
From: "Sinatra, Nicholas A."
Date: Monday, June 19, 2006 7:26 AM
To: "Sean Rushton" <SRushton@CommitteeforJustice.org>
Subject: RE: Press roundup.

This is great. Thank you!

From: Sean Rushton [mailto:SRushton@CommitteeforJustice.org]
Sent: Friday, June 16, 2006 6:56 PM
To: Sinatra, Nicholas A.
Subject: Press roundup.

Rocky Mountain News
June 15, 2006

Time running short on nomination
By M.E. Sprengelmeyer, Rocky Mountain News

WASHINGTON — Time is running out before a Colorado judicial nomination could get stalled in the U.S. Senate's summer swoon.

President Bush has nominated attorney and legal scholar Neil Gorsuch to fill a seat on the Denver-based 10th Circuit Court of Appeals, and backers hope he gets a hearing in the Senate Judiciary Committee in the next few weeks.

But if there's a delay and the committee can't agree to advance the nomination by the Senate's August recess, it's unlikely he can be win final Senate confirmation by the end of the year, said Sean Conway, chief of staff to Sen. Wayne Allard, R-Loveland.

That prospect, and the lengthy delay in confirming an earlier 10th Circuit nominee, Tim Tymkovich, prompted Allard to hand-deliver a letter to Senate Judiciary Committee chairman Sen. Arlen Specter, R-Pa., this week asking him to expedite Gorsuch's confirmation.

"What we're trying to do is get this process moving," Allard chief of staff Sean Conway said Thursday. "What pushed this is we do not want a repeat of the Tymkovich situation where we had a vacancy on the court for over two years."

"Sen. Allard just doesn't feel it's prudent to have a vacancy on an important appeals court like this, particularly with a non-controversial nominee."

So far, no overt opposition has emerged to Gorsuch's nomination, but arcane Senate procedures have left the timing of his pending confirmation hearings up in the air.

By Senate tradition, the Judiciary Committee does not move forward with confirmation hearings until a nominee's two home-state Senators deliver so-called "blue slips" indicating they approve going forward.

In the past, Allard has used that procedure to block two of former President Bill Clinton's Colorado judicial nominees.

As of Thursday afternoon, Sen. Ken Salazar, D-Denver, had not delivered his "blue slip" on Gorsuch, but spokesman Drew Nannis said there was no intent to delay Gorsuch and that Salazar's sign-off could come within a day or two.

http://www.humaneventsonline.com/rightangle/index.php?1=1&title=frist_sets_stage_for_vote_on_9th_circuit

6/15/06
HUMAN EVENTS

Frist Sets Stage for Vote on 9th Circuit Nominee

By Robert Bluey

A well-placed source tells me tonight that Senate Majority Leader Bill Frist (R.-Tenn.) has scheduled time on Monday at 5:30 p.m. to vote on the confirmation of Sandra Segal Ikuta, a nominee for the 9th U.S. Circuit Court of Appeals.

Ikuta doesn't have the name recognition of some other appellate court nominees, but with pressure mounting on Senate Republicans to act on judges, Frist's move demonstrates once again that he is listening to the base.

According to Law.com, Ikuta is a "moderate conservative," who is supported by both Republicans and Democrats. [T]he list of people who do know her is significant. Among them, former Secretary of State Warren Christopher (who put in a good word with Sen. Dianne Feinstein), 9th Circuit Judge Alex Kozinski, U.S. Supreme Court Justice Sandra Day O'Connor (she clerked for both) and Gov. Arnold Schwarzenegger (her current boss).

Ikuta currently serves as the general counsel to the California Resources Agency. She'll be replacing Judge James R. Browning, who is apparently the last appellate court judge remaining from the Kennedy Administration

UPDATE -- 1:27 a.m.: I'm hearing back from people with a stake in the judicial fight, and while they're pleased to see Frist move Ikuta to a vote, they're disappointed he didn't pick one of the well-known nominees I alluded to in my post. They include Terrence Boyle, William Haynes, William Myers or Michael Wallace.

