

FOIA Marker

This is not a textual record. This FOIA Marker indicates that material has been removed during FOIA processing by George W. Bush Presidential Library staff.

Counsel's Office, White House

Coffina, Scott

Stack:	Row:	Sect.:	Shelf:	Pos.:	FRC ID:	Location or Hollinger ID:	NARA Number:	OA Number:
W	19	17	10	1	14407	27270	14011	14202

Folder Title:

DC Circuit 11th/12th Seat: DC Circuit 11th/12th Seat

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Talking Points	Nomination of Peter Keisler to the D.C. Circuit	1	N.D.	P5;
002	Email	RE: Follow-Up for Senate Staff on 11th Seat - To: William Kelley, et al. - From: Jennifer Brosnahan	1	07/24/2006	P5;
003	Email	RE: Meeting with Grassley & Sessions Staff on 11th Judge - To: Bosnahan, Jennifer, et al. - From: John Smith	1	07/24/2006	P5;
004	Draft	D.C. Circuit Facts	3	N.D.	P5;
005	Letter	[Recommendation letter with attachments] - To: Fred Fielding - From: Richard Burr	7	08/31/2007	P2; P6/b6;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Coffina, Scott

FOLDER TITLE:

DC Circuit 11th/12th Seat: DC Circuit 11th/12th Seat

FRC ID:

14407

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

John - This is a complete overview of the seat history - including when folks were app'd; retired, etc.

U.S. Court of Appeals for the District of Columbia Circuit
Seat History

If you want to also double check our list - you can use this chart. A- Appointed R- Retired/Resigned D- Death

	1	2	3	4	5	6	7	8	9	10 (created 10/20/78)	11 (created 10/20/78)	12 (created 7/10/1984)
1978	Wilkey	Wright	Leventhal	R. Robb	McGowan	Tamm	Bazelon	MacKinnon	Robinson			N/A
1979	Wilkey	Wright	Leventhal (R- 11/20/79)	R. Robb	McGowan	Tamm	Bazelon (R- 6/30/79)	MacKinnon	Robinson	Wald (A- 7/26/79)	Mikva (A- 9/26/79)	N/A
1980	Wilkey	Wright	R. Ginsburg (A- 6/18/80)	R. Robb	McGowan	Tamm	Edwards (A- 2/20/80)	MacKinnon	Robinson	Wald	Mikva	N/A
1981	Wilkey	Wright	R. Ginsburg	R. Robb	McGowan (R- 8/31/81)	Tamm	Edwards	MacKinnon	Robinson	Wald	Mikva	N/A
1982	Wilkey	Wright	R. Ginsburg	R. Robb (R- 5/31/82) Scalia (A- 8/17/82)	Bork (A- 2/9/82)	Tamm	Edwards	MacKinnon	Robinson	Wald	Mikva	N/A
1983	Wilkey	Wright	R. Ginsburg	Scalia	Bork	Tamm	Edwards	MacKinnon (R- 5/20/83) Starr (A- 9/20/83)	Robinson	Wald	Mikva	N/A
1984	Wilkey (R- 12/6/84)	Wright	R. Ginsburg	Scalia	Bork	Tamm	Edwards	Starr	Robinson	Wald	Mikva	
1985		Wright	R. Ginsburg	Scalia	Bork	Tamm (D- 9/22/85) Buckley (A- 12/17/85)	Edwards	Starr	Robinson	Wald	Mikva	Silberman (A- 10/28/85)
1986	Williams (A- 6/16/86)	Wright (R- 6/1/86) D. Ginsburg (A- 10/14/86)	R. Ginsburg	Scalia (E- 9/25/86)	Bork	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1987	Williams	D. Ginsburg	R. Ginsburg	Sentelle (A- 9/11/87)	Bork	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1988	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Bork (R- 2/5/88)	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1989	Williams	D. Ginsburg	R. Ginsburg	Sentelle		Buckley	Edwards	Starr (R- 5/26/89)	Robinson (R- 9/1/89)	Wald	Mikva	Silberman
1990	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Thomas (A- 3/6/90)	Buckley	Edwards	Henderson (A- 7/5/90)	Randolph (A- 7/16/90)	Wald	Mikva	Silberman
1991	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Thomas (E- 10/15/1991)	Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman
1992	Williams	D. Ginsburg	R. Ginsburg	Sentelle		Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman
1993	Williams	D. Ginsburg	R. Ginsburg (E- 8/3/93)	Sentelle		Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman

U.S. Court of Appeals for the District of Columbia Circuit
Seat History

A- Appointed
R- Retired/Resigned D- Death

	1	2	3	4	5	6	7	8	9	10 (created 10/20/78)	11 (created 10/20/78)	12 (created 7/10/1984)
1994	Williams	D. Ginsburg	Tatel (A- 10/7/94)	Sentelle	Rogers (A- 3/11/94)	Buckley	Edwards	Henderson	Randolph	Wald	Mikva (R- 9/19/94)	Silberman
1995	Williams	D. Ginsburg	Tatel	Sentelle	Rogers	Buckley	Edwards	Henderson	Randolph	Wald		Silberman
1996	Williams	D. Ginsburg	Tatel	Sentelle	Rogers	Buckley (R- 8/31/96)	Edwards	Henderson	Randolph	Wald		Silberman
1997	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph	Wald	Garland (A- 3/20/97)	Silberman
1998	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph	Wald (R- 11.16.99)	Garland	Silberman
1999	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	Silberman
2000	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	Silberman (R- 11/1/00)
2001	Williams (R- 9/30/01)	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	
2002		D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	
2003		D. Ginsburg	Tatel	Sentelle	Rogers	Roberts (A- 6/2/03)	Edwards	Henderson	Randolph		Garland	
2004		D. Ginsburg	Tatel	Sentelle	Rogers	Roberts	Edwards	Henderson	Randolph		Garland	
2005	Brown (A- 6/10/05)	D. Ginsburg	Tatel	Sentelle	Rogers	Roberts (E- 9/29/05)	Edwards (R- 11/3/05)	Henderson	Randolph	Griffith (A- 6/29/05)	Garland	
2006	Brown	D. Ginsburg	Tatel	Sentelle	Rogers			Henderson	Randolph	Griffith	Garland	Kavanaugh (A- 5/30/06)

~~_____~~
APPROVED
for release

Document Originally
Attached to
Following Page

DRAFT

D.C. Circuit Facts

I. PRECEDENT

- **The D.C. Circuit had 11 active judges for much of 2005, plus a pending nominee.**
 - As of June 2005 (when Thomas Griffith added), there were 11 judges in active service, plus 1 nominee pending (Brett Kavanaugh).
- **It would be consistent with recent precedent for this court to have a total of 12 sitting judges and nominees pending in the Senate.**
 - As of July 2003, there were 9 judges in active service, with 3 additional nominees pending (Brett Kavanaugh, Janice Rogers Brown, and Miguel Estrada).
 - As of May 2004, there were again 9 judges in active service, with 3 nominees pending (Kavanaugh, Brown, Griffith).
- **In particular, a nomination to fill the 11th seat, while 10 judges are in active service, is consistent with precedent from 2005.**
 - As of June 2005 (when Brown added), there were 10 judges in active service, with 2 additional nominees pending (Kavanaugh, Griffith).

II. INCREASED CASELOAD

- **In any event, the D.C. Circuit's increasing caseload justifies filling the 11th seat and the 12th seat.**

A. Detainee Litigation

- The Detainee Treatment Act (DTA) provides that the D.C. Circuit will have exclusive jurisdiction to review (i) decisions of combatant status review tribunals (CSRT) and (ii) final decisions of military commissions.
 - **The DTA will significantly increase the D.C. Circuit's caseload.** There are currently about 470 detainees at GTMO, each of whom has a right to challenge his status determination in the D.C. Circuit. Also, the Administration is working with Congress to move forward with military commissions in a manner consistent with the Supreme Court's *Hamdan* ruling. When such trials take place, detainees will have the right to appeal their convictions to the D.C. Circuit, which would further increase the Circuit's caseload.

- **There are also 350 habeas petitions pending in the federal district court in Washington, which could be appealed to the D.C. Circuit.**
- In addition to the litigation above brought by current GTMO detainees, former detainees are also attempting to sue the government under a variety of legal theories.
 - Because they involve federal defendants, many of these cases have been and would likely be filed in the D.C. Circuit.

