly prepared to follow the law.

CAMERON: In other words, Republicans say abortion politics has led Democrats to religious discrimination.

HATCH: Rather than seeking to determine the judiciousness of the nominee and whether a nominee will be able to rule on the law, or the Constitution, without personal bias, my Democratic colleagues are out to guarantee that our judges are, in fact, biased. And certainly, no person who holds certain religious convictions need apply.

(END VIDEOTAPE)

CAMERON: Though some Democrats, like Zell Miller of Georgia, who often votes with the Republicans, have criticized the Democratic Party for the way they handled this nomination, Democratic leaders say the process has been and will continue to be fair. It's unclear how the president, who has promised to end gridlock and change the tone in Washington, will react if Republicans in the Senate slow things down to the point where his own agenda is adversely affected -- Tony.

Fox News Network
SHOW: FOX HANNITY & COLMES

March 15, 2002 Friday

EXCERPT

HANNITY: As we continue, Judge Charles Pickering's nomination to the appeals court was defeated in a party-line vote in the Senate Judiciary Committee yesterday, outraging many Republicans.

Now, a few years ago, our very own Greta Van Susteren was interviewing Vermont Democratic Senator Patrick Leahy. Senator Leahy was complaining that Republicans were unfairly keeping President Clinton's nominees off the bench.

And Greta asked -- quote -- "In the event the Democrats should win the U.S. Senate, is the Democratic Party going to do the same thing to the Republicans?" Leahy responded: "No, because I'll be chairman of the Judiciary Committee and I would never stand for the kind of things that Republicans are doing to the federal judiciary. I would not do it. I would resign before I would do it."

Well, it's time for him to resign, Alan. Zell Miller said it right, Democratic senator: What they did to this good and decent man is disgraceful and will ultimately hurt the Democratic Party in the South.

COLMES: Look, Republicans wouldn't give Democrats a hearing on Bill Lann Lee. They wouldn't give a hearing on a number of people. There was the guy who was gay in San Francisco, James Hormel. The same game gets played by both parties. It's happened all the time.

HANNITY: Not one Clinton appointee didn't get the chance to go to the Senate floor, not one.

COLMES: It never gets out of committee if it gets voted down in committee.

Party-line vote in Senate Judiciary Committee results in rejection of Bush nominee to US Court of Appeals

National Public Radio (NPR)
SHOW: Morning Edition
March 15, 2002 Friday

This is MORNING EDITION from NPR News. I'm Bob Edwards.

On a party-line vote, the Senate Judiciary Committee has rejected the nomination of Mississippi Judge Charles Pickering to the US Court of Appeals for the 5th Circuit. Although President Bush has urged the Democrats to allow a floor vote on the nomination, it is all but certain that will not happen. NPR legal affairs correspondent Nina Totenberg reports. NINA

TOTENBERG reporting:

The steam seemed to have gone out of the debate yesterday as the senators talked on in the knowledge that the Democrats on the Judiciary Committee had the votes, and the Republicans did not. The only new spark seemed to come from Senator Edward Kennedy, referring to President Bush's accusation that the Democrats were blocking Pickering for partisan reasons.

Senator EDWARD KENNEDY (Democrat, Massachusetts): I hope we can get away from the kind of casual and not-so-casual characterization of those that either agree or differ. It's really a recent phenomenon that we have seen over on the floor of the United States Senate: If you don't agree, it's somehow partisan or political; if you do agree, you're a statesman.

TOTENBERG: Senator Orrin Hatch, the committee's ranking Republican, backed away from the fiery rhetoric he used last week when he accused Democrats and liberal public interest groups of, quote, "lynching" Pickering. Yesterday, instead, he made a point-by-point rebuttal of some of the charges against Pickering, saying that the judge is a 'truly righteous and decent man, who, contrary to the allegations of his critics, has fought for civil rights all his life.' Hatch noted that Pickering had testified against the head of the Ku Klux Klan in the 1960s, putting his family and his career in jeopardy. Senator Hatch.