One source remarked:

"If the leader was listening to his base, he would be mounting defenses of Boyle, Haynes, Myers, and Wallace, and considering moving any of them -- especially Boyle, who will be on the floor one year this Friday -- rather than giving the Dems an easy pass to vote for Ikuta. It creates the illusion of action while avoiding the hard work conservatives are actually advocating."

<http://powerlineblog.com/archives/014398.php>

POWERLINE

June 14, 2006

The friends of Lindsey Graham

By Paul Mirengoff

Sen. Lindsey Graham has written a "Dear Friends" letter in which he explains his reservations about the nomination of Jim Haynes to the Fourth Circuit. He states that these reservations are based on the opposition of "very distinguished military leaders" to the Haynes nomination. These leaders turn out to be Retired Rear Admiral John Hutson and Retired Rear Admiral Donald Guter. As I have noted, Hutson is a partisan Democrat who served as Navy JAG under Clinton and retired before Haynes became General Counsel of the Defense Department. Guter, Hutson's successor and crony, worked with Haynes for only a short period of time. His opposition apparently is based on the incoherent prediction that, as a judge, Haynes would be unable to resist orders from his superiors.

Graham also cites Retired Brigadier General Edward Rodriguez of the United States Air Force Reserves. But, as I understand it, Rodriguez left active duty in 1974, stayed with the reserves until 1999, and never worked with Haynes. Why Graham relies on partisans with little or no first hand knowledge, while ignoring the pro-Haynes views of, say, Major General (ret.) Michael Marchand who served with Haynes until mid-2005, is unclear.

Graham also refers darkly to "memos written by military legal officers to the civilian leaders in the Department of Defense regarding detainees." He notes that military lawyers "express[ed] grave concerns about confusing and legally flawed interrogation policies" and the potential adverse consequences to the service men who would carry them out.

As I understand it, Graham is talking here about memos that the JAGs wrote about proposed interrogation methods when they participated in the interrogation working group in 2003. The JAGs in fact did express concerns, but the concerns were addressed in the final set of interrogation methods. This final document achieved general consensus (even Haynes critic Alberto Mora apparently was on board), although the document did not conform entirely to the wishes of the JAGs.

Thus, contrary to the claim that Haynes was unwilling to listen to the military, the JAGs were heard out, and their concerns were addressed. As Maj. Gen. Thomas J. Romig, the Army's top lawyer, testified before a subcommittee chaired by Sen. Graham (as reported in the Washington Post), the criticism "was accepted in some cases, maybe not in all cases. It did modify the proposed list of policies and procedures."

Finally, Graham's letter fails to address the most important questions that arise from his course of conduct -- what has his role been in preventing the Haynes nomination from coming to a vote, and will he now commit to allowing such a vote following a full and fair debate?

<http://www.philly.com/mid/inquirer/news/editorial/14820282.htm>

6/15/06

Philadelphia Inquirer

Stop the nomination games

It's time to pass Specter's reforms to the irresponsible handling of judicial nominations.

By Jeffrey Lord

Jeffrey Lord is the author of "The Borking Rebellion," an inside look at the U.S. Senate's judicial confirmation process

There they go again.

It's bad enough that one political party in charge of the U.S. Senate plays games with the federal judiciary when the other party controls the White House. Now we have members of the same party playing games when their own party controls the White House. Either way, the result is bad for federal judges.

The latest incident involves Sen. Lindsey Graham (R., S.C.) and a Bush nominee for the U.S. Court of Appeals for the Fourth Circuit. The nominee, William "Jim" Haynes, is currently the general counsel at the Pentagon. As such, he has played a role in the issue of the treatment of detainees captured on the battlefields of Afghanistan and Iraq. Graham, a military lawyer himself, apparently objects to Haynes and is responding to critics in the military community that the policies on detainees Haynes helped to construct make him unfit for the appeals court.

Fair enough. While I disagree with this assessment, this has been used as yet another excuse to abuse the Senate's judicial confirmation process.

Haynes' nomination has been sitting in the Senate Judiciary Committee for three years without a vote. Repeated news accounts finger Graham, a committee member, as the senator who is quietly keeping Haynes from getting that vote. Even more amazing, there are multiple media stories that Sen. John McCain (R., Ariz.), a potential presidential candidate, is urging Graham on.