B. General caseload facts

- **The total number of pending appeals in the D.C. Circuit is higher than it has been since 1998**, and is almost 20% higher than the figure from 2000.
 - The percent change in pending cases from 2004 to 2005 was 17.8%, which was higher than the nationwide average increase during that period.
- **The number of appeals filed in the D.C. Circuit has increased 22% since 2002**, which is higher than the national average during that period.
- **The median interval from filing a notice of appeal to disposition of a case in the D.C. Circuit has increased substantially since 2000.** The median interval has increased over 50%, from 7.3 months to 11.2 months. This lengthening interval suggests the overall complexity of the cases addressed by the D.C. Circuit as well as the workload of the judges.
 - The median disposition interval is now higher than at any time since 1997.
 - The median disposition interval is increasing at a much faster rate than the national average, which has remained relatively constant since 2000.
- **The D.C. Circuit handles a high percentage of *administrative* appeals, which are often highly complex and require more judicial resources.**
- **About one-third of the cases filed in the D.C. Circuit are administrative appeals, which is a substantially higher proportion than any other circuit**, except for the Ninth Circuit (which presumably has many straightforward immigration appeals). In most other circuits, less than 10% of the caseload is administrative appeals.
 - Since 1998, about one-third of cases terminated are administrative, yet administrative cases account for a significantly greater proportion (ranging 44-59%) of all *pending* cases. This backlog suggests that administrative cases are more difficult and take longer to resolve.

Draft

D.C. Circuit Facts

12 active judges (12th seat created July 10, 1984)

- Between 9/11/1987 (Sentelle appt.) and 2/5/1988 (Bork resigned). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Bork; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)
- Between 7/16/1990 (Randolph appt.) and 10/15/1991 (Thomas elevated). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Thomas; Buckley; Edwards; Henderson; Randolph; Wald; Mikva; Silberman)

11 active judges (11th seat created 10/20/1978)

- Between 6/18/1980 (R. Ginsburg appt.) to 8/31/1981 (McGowan retired.) (Wilkey; Wright; R. Ginsburg; R. Robb; McGowan; Tamm; Edwards; MacKinnon; Robinson; Wald; Mikva)
- Between 2/9/1982 (Bork appt.) and 5/31/1982 (R. Robb retired.) (Wilkey; Wright; R. Ginsburg; R. Robb; Bork; Tamm; Edwards; MacKinnon; Robinson; Wald; Mikva)
- Between 8/17/1982 (Scalia appt.) and 5/20/1983 (MacKinnon retired). (Wilkey; Wright; R. Ginsburg; Scalia; Bork; Tamm; Edwards; MacKinnon; Robinson; Wald; Mikva)
- Between 9/20/1983 (Starr appt.) and 12/6/1984 (Wilkey retired). (Wilkey; Wright; R. Ginsburg; Scalia; Bork; Tamm; Edwards; Starr; Robinson; Wald; Mikva)
- Between 12/17/1985 (Buckley appt.) and 6/1/1986 (Wright retired). (Wright; R. Ginsburg; Scalia; Bork; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)
- Between 6/16/1986 (Williams appt.) and 9/25/1986 (Scalia elevated). (Williams; R. Ginsburg; Scalia; Bork; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)
- Between 10/14/86 (D. Ginsburg appt.) and 9/11/1987 (Sentelle appt.— went from being 11 to 12 active judges). (Williams, D. Ginsburg; R. Ginsburg; Bork; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman).
- Between 2/5/1988 (Bork resigned—went from being 12 active judges) and 5/26/1989 (Starr resigned). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)
- Between 7/5/1990 (Henderson appt.) and 7/16/1990 (Randolph appt.--- went from being 11 to 12 active judges). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Thomas; Buckley; Edwards; Henderson; Wald; Mikva; Silberman)
- Between 10/15/1991 (Thomas elevated—went from being 12 active judges) and 8/3/1993 (Ginsburg elevated). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Buckley; Edwards; Henderson; Randolph; Wald; Mikva; Silberman)
- Between 3/11/1994 (Rogers appt.) and 9/19/1994 (Mikva retired). (Williams; D. Ginsburg; Sentelle; Rogers; Buckley; Edwards; Henderson; Randolph; Wald; Mikva; Silberman)
- Between 10/7/1994 (Tatel appt.) and 8/31/1996 (Buckley retired). (Williams; D. Ginsburg; Tatel; Sentelle; Rogers; Buckley; Edwards; Henderson; Randolph; Wald; Silberman)
- Between 3/20/1997 (Garland appt.) and 11/16/1999 (Wald retired). (Williams; D. Ginsburg; Tatel; Sentelle; Rogers; Edwards; Henderson; Randolph; Wald; Garland; Silberman)
- Between 6/29/2005 (Griffith appt.) and 9/29/2005 (Roberts elevated). (Brown, D. Ginsburg, Tatel, Sentelle, Rogers, Roberts, Edwards, Henderson, Randolph, Griffith, Garland)

U.S. Court of Appeals for the District of Columbia Circuit
Seat History

A- Appointed
R- Retired/Resigned D- Death

	1	2	3	4	5	6	7	8	9	10 (created 10/20/78)	11 (created 10/20/78)	12 (created 7/10/1984)
1978	Wilkey	Wright	Leventhal	R. Robb	McGowan	Tamm	Bazelon	MacKinnon	Robinson			N/A
1979	Wilkey	Wright	Leventhal (R- 11/20/79)	R. Robb	McGowan	Tamm	Bazelon (R- 6/30/79)	MacKinnon	Robinson	Wald (A- 7/26/79)	Mikva (A- 9/26/79)	N/A
1980	Wilkey	Wright	R. Ginsburg (A- 6/18/80)	R. Robb	McGowan	Tamm	Edwards (A- 2/20/80)	MacKinnon	Robinson	Wald	Mikva	N/A
1981	Wilkey	Wright	R. Ginsburg	R. Robb	McGowan (R- 8/31/81)	Tamm	Edwards	MacKinnon	Robinson	Wald	Mikva	N/A
1982	Wilkey	Wright	R. Ginsburg	R. Robb (R- 5/31/82) Scalia (A- 8/17/82)	Bork (A- 2/9/82)	Tamm	Edwards	MacKinnon	Robinson	Wald	Mikva	N/A
1983	Wilkey	Wright	R. Ginsburg	Scalia	Bork	Tamm	Edwards	MacKinnon (R- 5/20/83) Starr (A- 9/20/83)	Robinson	Wald	Mikva	N/A
1984	Wilkey (R- 12/6/84)	Wright	R. Ginsburg	Scalia	Bork	Tamm	Edwards	Starr	Robinson	Wald	Mikva	
1985		Wright	R. Ginsburg	Scalia	Bork	Tamm (D- 9/22/85) Buckley (A- 12/17/85)	Edwards	Starr	Robinson	Wald	Mikva	Silberman (A- 10/28/85)
1986	Williams (A- 6/16/86)	Wright (R- 6/1/86) D. Ginsburg (A- 10/14/86)	R. Ginsburg	Scalia (E- 9/25/86)	Bork	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1987	Williams	D. Ginsburg	R. Ginsburg	Sentelle (A- 9/11/87)	Bork	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1988	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Bork (R- 2/5/88)	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1989	Williams	D. Ginsburg	R. Ginsburg	Sentelle		Buckley	Edwards	Starr (R- 5/26/89)	Robinson (R- 9/1/89)	Wald	Mikva	Silberman
1990	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Thomas (A- 3/6/90)	Buckley	Edwards	Henderson (A- 7/5/90)	Randolph (A- 7/16/90)	Wald	Mikva	Silberman
1991	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Thomas (E- 10/15/1991)	Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman
1992	Williams	D. Ginsburg	R. Ginsburg	Sentelle		Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman
1993	Williams	D. Ginsburg	R. Ginsburg (E- 8/3/93)	Sentelle		Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman

U.S. Court of Appeals for the District of Columbia Circuit
 Seat History

A- Appointed
 R- Retired/Resigned D- Death

	1	2	3	4	5	6	7	8	9	10 (created 10/20/78)	11 (created 10/20/78)	12 (created 7/10/1984)
1994	Williams	D. Ginsburg	Tatel (A-10/7/94)	Sentelle	Rogers (A-3/11/94)	Buckley	Edwards	Henderson	Randolph	Wald	Mikva (R-9/19/94)	Silberman
1995	Williams	D. Ginsburg	Tatel	Sentelle	Rogers	Buckley	Edwards	Henderson	Randolph	Wald		Silberman
1996	Williams	D. Ginsburg	Tatel	Sentelle	Rogers	Buckley (R-8/31/96)	Edwards	Henderson	Randolph	Wald		Silberman
1997	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph	Wald	Garland (A-3/20/97)	Silberman
1998	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph	Wald (R-11.16.99)	Garland	Silberman
1999	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	Silberman
2000	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	Silberman (R-11/1/00)
2001	Williams (R-9/30/01)	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	
2002		D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	
2003		D. Ginsburg	Tatel	Sentelle	Rogers	Roberts (A-6/2/03)	Edwards	Henderson	Randolph		Garland	
2004		D. Ginsburg	Tatel	Sentelle	Rogers	Roberts	Edwards	Henderson	Randolph		Garland	
2005	Brown (A-6/10/05)	D. Ginsburg	Tatel	Sentelle	Rogers	Roberts (E-9/29/05)	Edwards (R-11/3/05)	Henderson	Randolph	Griffith (A-6/29/05)	Garland	
2006	Brown	D. Ginsburg	Tatel	Sentelle	Rogers			Henderson	Randolph	Griffith	Garland	Kavanaugh (A- 5/30/06)