Senator ORRIN HATCH (Republican, Utah): What is really going on here is an attempt to change the ground rules for judicial confirmations. Some have complained that President Bush has not sent mainstream, quote, "consensus," unquote, nominees to the Senate for confirmation. The problem with this argument is that those who propound it seem to define, quote, "mainstream," unquote nominees as nominees who agree with them on divisive social issues, such as abortion. They are poised to label as an
extremist any nominee, such as Judge Pickering, who has a record of disagreeing with them.

TOTENBERG: Republican Charles Grassley noted that Pickering is supported by many prominent African-Americans in his hometown, but he said the vote proved that the liberal special interest groups are back with a vengeance.

Senator CHARLES GRASSLEY (Republican, Iowa): If opposition to a member comes from the grass roots up, that's one thing. But when there's no opposition to a candidate until it's fomented through the press by somebody inside the Beltway, that's when things get wrong.

TOTENBERG: Democrats repeated their objections to Pickering, his judicial opinions on civil rights, employment discrimination and voting rights. They said he was openly and repeatedly hostile to civil rights claims; that he questioned the Supreme Court's one man, one vote rule.

But they focused most of their fire on what they called his 'unethical conduct'; in particular, the judge's handling of a cross-burning case in 1994. In that case, Pickering intervened with the Justice Department and threatened prosecutors with ordering a new trial in order to lessen the stiff sentence required by law. Eventually, the Justice Department caved in to the pressure, and the judge sealed the records of his actions. New York Senator Charles Schumer called

Pickering's conduct 'mind-boggling,' and North Carolina's John Edwards called it, simply, 'disqualifying.'

Senator JOHN EDWARDS (Democrat, North Carolina): These things, in my experience, are way outside the norm of what a judge will do and should do. And when a judge takes sides in a case, as Judge Pickering did in this particular case, it is impossible for the system to work.

TOTENBERG: That prompted Republican Jon Kyl of Arizona to observe that the American Bar Association had given Pickering its highest rating, so clearly had not thought him unethical.

Senator JON KYL (Republican, Arizona): The ABA would not have rated him well-qualified if that were really the case.

TOTENBERG: But Democrats quickly responded that Pickering's actions in the cross-burning case were not known at the time he was screened by the ABA. And they faulted the nominee as well for soliciting support letters from lawyers who practiced before him.

Unidentified Woman: Mr. Chairman?

Unidentified Chairman: No.

Unidentified Woman: Mr. Chairman, the votes are nine yeas, 10 nays.

TOTENBERG: At day's end, the committee voted 10-to-9 to defeat the nomination. Nina Totenberg, NPR News, Washington.

Sen. Don Nickles on Fox News Sunday
Sunday, March 17, 2002.

EXCERPT

TONY SNOW, FOX NEWS SUNDAY: Tempers flared in the Senate this week after the Judiciary Committee, on apredictable party-line vote, rejected the nomination of Charles Pickering to serve the 5th U.S. Circuit Court of Appeals.

Senator Minority Leader Trent Lott promised and delivered swift retribution, which we will discuss with our next guest, SenateAssistant Minority Leader Don Nickles of Oklahoma.

Also here with questions, Juan Williams of National Public Radio and Fox News.

Senator Nickles, a lot of people are saying that the folks most to blame for Judge Pickering's fate are not Democrats butRepublicans who waited around and waited around and waited around and really didn't mount a very vigorous defense on hisbehalf until the 11th hour.

SEN. DON NICKLES, (R-OK): Well, I take issue with that. I know Senator Lott worked very hard. He was verypersonally involved. Judge Pickering was a friend of his, so I know he worked hard to get the nomination through.

And looking back, I still can't imagine that the Democrats did it. This is unheard of. I can't imagine that they would ever do thisto Bob Dole or Howard Baker or that we would, conversely, that we would do this Tom Daschle or one of the Democratleaders.

HUME: But didn't Orrin Hatch, if memory serves, didn't Orrin Hatch say of Bruce Babbitt, the former Arizona governor, toBill Clinton, "Don't even both nominating him" -- he was, I think, the interior secretary at the time, Bruce Babbitt was -- "to theSupreme Court, because we're not going to do anything with it"? So there is a certain kind of political precedent here.