Once again, members of the U.S. Senate are vividly demonstrating why the public has such increasing contempt for things political. Not unlike the way Pennsylvania state legislators of both parties united to give themselves a pay raise in the middle of the night, Republican and Democratic U.S. senators seem determined to show the public that there are not two political parties in Washington, but three: the Republicans, the Democrats and the Senate Party. The latter has a mere 100 members and is thoroughly bipartisan.

So Graham quietly signals his colleagues that he wants to obstruct the confirmation process and - presto! - the senator gets his wish. Never mind that the rules for selecting senators are hard and fast and not to be tampered with. Forget that McCain and any other interested presidential candidate depend on the rules for how we elect a president. It's only the third branch of government that doesn't get the same respect.

If Graham were informed today that his next election were moved up from 2008 to next week, he would correctly cry foul. Yet he shows not the slightest concern over letting a judicial nominee cool his heels for three years.

Even more amazing is the reported conduct of McCain. Forget the sheer politics of his infuriating the very conservatives he will need to get nominated. Does he seriously believe that his conduct in this matter will not provide some ammunition for some future senator to stymie the judicial nominations of a President McCain?

For that matter, every senator with an eye on the White House in 2008 should be hustling to make sure Haynes and other nominees are treated fairly. After senatorial abuse of the process reaching back to at least the Reagan administration, what makes any Democrat think things will change if the next president's name is Clinton, Kerry or Feingold?

Several years ago, Pennsylvania's own Sen. Arlen Specter proposed a series of excellent reforms that would bring a halt to what has become an out-of-control judicial confirmation process. They featured a timeline for hearings, committee votes and floor votes. If adopted, the rule changes would apply to all nominees of all presidents, regardless of which party controlled the Senate.

For no other reason than simple fairness, not to mention respect for the federal judiciary, it's time to pass those Specter reforms.

Of course, there will be bipartisan resistance from senators more interested in self-granted perks than the kind of impartial rules senators themselves look to as the lifeblood of their role as elected officials under the Constitution.

But Specter believes in these reforms and, as chairman of the Senate Judiciary Committee, he is in exactly the right place to get fair treatment for Haynes and finally reform the U.S. Senate's judicial confirmation process for good. After decades of senatorial mistreatment of judicial nominees, isn't it about time?

Pennsylvanians of all political stripes who are interested in seeing that the federal judiciary gets the same fairness senators demand for themselves should insist that their senior senator use his considerable yet momentary power to pass the Specter reforms.

http://wnd.com/news/article.asp?ARTICLE_ID=50631

6/15/06

Worldnetdaily.com

Quit De Wining about the Santorum Specteracle

By Jill Stanek

A few weeks ago, I sent an e-mail to my list, encouraging Pennsylvania pro-lifers to support Republican Rick Santorum in his rebid for the U.S. Senate against Democrat Bob Casey.

Both are pro-life, but because Santorum and the White House supported pro-abortion incumbent Arlen Specter in the 2004 Republican primary against pro-lifer Pat Toomey, pro-lifers consider him a traitor. Specter won 51-49 percent. Pro-lifers blame Santorum and Bush for the edge.

This was typical of negative responses I received regarding my e-mail:

Sorry – just can't do it. ... These Republicans must understand there is a price to be paid for going against their pro-life/Christian base.

Pro-abort politicians understand that with one just false step, their liberal base will leave them. ... We, on the other hand, keep forgiving and forgiving our politicians for stabbing us in the back. No more.

Let Rick Santorum be the example to all the other Republican politicians that we will not allow them to play games with the lives of our unborn children, and if they do, they will be gone.

I wish Santorum had not supported Specter. But would turning from Santorum help or hurt the pro-life cause?

I submit it would hurt, badly.

Read what Manuel Miranda wrote. Miranda is an attorney and former U.S. Senate staffer who lost his job over the Democrat judicial memo flak. Miranda now leads the Third Branch Conference, a group promoting the advancement of conservative federal judges through the confirmation process. He said:

In my time in the Senate, I came to meet the vain and vainglorious, all with certificates of election. I came to learn that most senators are quite replaceable. ...