FORMER DC CIRCUIT JUDGES AND WHEN THEY TOOK SENIOR STATUS

August 1, 2006

<i>Name (Last, First)</i>	<i>Birth Year</i>	<i>Age at time of taking SS</i>	<i>Start of Service (Date of First Commission)</i>	<i>Yrs. Of Service at time of taking SS</i>	<i>Age+ Yrs</i>	<i>Date took Senior Service</i>	<i>Years between eligibility for senior service and when the judge took senior status</i>
McGowan, Carl E.	1911	70	27-Mar-63	18	88	31-Aug-81	4 years
Robb, Roger	1907	75	6-May-69	13	88	31-May-82	4 years
MacKinnon, George Edward	1906	77	6-May-69	14	91	20-May-83	5 years
Wilkey, Malcolm Richard	1918	66	25-Feb-70	14	80	6-Dec-84	Took Senior Service almost immediately
Wright, James Skelly	1911	75	9-Mar-50	36	111	1-Jun-86	10 years
Robinson, Spottswood William III	1916	73	2-Jul-64	25	98	1-Sep-89	8 years
Buckley, James Lane	1923	73	17-Dec-85	11	84	31-Aug-96	2 years
Silberman, Laurence Hirsch	1935	65	28-Oct-85	15	80	1-Nov-00	Took Senior Service almost immediately
Williams, Stephen Fain	1936	65	16-Jun-86	15	80	30-Sep-01	Took Senior Service almost immediately
Edwards, Harry Thomas	1940	65	20-Feb-80	25	90	3-Nov-05	Took Senior Service almost immediately

NOT
approved for
release

Vacancy Created By	Vacancy Date	Nominee	Date Nomination was	Time b/w	Date of Nominee's	Time b/w	Time b/w
			submitted to Senate to fill	Vacancy Date &		& Confirmation	Vacancy Date &
			vacancy	Nomination Date	confirmation	Date	Confirmation
Scalia	25-Sep-86	Sentelle	2-Feb-87	130d	9-Sep-87	219d	349d
Bork	5-Feb-88	Thomas	31-Oct-89	1yr 8m 26d	6-Mar-90	126d	2yr 1m 1d
	5-Feb-88	Hope	14-Apr-88	69d	Returned	N/A	N/A
Starr	26-May-89	Henderson	8-May-90	347d	29-Jun-90	52d	1yr 1m 3d
Robinson	1-Sep-89	Randolph	8-May-90	249d	13-Jul-90	66d	315d
Thomas	15-Oct-91	Rogers	17-Nov-93	2yr 1m 2d	10-Mar-94	113d	2yr 4m 23d
	15-Oct-91	Roberts	27-Jan-92	104d	Returned	N/A	N/A
Mikva	19-Sep-94	Garland	5-Sep-95 & 7-Jan-97	351d; 2yr 3m 19d	19-Mar-97	1yr 6m 14d	2yr 6m
				4yr 8m 9d;			
Buckley	31-Aug-96	Roberts	9-May-01; 4-Sep-01 & 7-Jan-03	5yr 4d; 6yr 4m 7d	8-May-03	1yr 11m 29d	6yr 8m 8d
	31-Aug-96	Kagan	17-Jun-99	2yr 9m 17d	Returned	N/A	N/A
Wald	16-Nov-99	Griffith	10-May-04 & 14-Feb-05	4yr 5m 24d; 5yr 2m 29d	14-Jun-05	1yr 1m 4d	5yr 6m 29d
				1yr 5m 23d;			
	16-Nov-99	Estrada	9-May-01; 4-Sep-01 & 1-Jan-03	1yr 9m 19d; 3yr 1m 22d	Withdrawal	N/A	N/A
	16-Nov-99	Snyder	22-Sep-99	Nom. b/f Vacancy date	Returned	N/A	N/A
Silberman	1-Nov-00	Kavanaugh	25-Jul-03; 14-Feb-05; 25-Jan-06	2yr 8m 24d; 4yr 3m 13d; 5yr 2m 24d	26-May-06	2yr 10m 1d	5yr 6m 25d
Williams	30-Sep-01	Brown	25-Jul-03; 14-Feb-05	1yr 9m 25d; 3yr 4m 15d	8-Jun-05	1yr 10m 14d	3yr 8m 9d
Roberts	29-Sep-05	Keisler	29-Jun-06	273d	N/A	N/A	N/A
Edwards	3-Nov-05	N/A	N/A	N/A	N/A	N/A	N/A

ACTIVE JUDGES NEARLY ELIGIBLE FOR SENIOR STATUS ON THE COURT OF APPEALS FOR THE DC CIRCUIT

August 1, 2006

<i>Current Court</i>	<i>Name (Last, First)</i>	<i>Birth Year</i>	<i>Age</i>	<i>Start of Service (Date of First Commission)</i>	<i>Yrs</i>	<i>Age+ Yrs</i>	<i>Appointed to Current Position By</i>	<i>Years until Eligible For Senior Service</i>
District of Columbia Circuit	Henderson, Karen LeCraft	1944	62	16-Jun-86	20	82	Reagan; H.W. Bush	3 years (when Henderson turns 65)
District of Columbia Circuit	Randolph, Arthur Raymond	1943	63	16-Jul-90	16	79	H.W. Bush	2 years (when Randolph turns 65)
District of Columbia Circuit	Rogers, Judith Ann Wilson	1939	67	11-Mar-94	12	79	Clinton	1/2 year (when Rogers has enough years of service)
District of Columbia Circuit	Sentelle, David Bryan	1943	63	17-Oct-85	21	84	Reagan	2 years (when Sentelle turns 65)
District of Columbia Circuit	Tatel, David S.	1942	64	7-Oct-94	12	76	Clinton	2 years (when Tatel turns 65 and has enough years of service)

DC DISTRICT COURT FACTS

- In September 2005, the number of cases pending in the U.S. District Court for the District of Columbia was 26% higher than it was in 1997.
 - The number of cases pending in the District Court has risen significantly (4,634 in 2005 vs. 3,427 in 1997).
 - The number of terminations in the District Court has also risen since 1997. (3,305 in 2005 vs. 3,205 in 1997).
- This higher number of terminated and pending cases in the District Court will likely generate a correspondingly higher number of appeals to the DC Circuit, increasing its caseload.
 - The proportion of the DC Circuit's caseload that comes from the District Court has increased since 1997. In 2005, appeals from the District Court made up 58% of the DC Circuit caseload. In 1997, the proportion was 50%. (In general, appeals from the District Court have comprised over half of the DC Circuit caseload.)

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Talking Points	Nomination of Peter Keisler to the D.C. Circuit	1	N.D.	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Coffina, Scott

FOLDER TITLE:

DC Circuit 11th/12th Seat: DC Circuit 11th/12th Seat

FRC ID:

14407

OA Num.:

14202

NARA Num.:

14011

FOIA IDs and Segments:

2018-0009-P

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

HANDBOOK OF PRACTICE
and
INTERNAL PROCEDURES

UNITED STATES COURT OF APPEALS
for the
DISTRICT OF COLUMBIA CIRCUIT

As Amended Through July 1, 2006

Anyone seeking an exemption under this provision should complete an exemption request form and return it to the Clerk's Office.

4. *Court Operations During Inclement Weather*

The Court makes its own decision whether to be open in inclement weather. Although the Court of Appeals does not automatically follow the practice of the District Court or the federal government, ordinarily the Chief Judges of the two courts will confer before a determination on whether to close is made. Counsel with filing deadlines or who are scheduled to appear for oral argument must check with the Clerk's Office when there is a possibility that the Court may be closed because of bad weather. Special announcements on closings can be obtained by calling the Clerk's Office general information number (202-216-7000).