NICKLES: Well, not really. No, there's no comparison whatsoever. This is unheard of. We haven't killed, in the JudiciaryCommittee, we haven't killed a nominee in 11 years. And the last time, I think, the Democrats did it in 1991. It's just not done.

And I think it's very unfair. Judge Pickering was confirmed unanimously in 1990, and then to have this happen, I think, it'sbecause a lot of outside groups did a character assassination on him.

HUME: Well, Democrats are saying, look, yes, we did approve him in 1990. But on the other hand, we looked at the 12years, we didn't like the record. They were trying to point at that record.

But let me raise a different objection that has been mentioned. A lot of people won't admit to it, but the fact is, Republicansduring the last couple of years of Bill Clinton's presidency sat on a lot of judicial nominations, didn't even hold hearings, which isprecisely what Democrats are doing in the Judiciary Committee now.

Isn't it true that the Republicans were guilty during the last years of the Clinton administration of precisely what you'recomplaining about with Democratic behavior now?

NICKLES: Well, usually, the tradition is that presidents and the new administration get their judges the first two or three years.The last year usually goes pretty slow because -- obviously, they may not be president next go around.

If you look at Ronald Reagan, if you looked at President Bush 41 or if you look at Bill Clinton, all of which got 90 percent oftheir judges in the first two years. This is not the case with President Bush now. President Bush, as far as circuit courts, falling at24 percent -- seven out of 29 -- whereas, all the other presidents got 90-something percent of the Circuit Court nominees.There's never been the litmus test. There's never been this grilling that we've had. And I think -- unfortunately, I think theDemocrats shot down a good judge in Judge Pickering.

SNOW: So Trent Lott now is taking action. He says we're going to retaliate. And there have been a couple of actions already.Number one, there is a Federal Communication Commission

nominee, somebody who used to work for Tom Daschle, that'sbeing held up. Number two, the Judiciary Committee has asked for $1.5 million to investigate things in the aftermath ofSeptember 11; he's killing that.

Are some of the other possible actions, would they include, for instance, insisting getting rid of unanimous consent, which is adevice that's used on the Senate floor basically to keep the place operating, is that something you would contemplate,Republicans? Is that something -- I'm not going to ask you to make a decision on behalf of Trent Lott, but is that one of theoptions that would be under consideration?

NICKLES: Well, there's lots of options. We have to have some kind of comity. We have to get some kind of agreement thatwe're going to take up these judges, or else Republicans are going to do something to get the Democrats' attention. There's lotsof different ways of getting their attention.

But to just say we're not going to take up circuit court nominees -- the president's nominated 29 and we've confirmed seven.Judge Pickering was just defeated. There's 20 that haven't even had hearings.

And some of these individuals are outstanding individuals. Miguel Estrada, for example, D.C. Circuit Court, Hispanic, hasargued 16 cases before the Supreme Court, nominated in May, hasn't even had a hearing. And same thing with John Roberts...

SNOW: Well...

NICKLES: John Roberts has argued 35 cases before the Supreme Court and he hasn't had a hearing. So we're going to dosomething.

I've told this to Senator Daschle and Senator Reid. I said, you all need to cooperate with us and get the Judiciary Committee tohave hearings and mark up circuit court nominees or we're going to start taking actions that will get your attention.

JUAN WILLIAMS, FOX NEWS: So then, Senator, what's the next step of the Republicans? Is it to nominate people to thejudiciary who don't have a record, who don't have a track record, a paper trail?

NICKLES: No. President Bush has nominated some outstanding people. I just mentioned two. I could go over several others.And we just want these people to have a hearing. I think, once they have a hearing, you're going to find that the Democrats arenot going to be able to oppose a Roberts or Estrada because they are outstanding nominees.

WILLIAMS: Well, I think some would say that Pickering had an undistinguished record, that, you know, maybe theDemocrats overboard in their charges of racism, but not a very distinguished record and maybe most distinguished by the factthat he was a conservative. And so, what we're really looking at here is buildup toward nominees to the Supreme Court, andthe

Democrats are laying down a marker the Republicans.