I want to tell you that in my observation there was one Republican senator who is not replaceable. In fact, he was the indispensable man on all of the issues that values voters care about. Even if we can nitpick, no one represents us more consummately. That man, of course, is Rick Santorum. ...

Simply put, without him many things that you and I care about would simply not be championed by anyone else, or at least not as effectively. Even now when you hear me express disappointment on the judge issue, I suspect that lack of vision from the GOP may well be because Rick is understandably busy with his overwhelming campaign. Remember that it was Santorum who led the 40-hour debate of 2003. ...

As the chairman of the Senate Republican Conference, the third-ranking leadership position, Rick ... asks senators to take one for the team from time to time. Rick stands by them in moments when loyalty counts. And in a leader, I have learned the hard way that loyalty counts.

That includes in elections. ... [B]ecause Rick asked Arlen Specter very often to take one for the team, Rick stood by him in 2004. And I can tell you, as one who doubted, that the loyalty has been repaid and it has worked out well. ...

Leaders in the Senate speak to the press all the more often, where others hide, and all the more often they are targeted. It is all the more difficult when, as Rick does, you speak in the language of Judeo Christian morality, or say the obvious that no one else dare speak. ...

[Here is] what I said of Rick in September in an [Opinion Journal](#) article:

"No Republican senator has done more to make the confirmation of John Roberts possible, because no Republican senator is more responsible for making the judiciary issue a national electoral winner for Republicans, or for making colleagues understand its significance to constituents. ..."

Judges are key to the pro-life issue, and their significance in our battle points to a second reason we cannot lose Santorum. It would risk losing the Republican Senate majority.

Wrote Hugh Hewitt in [World Magazine](#) May 27:

If the Republicans lose control of the United States Senate, or even forfeit a net of three seats in the upper body of the Congress, it is almost certain that George W. Bush will not be able to get a third conservative justice confirmed should the opportunity arise.

If Patrick Leahy returns to the chairmanship of the Senate's Judiciary Committee ... no genuine judicial conservative will clear the first hurdle on the way to confirmation. Sen. Leahy's record proves that.

Even if the GOP holds a nominal majority after the smoke clears in November, expect unbreakable filibusters if there are not at least 50 solid votes to invoke the "constitutional option" which the Democrats dread. ...

So a Supreme Court poised to return to originalist practices and traditional decision making will in fact be just a vote or two in the Senate beyond reach. And then the "purists" will have their "victory."

Politics is a messy business. But majorities require compromise and commitment. The best result is to threaten disengagement, and then to work harder than ever for a conservative triumph.

On June 3, Hewitt [wrote in World](#) about pro-life malaise surrounding Ohio Republican Sen. Mike DeWine. He could have been speaking of Santorum:

[O]pposition to a DeWine re-election seems almost bizarrely contrary to the approach a pro-life, pro-Second Amendment, pro-property rights, or pro-national security conservative should take. ...

If Buckeye State evangelicals carefully and prudently consider the best interests of the country and the enormous power of a single Senate vote as well as the closeness of the division on the U.S. Supreme Court, they should not withhold support from Mike DeWine; they should instead send in their small or large checks and volunteer to walk precincts.

 A Senate majority is a terrible thing to throw away.

ASSOCIATED PRESS

June 13th, 2006

Conservative Coalition Wants Flag Amendment on Back Burner

SALT LAKE CITY (AP) -- A coalition of conservative groups wants time set aside later this month for debate on the proposed constitutional amendment to be spent instead on pending judicial nominations.

At least 100 groups signed a letter that was to be sent Tuesday to Senate Majority Leader Bill Frist, R-Tenn.; Sen. Orrin Hatch, R-Utah and the Senate sponsor of the amendment; and all the Republican senators.

Among the groups were the Third Branch Conference, Coalitions for America, American Family Association, 60 Plus Association and the Family Research Council.