5. *The Appeals Management Plan; Complex Cases*

Questions concerning multi-party, multi-issue cases handled pursuant to the Appeals Management Plan, or designated "Complex" under the Case Management Plan, should be directed to the Legal Division. Questions that must be answered by reference to the dockets should be resolved by consulting one of the Court's electronic public access systems, AVIS or the PACER web site. *See supra* Part II.B.3. For further assistance, questions can be directed to the Clerk's Office. The Legal Division will, however, advise practitioners whether a case is being managed by the Legal Division, or whether such management would be appropriate.

6. *General Information*

Requests for information of a general nature about cases, such as whether a brief or specific pleading has been filed, or whether the Court has acted on a motion, should be directed to the Clerk's Office or obtained by accessing docket information through AVIS or the PACER web site. *See supra* Part II.B.3.

7. *Pending Cases*

It is the strict policy of the Court that telephone calls to judges' chambers, or to judges' law clerks or secretaries, concerning the status of any pending case or motion will not be accepted. All such calls will be immediately referred to the Clerk or to the Legal Division.

If the inquiry as to a pending case involves procedural questions or matters of public record, it should be made in accordance with the instructions above. If counsel is experiencing a more specialized problem with a case, he or she should call the Clerk, the Chief Deputy Clerk, the Operations Manager of the Clerk's Office, or the Director of the Legal Division. If the problem does not require immediate attention, the Clerk will usually direct that counsel's inquiry be submitted in writing. The Clerk's Office will forward the letter or motion to the Court or Legal Division, as appropriate.

8. *Disclosure of Panels and Dates*

(a) *Merits Panels*

Ordinarily, the Court discloses merits panels to counsel in the order setting the case for oral argument. In criminal appeals, unlike most civil appeals, the panel usually will not be disclosed until after the parties

2. *Timeliness*

(See Fed. R. App. P. 25(a), 26; D.C. Cir. Rules 25, 26, 27(h), 28(g).)

In computing times prescribed for filings, the day of the event from which the prescribed period begins to run is not included. Furthermore, if the last day of the period falls on a Saturday, Sunday, or legal holiday, the period is extended to the next business day. All intermediate days are included, except when the period prescribed is less than 11 days, in which case Saturdays, Sundays, and legal holidays are not included, unless the period is stated in calendar days. Filing of a motion may be by mail addressed to the Clerk, but the papers must reach the Clerk's Office within the time prescribed. Only briefs, not motions or other pleadings, are timely if mailed on the date due. The Court, however, prefers to receive briefs on the date due. Briefs must be filed according to the schedule set by the Court.

Service by any method other than personal service extends by 3 calendar days the time for responding to the paper served (other than briefs, whose due dates are set by schedule). Papers are presumed to be served by mail unless the certificate of service indicates otherwise. In addition, upon motion for compelling reasons, the Court may extend the time prescribed for filing any papers or allow filings out of time. However, the Court lacks the authority to extend the time for filing papers that commence an appeal, such as a notice of appeal, a petition for review, or a petition filed pursuant to 28 U.S.C. § 1292(b) or Federal Rule of Civil Procedure 23(f).

Any filing or brief (with the exception of emergency, confidential, or sealed documents) may be left, on the date due, in the Court of Appeals filing depository, currently located at the John Marshall Park entrance near the U.S. Marshal's desk, unless the Court has ordered that the filing be made at a time certain. (By early 2006, the filing depository will be relocated to the Third Street entrance to the Courthouse.) The filing depository is available 24 hours a day, 7 days a week. All filings must be enclosed in an envelope or otherwise securely wrapped. The maximum dimensions for documents deposited are 14 ½ inches by 11 ½ inches by 10 inches. Materials exceeding these dimensions must be split into separate packages and clearly marked. A form provided at the U.S. Marshal's counter must be completed, date/time stamped, and affixed to each package.

Under the Court's Case Management Plan, briefing schedules are usually set after the case has been screened and classified by the Legal Division, and after all outstanding procedural and dispositive motions have been resolved. In cases classified as "Regular Merits" cases, the oral argument date and the briefing schedule are usually set in the same order, and the briefing schedule is computed *back* from the oral argument date. In cases classified as potential "Rule 34(j)" cases, the briefing schedule is set in the order notifying counsel that the case might be disposed of without oral argument under Circuit Rule 34(j). Finally, in cases classified as "Complex," or otherwise identified for management under the Case Management Plan, the briefing format and schedule are formulated by the "complex" or special panel in conjunction with the Legal Division, in most cases based on the parties' responses to an order to show cause concerning a proposed briefing schedule and format.

The amount of time for briefing a "Regular Merits" case may vary, depending on whether it is a district court or agency case, whether there are intervenors or *amici curiae*, whether there are cross-appeals, and whether there is a deferred appendix. Somewhat more problematic is determining when briefing will *commence*, because briefing is tied to the oral argument date, and that date is not normally set until all pending motions are resolved.

Deadlines are monitored by the Clerk's Office; when the deadlines are not met, the matter is called to the party's attention by phone call, letter, or an order from the Court directing the party to show cause why

If a brief uses a proportionally spaced face, the typeface must be at least 11 point and must include serifs, but sans-serif type may be used in headings and captions. If a brief uses a monospaced face, it may have no more than 10 ½ characters per inch. See Fed. R. App. P. 32(a)(5), (6); D.C. Cir. Rule 32(a)(1). Briefs must be double-spaced and printed on one side of the page only. Evasion of the length limitations may result in the Court's rejection of the brief.

Briefs other than those submitted by unrepresented parties must have colored covers as follows: appellant - blue; appellee - red; intervenor or *amicus curiae* - green; appellant's reply - gray; supplemental brief - tan. In cases designated "Complex," the cover of the briefs and the first page of motions and other pleadings should indicate the designation "Complex." In cases being considered for disposition without oral argument under Circuit Rule 34(j), the cover of the briefs and the first page of motions and other pleadings should indicate "Case being considered for treatment pursuant to Rule 34(j)."

The front cover of the brief must set forth the following: (1) the name of this Court; (2) the docket number of the appeal and the caption of the case, including the docket number and caption of the lead case in a consolidated appeal; (3) the nature of the proceeding and the name of the court or agency below (*e.g.*, Appeal from the United States District Court for the District of Columbia; Petition for Review of an Order of the Federal Communications Commission); (4) the title of the document (*e.g.*, Brief for Appellant); (5) the names, addresses, and telephone numbers of an unrepresented party or counsel representing the party filing the brief; and (6) the date on which the case has been scheduled for oral argument. One of the attorneys designated on the cover must be a member of the bar of the Court, except as otherwise provided by law.

If a brief does not conform to the Federal Rules of Appellate Procedure and/or to the Circuit Rules, counsel will be called and directed either to file a conforming brief (if the problems are numerous) or an errata to the brief (if the problems are minor). If the brief exceeds the page, line, or word limitations, counsel will be directed to submit either a corrected brief or a motion for leave to exceed the limits on length.

7. Length

(See Fed. R. App. P. 32(a); D.C. Cir. Rules 28(f), 32.)

Briefs may not exceed the word, line, or page limitations set forth in the Federal and Circuit Rules absent the Court's permission. A principal brief is limited to 30 pages unless the brief complies with the type-volume limitation of 14,000 words or uses a monospaced face and contains no more than 1,300 lines of text. See Fed. R. App. P. 32(a)(7). A reply brief is limited to half the type-volume of the principal brief or 15 pages. The length limitations for briefs in cross-appeals are set out in Federal Rule of Appellate Procedure 28.1. See IX.A.3. These limits do not include the table of contents; table of citations; statement with respect to oral argument; certificate of parties, rulings, and related cases; the glossary; any addendum containing statutory material, regulations, or evidence supporting the claim of standing; and certificates of service and compliance with type-volume limitations. *The summary of argument, footnotes, and citations are included for purposes of computing the word or page limits.*

Parties submitting briefs under the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) must include in the brief a certificate, signed by counsel of record or, in the case of parties filing briefs pro se, by the party, stating the number of words in the brief or the number of lines of monospaced text. The person preparing this certificate may rely on word or line counts reported by word processing systems provided the word processing system counts words in footnotes and citations. Parties using word

A. SCHEDULING SITTING PERIODS

The sitting periods ordinarily begin in September and end in May. While there are usually no formal sitting periods in June, July, and August, panels of the Court are available throughout the summer to hear appeals in which there is an urgent need for immediate consideration. These summer panels also continue to decide motions and cases submitted without argument pursuant to Circuit Rule 34(j).

The sitting periods for each term are scheduled the preceding winter. The Clerk, with the assistance of a computer program, prepares a proposed schedule and submits it to the Court in executive session. The Court accepts the schedule as prepared by the Clerk or modifies it, if necessary.