NICKLES: Well, that's ridiculous. One, if you look at Judge Pickering, his age, he wouldn't be a Supreme Court nominee.This was a hatchet job by a bunch of liberal groups that spend a lot of money -- interesting, you had a segment on campaignfinance -- these groups are spending all kinds of money trying to kill this nomination.

But this was unfortunate and it's unfair.

SNOW: Well, let me go...

NICKLES: What we're going to do, we're going to try to get the Democrats' attention, and we'll do whatever is necessary toget their attention to make sure that we're going to have good nominees have a chance to have a hearing.

NICKLES: Some of these people have been waiting a year, almost a year. They were nominated in May, and they haven'teven had a hearing yet before the Judiciary Committee.

SNOW: I'll let Juan get back at you in a minute, but first I want you to take a look a quote from Senate Majority Leader TomDaschle. I mean, he knows that you're trying to pick a fight and he says, OK, bring it on. Here's the quote: "I don't know ifthey, Republicans, have given careful thought to the threat" -- blocking an FCC appointment. "I think that it could easilybackfire in many ways."

He's running the place. He can shut down anything that you propose. How on earth is this a smart strategy for getting people tobe nice to each other?

NICKLES: Well, we have to get their attention. And the Senate -- this is a real bad thing. I happen to love the Senate. I havebeen in the Senate for 22 years. And the way that the Democrats are running the Senate right now bothers me a lot -- and notjust the Judiciary Committee. But, again, this is the first time this happened in 11 years. It shouldn't have happened.

Senator Breaux was right. They should have figured out a way. You don't kill the Republican leader's nominee. That is just notthe way that things are supposed to do if you believe that this body is supposed to work.

But it is not working in other ways. I'm on the Energy Committee. We are debating the energy bill on the floor of the Senate. Ihave been on the committee for 22 years. We didn't mark up the bill in the committee. Why? Because Tom Daschle didn't wantus to because he was afraid that we would put ANWR in the bill. So I didn't have a chance.

Interest Groups/Press Releases

Judiciary Committee Rejects Pickering's Promotion

People for the American Way
Ralph Neas
Thursday March 14, 2002

Record on constitutional and civil rights principles generated intense opposition; future judicial nomination battles will depend on White House actions

The Senate Judiciary Committee today rejected President Bush's nomination of Judge Charles Pickering to the U.S. Court of Appeals for the 5th Circuit.

"Judge Pickering was defeated by his own record as a federal judge and state senator," said People For the American Way President Ralph G. Neas. "That record convinced a majority of senators on the Judiciary Committee that he should not be promoted to the appeals court."

Neas said reducing future acrimony over judicial nominations would require a bipartisan approach and a commitment to genuine dialogue that the White House has not yet been willing to make. He said President Bush should consult with senators from both parties and seek out nominees who demonstrate an understanding of and commitment to civil and constitutional rights.

"Today's vote is a victory for Americans opposed to right-wing domination of the federal courts," said Neas. "The Senate Judiciary Committee should continue to give priority to nominees who have bipartisan support and should continue to reject nominees who pose a threat to civil rights protections, reproductive choice, environmental protection and other important constitutional and legal principles."

Neas praised the Judiciary Committee majority for ignoring efforts to deflect attention from Pickering's record by claiming that the judge had been the victim of an unfair smear campaign. "All the right-wing attacks and distortions could not change the facts, which were examined carefully and discussed in two open public hearings. Senator Leahy and other members of the Judiciary Committee majority stood up to Trent Lott's threats and intimidation and took a principled stand based on Judge Pickering's record and on the important issues at stake."

Neas also praised the broad coalition of local, state, and national organizations that documented Pickering's record and mobilized in opposition to the nomination. "I am extremely proud to be part the broad community of advocates who made the commitment to stand up and fight this threat to civil and constitutional rights," he said. "And I am especially grateful to those citizens of Mississippi who took the courageous step of publicly opposing a sitting federal judge."