B. MERITS PANELS

The Clerk assigns the judges in panels of three to the sitting weeks for which they are available for an entire term. The Clerk attempts to pair each active judge with each other active judge an equal number of weeks during the year, insofar as availability permits. If a judge becomes unavailable, he or she may arrange to switch sitting dates with another judge. Depending on their availability, senior judges of this Court and visiting judges from other courts also serve on panels.

C. CASELOAD AND CASE MIX

The Clerk's Office usually schedules at least three cases for each day of a panel's sitting period. The "mix" of cases (criminal appeals, private civil appeals, civil appeals where the federal government is a party, and administrative agency cases) in a given sitting period reflects roughly the proportions of the Court's overall caseload.

D. SCHEDULING CASES FOR ARGUMENT

Most appeals screened by the Legal Division are classified as "regular merits" cases. The Clerk's Office sets an oral argument date and a briefing schedule in these cases as soon as all pending motions have been resolved. Depending on the availability of open dates on the Court's calendar and the amount of time needed for briefing, the case may be set well in advance of the oral argument. Scheduling is done by a computer. Once a case has been screened, it is entered into the case calendaring program, which selects an oral argument date. The program automatically checks for known recusals, calculates the time necessary to brief the appeal, and makes certain that the case mix both for a specific date and for that week's sitting is acceptable. As a general rule, once they become ready, cases are calendared in order of age, with the oldest cases set first.

From time to time a judge must recuse himself or herself from consideration of a particular case. *See* 28 U.S.C. § 455; Canon 3E, Code of Judicial Conduct, Judicial Conference of the United States. The judge is not required to state the reasons for recusal. The provisional certificate of parties filed with the docketing statement, pursuant to Circuit Rules 12(c) and 15(c), or with a petition for permission to appeal or a petition for an extraordinary writ, pursuant to Circuit Rules 5 and 21, affords the Clerk's Office the opportunity to determine in advance of briefing those judges who would be recused. In most cases, this ensures that the case will not be set for hearing on a day when the recused judge is sitting. In some cases, however, a judge discovers the basis for recusal only after the case has been scheduled before a particular panel. In those cases, a replacement judge is assigned to hear the case on that date.

Cases that have been designated as "Complex" by the Legal Division proceed on their own schedule for briefing and argument.

U.S. COURT OF APPEALS - JUDICIAL CASELOAD PROFILE

		12-MONTH PERIOD ENDING SEPTEMBER 30							
DISTRICT OF COLUMBIA		2005	2004	2003	2002	2001	2000		
OVERALL CASELOAD STATISTICS	Appeals Filed	Total	1,379	1,390	1,121	1,126	1,401	1,506	
		Prisoner	210	145	156	174	191	226	
		Other**	527	609	453	463	575	631	
		Criminal	174	162	121	89	92	82	
		Administrative	468	474	391	400	543	567	
		% Change in Total Filings	Over Last Year		-0.8				
			Over Earlier Years			23.0	22.5	-1.6	-8.4
	Appeals Terminated	Total	1,158	1,155	1,182	1,303	1,391	1,582	
		Consolidations & Cross Appeals	149	156	119	203	199	280	
		Procedural	491	507	549	566	603	673	
		On The Merits	Total	518	492	514	534	589	629
			Prisoner	55	63	55	76	85	73
			Other	307	234	271	276	318	340
			Criminal	50	58	52	43	56	58
			Administrative	106	137	136	139	130	158
	Percent by Active Judges	96.4	94.2	93.3	90.1	98.5	98.6		
Pending Appeals		1,463	1,266	1,031	1,092	1,270	1,260		
ACTIONS PER ACTIVE JUDGE*	Terminations on the Merits		170	156	178	180	195	183	
	Procedural Terminations		43	42	53	51	54	61	
	Written Decisions	Total	60	54	61	62	65	61	
		Signed	23	24	25	23	22	23	
		Unsigned	37	30	36	39	43	38	
		Without Comment	-	-	-	-	-	-	

* Includes only judges active during the entire 12 month period.

** See "Explanation of Selected Terms."

Note: Data for petitions for rehearing per judgeship in 2003 have been revised.

~~213~~

273

Show Page Two

U.S. COURT OF APPEALS JUDICIAL CASELOAD PROFILE PAGE 2

		12-MONTH PERIOD ENDING SEPTEMBER 30						2005 Numerical Standing		
DISTRICT OF COLUMBIA		2005	2004	2003	2002	2001	2000			
Number of Judgeships/Number of Panels		12/4.0	12/4.0	12/4.0	12/4.0	12/4.0	12/4.0			
Number of Sitting Senior Judges		2	2	2	2	1	1			
Number of Vacant Judgeship Months**		28.6	36.0	44.0	48.0	35.0	22.4			
ACTIONS PER PANEL*	Appeals Filed	Total	345	348	280	282	350	377	12	
		Prisoner	53	36	39	44	48	57	12	
		Other	131	152	113	116	143	157	12	
		Criminal	44	41	30	22	23	21	12	
		Administrative	117	119	98	100	136	142	6	
	Appeals Terminated		Total	290	289	296	326	348	396	12
			Consolidations & Cross Appeals	37	39	30	50	50	71	9
			Procedural	123	127	137	142	151	168	12
		On The Merits	Total	130	123	129	134	147	157	12
			Prisoner	14	16	14	19	21	18	12
			Other	76	58	68	69	79	84	12
			Criminal	13	15	13	11	14	15	12
	Administrative	27	34	34	35	33	40	11		
	Pending Appeals		366	317	258	273	318	315	12	
	Median Time	Median Time from Filing Notice of Appeal to Disposition	11.2	10.5	12.0	9.7	7.6	7.3	6	
Other Caseload Per Judgeship	Applications for Interlocutory Appeals	1	1	1	1	1	1	5		
	Petitions for Rehearing	24	21	20	29	34	26	12		

U.S. COURT OF APPEALS JUDICIAL CASELOAD PROFILE PAGE 2

		12-MONTH PERIOD ENDING SEPTEMBER 30						2005 Numerical Standing		
DISTRICT OF COLUMBIA		2005	2004	2003	2002	2001	2000			
Number of Judgeships/Number of Panels		12/4.0	12/4.0	12/4.0	12/4.0	12/4.0	12/4.0			
Number of Sitting Senior Judges		2	2	2	2	1	1			
Number of Vacant Judgeship Months**		28.6	36.0	44.0	48.0	35.0	22.4			
ACTIONS PER PANEL*	Appeals Filed	Total	345	348	280	282	350	377	12	
		Prisoner	53	36	39	44	48	57	12	
		Other	131	152	113	116	143	157	12	
		Criminal	44	41	30	22	23	21	12	
		Administrative	117	119	98	100	136	142	6	
	Appeals Terminated	On The Merits	Total	290	289	296	326	348	396	12
			Consolidations & Cross- Appeals	37	39	30	50	50	71	9
			Procedural	123	127	137	142	151	168	12
		On The Merits	Total	130	123	129	134	147	157	12
			Prisoner	14	16	14	19	21	18	12
			Other	76	58	68	69	79	84	12
			Criminal	13	15	13	11	14	15	12
			Administrative	27	34	34	35	33	40	11
	Pending Appeals		366	317	258	273	318	315	12	
Median Time	Median Time from Filing Notice of Appeal to Disposition	11.2	10.5	12.0	9.7	7.6	7.3	6		
Other Caseload Per Judgeship	Applications for Interlocutory Appeals	1	1	1	1	1	1	5		
	Petitions for Rehearing	24	21	20	29	34	26	12		

170
 + 43
 + 60

 273

214
 55
 72

 341

11
 214
 55
 72

 341

U.S. COURT OF APPEALS - JUDICIAL CASELOAD PROFILE

		12 MONTHS ENDED SEPTEMBER 30							
DISTRICT OF COLUMBIA		1997	1996	1995	1994	1993	1992		
OVERALL CASELOAD STATISTICS	Appeals Filed	Total	1,531	1,347	1,625	1,770	1,791	1,723	
		Prisoner	139	161	179	157	118	93	
		Other	508	561	674	606	633	693	
		Criminal	157	151	155	163	202	288	
		Administrative	727	474	617	844	838	649	
		% Change in Total Filings	Over Last Year	13.7					
	Over Earlier Years				-5.8	-13.5	-14.5	-11.2	
	Appeals Terminated	On The Merits	Total	1,833	1,674	1,670	1,617	1,877	1,606
			Consolidations & Cross Appeals	223	293	286	264	280	366
			Procedural	878	686	681	578	781	517
			Total	732	695	703	775	816	723
			Prisoner	83	88	71	79	77	71
			Other	381	319	329	371	390	294
			Criminal	109	131	138	159	184	178
		Administrative	159	157	165	166	165	180	
		Percent by Active Judges	98.5	99.8	99.9	97.7	99.9	98.9	
		Pending Appeals	1,523	1,825	2,158	2,205	2,057	2,146	
ACTIONS PER ACTIVE JUDGE	Terminations on the Merits	214	196	196	224	227	195		
	Procedural Terminations	55	55	44	59	62	31		
	Written Decisions	Total	72	62	67	67	77	65	
		Signed	25	26	23	23	23	22	
		Unsigned	47	36	44	44	54	43	
Without Comment		-	-	-	-	-	-		

* Includes only judges active during the entire 12 month period.

311

Show Page Two

U.S. COURT OF APPEALS - JUDICIAL CASELOAD PROFILE PAGE 2

DISTRICT OF COLUMBIA		12 MONTHS ENDED SEPTEMBER 30						1997 Numerical Standing		
		1997	1996	1995	1994	1993	1992			
Number of Judgeships/Number of Panels		12/4.0	12/4.0	12/4.0	12/4.0	12/4.0	12/4.0			
Number of Sitting Senior Judges		1	1	-	1	-	-			
Number of Vacant Judgeship Months		12.0	13.0	12.3	29.9	13.9	8.5			
ACTIONS PER PANEL*	Appeals Filed	Total	383	337	406	443	448	431	12	
		Prisoner	35	40	45	39	30	23	12	
		Other	127	140	168	152	157	174	12	
		Criminal	39	38	39	41	51	72	12	
		Administrative	182	119	154	211	210	162	1	
	Appeals Terminated	Total	Total	458	419	418	404	469	402	12
			Consolidations & Cross Appeals	55	73	72	65	70	92	6
		On The Merits	Procedural	220	172	170	145	195	129	12
			Total	183	174	176	194	204	181	12
			Prisoner	21	22	18	20	19	18	12
			Other	95	80	82	92	98	73	12
			Criminal	27	33	35	40	46	45	12
		Administrative	40	39	41	42	41	45	2	
	Pending Appeals		381	456	540	551	514	537	12	
	Median Time	Median Time from Filing Notice of Appeal to Disposition	10.9	12.0	12.8	12.0	13.6	12.9	8	
Other Caseload Per Judgeship	Applications for Interlocutory Appeals	1	1	-	1	1	1	4		
	Pro Se Mandamus Petitions	15	2	2	3	4	3	1		
	Petitions for Rehearing	27	21	22	22	22	20	11		

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	RE: Follow-Up for Senate Staff on 11th Seat - To: William Kelley, et al. - From: Jennifer Brosnahan	1	07/24/2006	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Coffina, Scott

FOLDER TITLE:

DC Circuit 11th/12th Seat: DC Circuit 11th/12th Seat

FRC ID:

14407

OA Num.:

14202

NARA Num.:

14011

FOIA IDs and Segments:

2018-0009-P

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	RE: Meeting with Grassley & Sessions Staff on 11th Judge - To: Bosnahan, Jennifer, et al. - From: John Smith	1	07/24/2006	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Coffina, Scott

FOLDER TITLE:

DC Circuit 11th/12th Seat: DC Circuit 11th/12th Seat

FRC ID:

14407

OA Num.:

14202

NARA Num.:

14011

FOIA IDs and Segments:

2018-0009-P

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

DRAFT

D.C. Circuit Facts

I. PRECEDENT

- **The D.C. Circuit had 11 active judges for much of 2005, plus a pending nominee.**
 - As of June 2005 (when Thomas Griffith added), there were 11 judges in active service, plus 1 nominee pending (Brett Kavanaugh).
- **It would be consistent with recent precedent for this court to have a total of 12 sitting judges and nominees pending in the Senate.**
 - As of July 2003, there were 9 judges in active service, with 3 additional nominees pending (Brett Kavanaugh, Janice Rogers Brown, and Miguel Estrada).
 - As of May 2004, there were again 9 judges in active service, with 3 nominees pending (Kavanaugh, Brown, Griffith).
- **In particular, a nomination to fill the 11th seat, while 10 judges are in active service, would be consistent with precedent from 2005.**
 - As of June 2005 (when Brown added), there were 10 judges in active service, with 2 additional nominees pending (Kavanaugh, Griffith).

II. INCREASED CASELOAD

- **In any event, the D.C. Circuit's increasing caseload justifies filling the 11th seat and the 12th seat.**

A. Detainee Litigation

- The Detainee Treatment Act (DTA) provides that the D.C. Circuit will have exclusive jurisdiction to review (i) decisions of combatant status review tribunals (CSRT) and (ii) final decisions of military commissions.
 - **The DTA will significantly increase the D.C. Circuit's caseload.** There are currently about 470 detainees at GTMO, each of whom has a right to challenge his status determination in the D.C. Circuit. Also, the Administration is working with Congress to move forward with military commissions in a manner consistent with the Supreme Court's *Hamdan* ruling. When such trials take place, detainees will have the right to appeal their convictions to the D.C. Circuit, which would further increase the Circuit's caseload.

- **There are also 350 habeas petitions pending in the federal district court in Washington, which could be appealed to the D.C. Circuit.**
- In addition to the litigation above brought by current GTMO detainees, former detainees are also attempting to sue the government under a variety of legal theories.
 - Because they involve federal defendants, many of these cases have been and would likely be filed in the D.C. Circuit.

B. General caseload facts

- **The total number of pending appeals in the D.C. Circuit is higher than it has been since 1998**, and is almost 20% higher than the figure from 2000.
 - The percent change in pending cases from 2004 to 2005 was 17.8%, which was higher than the nationwide average increase during that period.
- **The number of appeals filed in the D.C. Circuit has increased 22% since 2002**, which is higher than the national average during that period.
- **The median interval from filing a notice of appeal to disposition of a case in the D.C. Circuit has increased substantially since 2000.** The median interval has increased over 50%, from 7.3 months to 11.2 months. This lengthening interval suggests the overall complexity of the cases addressed by the D.C. Circuit as well as the workload of the judges.
 - The median disposition interval is now higher than at any time since 1997.
 - The median disposition interval is increasing at a much faster rate than the national average, which has remained relatively constant since 2000.
- **The D.C. Circuit handles a high percentage of *administrative* appeals, which are often highly complex and require more judicial resources.**
- **About one-third of the cases filed in the D.C. Circuit are administrative appeals, which is a substantially higher proportion than any other circuit**, except for the Ninth Circuit (which presumably has many straightforward immigration appeals). In most other circuits, less than 10% of the caseload is administrative appeals.
 - Since 1998, about one-third of cases terminated are administrative, yet administrative cases account for a significantly greater proportion (ranging 44-59%) of all *pending* cases. This backlog suggests that administrative cases are more difficult and take longer to resolve.

U.S. Court of Appeals for the District of Columbia Circuit
 Seat History

A- Appointed
 R- Retired/Resigned D- Death

	1	2	3	4	5	6	7	8	9	10 (created 10/20/78)	11 (created 10/20/78)	12 (created 7/10/1984)
1978	Wilkey	Wright	Leventhal	R. Robb	McGowan	Tamm	Bazelon	MacKinnon	Robinson			N/A
1979	Wilkey	Wright	Leventhal (R- 11/20/79)	R. Robb	McGowan	Tamm	Bazelon (R- 6/30/79)	MacKinnon	Robinson	Wald (A- 7/26/79)	Mikva (A- 9/26/79)	N/A
1980	Wilkey	Wright	R. Ginsburg (A- 6/18/80)	R. Robb	McGowan	Tamm	Edwards (A- 2/20/80)	MacKinnon	Robinson	Wald	Mikva	N/A
1981	Wilkey	Wright	R. Ginsburg	R. Robb	McGowan (R- 8/31/81)	Tamm	Edwards	MacKinnon	Robinson	Wald	Mikva	N/A
1982	Wilkey	Wright	R. Ginsburg	R. Robb (R- 5/31/82) Scalia (A- 8/17/82)	Bork (A- 2/9/82)	Tamm	Edwards	MacKinnon	Robinson	Wald	Mikva	N/A
1983	Wilkey	Wright	R. Ginsburg	Scalia	Bork	Tamm	Edwards	MacKinnon (R- 5/20/83) Starr (A- 9/20/83)	Robinson	Wald	Mikva	N/A
1984	Wilkey (R- 12/6/84)	Wright	R. Ginsburg	Scalia	Bork	Tamm	Edwards	Starr	Robinson	Wald	Mikva	
1985		Wright	R. Ginsburg	Scalia	Bork	Tamm (D- 9/22/85) Buckley (A- 12/17/85)	Edwards	Starr	Robinson	Wald	Mikva	Silberman (A- 10/28/85)
1986	Williams (A- 6/16/86)	Wright (R- 6/1/86) D. Ginsburg (A- 10/14/86)	R. Ginsburg	Scalia (E- 9/25/86)	Bork	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1987	Williams	D. Ginsburg	R. Ginsburg	Sentelle (A- 9/11/87)	Bork	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1988	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Bork (R- 2/5/88)	Buckley	Edwards	Starr	Robinson	Wald	Mikva	Silberman
1989	Williams	D. Ginsburg	R. Ginsburg	Sentelle		Buckley	Edwards	Starr (R- 5/26/89)	Robinson (R- 9/1/89)	Wald	Mikva	Silberman
1990	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Thomas (A- 3/6/90)	Buckley	Edwards	Henderson (A- 7/5/90)	Randolph (A- 7/16/90)	Wald	Mikva	Silberman
1991	Williams	D. Ginsburg	R. Ginsburg	Sentelle	Thomas (E- 10/15/1991)	Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman
1992	Williams	D. Ginsburg	R. Ginsburg	Sentelle		Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman
1993	Williams	D. Ginsburg	R. Ginsburg (E- 8/3/93)	Sentelle		Buckley	Edwards	Henderson	Randolph	Wald	Mikva	Silberman

U.S. Court of Appeals for the District of Columbia Circuit
 Seat History

A- Appointed
 R- Retired/Resigned D- Death

	1	2	3	4	5	6	7	8	9	10 (created 10/20/78)	11 (created 10/20/78)	12 (created 7/10/1984)
1994	Williams	D. Ginsburg	Tatel (A- 10/7/94)	Sentelle	Rogers (A- 3/11/94)	Buckley	Edwards	Henderson	Randolph	Wald	Mikva (R- 9/19/94)	Silberman
1995	Williams	D. Ginsburg	Tatel	Sentelle	Rogers	Buckley	Edwards	Henderson	Randolph	Wald		Silberman
1996	Williams	D. Ginsburg	Tatel	Sentelle	Rogers	Buckley (R- 8/31/96)	Edwards	Henderson	Randolph	Wald		Silberman
1997	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph	Wald	Garland (A- 3/20/97)	Silberman
1998	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph	Wald (R- 11.16.99)	Garland	Silberman
1999	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	Silberman
2000	Williams	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	Silberman (R- 11/1/00)
2001	Williams (R- 9/30/01)	D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	
2002		D. Ginsburg	Tatel	Sentelle	Rogers		Edwards	Henderson	Randolph		Garland	
2003		D. Ginsburg	Tatel	Sentelle	Rogers	Roberts (A- 6/2/03)	Edwards	Henderson	Randolph		Garland	
2004		D. Ginsburg	Tatel	Sentelle	Rogers	Roberts	Edwards	Henderson	Randolph		Garland	
2005	Brown (A- 6/10/05)	D. Ginsburg	Tatel	Sentelle	Rogers	Roberts (E- 9/29/05)	Edwards (R- 11/3/05)	Henderson	Randolph	Griffith (A- 6/29/05)	Garland	
2006	Brown	D. Ginsburg	Tatel	Sentelle	Rogers			Henderson	Randolph	Griffith	Garland	Kavanaugh (A- 5/30/06)

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
333 CONSTITUTION AVENUE, N.W.
WASHINGTON, DC 20001-2805

HARRY T. EDWARDS
CIRCUIT JUDGE

TELEPHONE (202) 216-7380
FACSIMILE (202) 273-0119

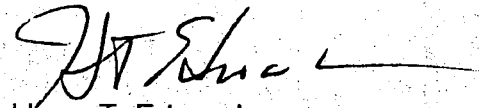
June 9, 2005

The President
The White House
Washington, D.C. 20500

Mr. President:

Please be advised that on November 3, 2005, I intend to retire from regular active service as a United States Circuit Judge for the District of Columbia Circuit under the provisions of 28 U.S.C. § 371(b)(1), having attained the age and met the service requirements of subsection (c) of that section. It is my intention to continue to render substantial judicial service as a senior judge.

Respectfully yours,



Harry T. Edwards
U.S. Circuit Judge

cc: The Chief Justice of the United States
The Honorable Douglas H. Ginsburg
Leonidas R. Mecham, Director
Administrative Office of the U.S. Courts
Barbara J. Rothstein, Director
Federal Judicial Center
Carol S. Sefren, Chief
Judges' Compensation & Retirement Services Office
Jill C. Sayenga, Circuit Executive

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
333 CONSTITUTION AVENUE, N.W.
WASHINGTON, DC 20001-2805

HARRY T. EDWARDS
CIRCUIT JUDGE

TELEPHONE (202) 216-7380
FACSIMILE (202) 273-0119

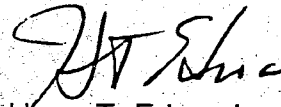
June 9, 2005

The President
The White House
Washington, D.C. 20500

Mr. President:

Please be advised that on November 3, 2005, I intend to retire from regular active service as a United States Circuit Judge for the District of Columbia Circuit under the provisions of 28 U.S.C. § 371(b)(1), having attained the age and met the service requirements of subsection (c) of that section. It is my intention to continue to render substantial judicial service as a senior judge.

Respectfully yours,



Harry T. Edwards
U.S. Circuit Judge

cc: The Chief Justice of the United States
The Honorable Douglas H. Ginsburg
Leonidas R. Mecham, Director
Administrative Office of the U.S. Courts
Barbara J. Rothstein, Director
Federal Judicial Center
Carol S. Sefren, Chief
Judges' Compensation & Retirement Services Office
Jill C. Sayenga, Circuit Executive

Brown - June 8, 2005
Griffith June 29, 2005

June - Sept. Edwards Nov
Roberts Sept. 29

DRAFT

D.C. Circuit Facts

- Brown - Randolph
- Ginsburg - Griffith
- Tatal - Garland
- Sentelle (11)
- Rogers
- Roberts
- Edwards
- Henderson

I. PRECEDENT

- The D.C. Circuit had 11 active judges for much of 2005, plus a pending nominee.
 - As of June ²⁹ 2005 (when Thomas Griffith added), there were 11 judges in active service, plus 1 nominee pending (Brett Kavanaugh).
- It would be consistent with recent precedent for this court to have a total of 12 sitting judges and nominees pending in the Senate.
 - As of July 2003, there were 9 judges in active service, with 3 additional nominees pending (Brett Kavanaugh, Janice Rogers Brown, and Miguel Estrada).
 - As of May 2004, there were again 9 judges in active service, with 3 nominees pending (Kavanaugh, Brown, Griffith).
- In particular, a nomination to fill the 11th seat, while 10 judges are in active service, would be consistent with precedent from 2005.
 - As of June ⁸ 2005 (when Brown added), there were 10 judges in active service, with 2 additional nominees pending (Kavanaugh, Griffith).

II. INCREASED CASELOAD

OUT: Roberts - Sept 29
Edwards - Nov 3

- In any event, the D.C. Circuit's increasing caseload justifies filling the 11th seat and the 12th seat.

A. Detainee Litigation

- The Detainee Treatment Act (DTA) provides that the D.C. Circuit will have exclusive jurisdiction to review (i) decisions of combatant status review tribunals (CSRT) and (ii) final decisions of military commissions.
 - **The DTA will significantly increase the D.C. Circuit's caseload.** There are currently about 470 detainees at GTMO, each of whom has a right to challenge his status determination in the D.C. Circuit. Also, the Administration is working with Congress to move forward with military commissions in a manner consistent with the Supreme Court's *Hamdan* ruling. When such trials take place, detainees will have the right to appeal their convictions to the D.C. Circuit, which would further increase the Circuit's caseload.

- **There are also 350 habeas petitions pending in the federal district court in Washington, which could be appealed to the D.C. Circuit.**
- In addition to the litigation above brought by current GTMO detainees, former detainees are also attempting to sue the government under a variety of legal theories.
 - Because they involve federal defendants, many of these cases have been and would likely be filed in the D.C. Circuit.

B. General caseload facts

- **The total number of pending appeals in the D.C. Circuit is higher than it has been since 1998**, and is almost 20% higher than the figure from 2000.
 - The percent change in pending cases from 2004 to 2005 was 17.8%, which was higher than the nationwide average increase during that period.
- **The number of appeals filed in the D.C. Circuit has increased 22% since 2002**, which is higher than the national average during that period.
- **The median interval from filing a notice of appeal to disposition of a case in the D.C. Circuit has increased substantially since 2000.** The median interval has increased over 50%, from 7.3 months to 11.2 months. This lengthening interval suggests the overall complexity of the cases addressed by the D.C. Circuit as well as the workload of the judges.
 - The median disposition interval is now higher than at any time since 1997.
 - The median disposition interval is increasing at a much faster rate than the national average, which has remained relatively constant since 2000.
- **The D.C. Circuit handles a high percentage of *administrative* appeals, which are often highly complex and require more judicial resources.**
- **About one-third of the cases filed in the D.C. Circuit are administrative appeals, which is a substantially higher proportion than any other circuit**, except for the Ninth Circuit (which presumably has many straightforward immigration appeals). In most other circuits, less than 10% of the caseload is administrative appeals.
 - Since 1998, about one-third of cases terminated are administrative, yet administrative cases account for a significantly greater proportion (ranging 44-59%) of all *pending* cases. This backlog suggests that administrative cases are more difficult and take longer to resolve.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Draft	D.C. Circuit Facts	3	N.D.	P5;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Coffina, Scott

FOLDER TITLE:

DC Circuit 11th/12th Seat: DC Circuit 11th/12th Seat

FRC ID:

14407

OA Num.:

14202

NARA Num.:

14011

FOIA IDs and Segments:

2018-0009-P

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

You voted against the Garland nomination in Committee and on the floor, stating that **“I do not believe that that that judgeship should be filled based on the caseload in that circuit, and for no other reason.”** Several Republicans referenced your analysis when they voted against this nomination (Kyl & Grassley). As you know, Judge Garland was confirmed by a vote of 76-23.

The latest statistics for the DC Circuit indicate that the court's caseload has not changed much since 1997, when the Garland nomination was debated on the Senate floor. **The D.C. Circuit's case filings have dropped from 1,531 in 1997 to 1,379 in 2005. The number of senior judges sitting on the court rose from 1 in 1997 to 2 in 2005** (there are currently 4 senior judges sitting on the DC Circuit). **The number of administrative case filings has declined, from 727 in 1997 to 468 in 2005** (you will recall that then Chief Judge Edwards argued that these were extremely complex cases unique to the DC Circuit, and thus should be weighted more than other kinds of cases). **Even the number of written decisions has declined, from 72 per judge in 1997 to 60 per judge in 2005.** As you can see, the numbers for the DC Circuit have not increased to justify changing your position on filling the 11th or 12th seat on this court. The reality is that the overall numbers for the DC Circuit have declined even further since 1997. Based on these statistics, in the 109th Congress, you and Senator Grassley re-introduced a bill to permanently eliminate the 12th seat on the DC Circuit (S. 2016).

1523
2nd
1997

1,379
+ 470

1,849
used
before
now a

In 1999, when Senator Grassley chaired the Administrative Oversight Subcommittee, it released a Report on Judicial Allocations that showed the DC Circuit had the lowest caseload per judge in the country and its backlog had not increased in the previous decade. The Report concluded that serious consideration should be given to permanently reducing the number of allocated judgeship for the DC Circuit. The Report also stated that in the event that one of the 10 current active judges took senior status, Congress should consider leaving that vacancy unfilled.

Your floor statements against filling the 11th and 12th seats on the DC Circuit were particularly strong during the debate on Clinton's nominee Merrick Garland to fill the 11th seat (March 19, 1997). You stated, "**[b]ased on my commitment to frugal management of the money of this Nation, I feel the position should not be filled at this time.**" You opposed filling the 12th seat based on the low caseload per judge, steady decline in case filings, and substantial long term costs justified not filling the 11th seat on the court. You stated, "**[t]he fact remains that the taxpayers should not be required to pay for a judge we do not need. The taxpayers should not have to pay \$1 million per year for a judge that is not needed.**"

12 active judges (12th seat created July 10, 1984)

- Between 9/11/1987 (Sentelle appt.) and 2/5/1988 (Bork resigned). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Bork; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)
- Between 7/16/1990 (Randolph appt.) and 10/15/1991 (Thomas elevated). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Thomas; Buckley; Edwards; Henderson; Randolph; Wald; Mikva; Silberman)

11 active judges (11th seat created 10/20/1978)

Between 6/18/1980 (R. Ginsburg appt.) to 8/31/1981 (McGowan retired.) (Wilkey; Wright; R. Ginsburg; R. Robb; McGowan; Tamm; Edwards; MacKinnon; Robinson; Wald; Mikva)

Between 2/9/1982 (Bork appt.) and 5/3/1982 (R. Robb retired.) (Wilkey; Wright; R. Ginsburg; R. Robb; Bork; Tamm; Edwards; MacKinnon; Robinson; Wald; Mikva)

Between 8/17/1982 (Scalia appt.) and 5/20/1983 (MacKinnon retired). (Wilkey; Wright; R. Ginsburg; Scalia; Bork; Tamm; Edwards; MacKinnon; Robinson; Wald; Mikva)

Between 9/20/1983 (Starr appt.) and 12/6/1984 (Wilkey retired). (Wilkey; Wright; R. Ginsburg; Scalia; Bork; Tamm; Edwards; Starr; Robinson; Wald; Mikva)

Between 12/17/1985 (Buckley appt.) and 6/1/1986 (Wright retired). (Wright; R. Ginsburg; Scalia; Bork; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)

- Between 6/16/1986 (Williams appt.) and 9/25/1986 (Scalia elevated). (Williams; R. Ginsburg; Scalia; Bork; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)
- Between 10/14/86 (D. Ginsburg appt.) and 9/11/1987 (Sentelle appt.— went from being 11 to 12 active judges). (Williams, D. Ginsburg; R. Ginsburg; Bork; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)
- Between 2/5/1988 (Bork resigned—went from being 12 active judges) and 5/26/1989 (Starr resigned). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Buckley; Edwards; Starr; Robinson; Wald; Mikva; Silberman)
- Between 7/5/1990 (Henderson appt.) and 7/16/1990 (Randolph appt.--- went from being 11 to 12 active judges). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Thomas; Buckley; Edwards; Henderson; Wald; Mikva; Silberman)
- Between 10/15/1991 (Thomas elevated—went from being 12 active judges) and 8/3/1993 (Ginsburg elevated). (Williams; D. Ginsburg; R. Ginsburg; Sentelle; Buckley; Edwards; Henderson; Randolph; Wald; Mikva; Silberman)
- Between 3/11/1994 (Rogers appt.) and 9/19/1994 (Mikva retired). (Williams; D. Ginsburg; Sentelle; Rogers; Buckley; Edwards; Henderson; Randolph; Wald; Mikva; Silberman)
- Between 10/7/1994 (Tatel appt.) and 8/31/1996 (Buckley retired). (Williams; D. Ginsburg; Tatel; Sentelle; Rogers; Buckley; Edwards; Henderson; Randolph; Wald; Silberman)
- Between 3/20/1997 (Garland appt.) and 11/16/1999 (Wald retired). (Williams; D. Ginsburg; Tatel; Sentelle; Rogers; Edwards; Henderson; Randolph; Wald; Garland; Silberman)
- Between 6/29/2005 (Griffith appt.) and 9/29/2005 (Roberts elevated). (Brown, D. Ginsburg, Tatel, Sentelle, Rogers, Roberts, Edwards, Henderson, Randolph, Griffith, Garland)

John - I added these times prior to the creation of the 11th seat.

I also added a couple other bullets.



United States Senator · North Carolina

RICHARD BURR

217 Russell Senate Office Bldg. • Washington, D.C. 20510-3308
202-224-3154 • FAX 202-228-2981

To: Kate Todd
Fax: 456-7906
From: Andy Moskowitz
Phone: (202) 228-5963
Re: Letter to Fred Fielding
Date: September 6, 2007
Pages (including cover page): 8

Kate,
Attached is the letter we discussed over the phone. Hope all is well!
Thanks,
Andy

Andy Moskowitz
Legislative Counsel
Senator Richard Burr
(202) 224-3154

This transmission is intended only for the use of the person or office to whom it is addressed and may contain information that is privileged, confidential, or protected by law. All others are hereby notified that receipt of this message does not waive any applicable privilege or exemption from disclosure and that any dissemination, distribution, or copying of this communication is prohibited.

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Recommendation letter with attachments] - To: Fred Fielding - From: Richard Burr	7	08/31/2007	P2; P6/b6;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Coffina, Scott

FOLDER TITLE:

DC Circuit 11th/12th Seat: DC Circuit 11th/12th Seat

FRC ID:

14407

OA Num.:

14202

NARA Num.:

14011

FOIA IDs and Segments:

2018-0009-P

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.