The groups do not oppose the amendment, which would allow Congress to pass a law outlawing the physical desecration of the U.S. flag, but say a majority of conservatives would rather see the time spent on getting judges approved, the Deseret Morning News reported.

"You are planning to devote valuable Senate floor time to debating a flag-desecration constitutional amendment," according to the letter. "While most of us would support such an amendment, we believe this is a misguided use of time."

Out of 125 conservative organization leaders who responded to a survey on whether the flag-burning amendment is a priority to get done before Nov. 1, only 18 put it toward the top of the list, according to the letter. And those 18 agreed to put judges over the flag amendment when told to pick between the two.

"We all agree that debate on judicial nominations is time better spent, and time well spent early to build up steam," according to the letter.

The letter points to 9th Circuit nominee William Myers, and 4th Circuit nominees Terrence Boyle and William Haynes as those waiting for confirmation that should be addressed.

Hatch said, "There's no reason why we can't consider the flag amendment along with pending judicial nominations.

"Ultimately, the majority leader runs the floor schedule. He knows that with 60 senators publicly behind the amendment, and several more who have voted for it in the past, we're primed to bring this to the floor for a vote. But that doesn't mean we can't consider nominations as well."

Third Branch Conference Chairman Manuel Miranda, a former Hatch aide, said time is precious on the Senate's election-year calendar and that the flag amendment is "kind of yesterday's issue."

Frist's office said he has not seen the letter yet but is committed to the judicial nominees and the flag amendment. "Both issues are important," a spokeswoman said.

<http://www.worldmag.com/articles/11914>

Conservative Grassroots Demand Senate Action on Stalled Judicial Nominees

Over 5,000 Messages to Senate GOP in One Day

WASHINGTON, DC – William Greene, President of the conservative online activist organization RightMarch.com, has announced that over five thousand messages were sent through his group's website to Senate Republicans in a single day, demanding that they move circuit nominees to an honest up-or-down vote, and that they spend scheduled Senate floor time in vigorous debate.

"Senate Republicans have 'dropped the ball' on pushing President Bush's conservative judicial nominees," said William Greene, President of RightMarch.com. "Their conservative base will simply not accept the status quo on this issue. They recognize that it's time to demand that they devote more effort on and off the Senate floor to confirming the President's circuit court nominees."

Today the circuit courts have 18 vacancies. They are nearly 10 percent vacant and President Bush has the lowest confirmation rate of circuit court nominations for any president, below 75 percent. "From where I sit, it looks like the Majority is ignoring the impact of the nominations debate on its ability to gain the support of those small margins of voters that the Majority needs to secure unobstructed confirmations," said Greene. "We need to not only remind GOP Senators of their duty, but we also should be concerned that if the Majority that assured the confirmation votes of Chief Justice Roberts and Justice Alito lose just one seat in the next election, the future of the Supreme Court and the federal appellate bench will again be imperiled by use of filibusters. The conservative grassroots – the base that elected this majority – is demanding that this issue be given 'front-burner' status immediately."

RightMarch.com is a web-based, conservative organization, dedicated to giving hundreds of thousands of hardworking, patriotic Americans across the country a strong collective voice in the political process. For more information, visit www.RightMarch.com.

 Charleston Post and Courier
 Proceed with Haynes' nomination

Nominees for judicial appointments deserve to be voted on, and William James Haynes II, a nominee to the 4th Circuit Court of Appeals, is no exception. In view of his service and qualifications, and the Senate's previous consideration of Mr. Haynes for the judgeship, as well as for Defense posts, it's safe to say that his nomination is long overdue for debate.

Mr. Haynes was nominated initially by President Bush in 2003, and his nomination was sent to the Senate by its Judiciary Committee in 2004. But before the nomination could be considered by the full Senate, the congressional session ended. Consequently, the administration had to renominate him in 2005.

Advancing judicial nominations hasn't been easy in the partisan atmosphere of the Senate, but some of Mr. Haynes' advocates are pointing the finger at a prominent Republican on the Judiciary Committee, South Carolina's Lindsey Graham. That's surprising, since Sen. Graham has taken a leadership role in getting the judicial logjam unstuck, and at some political risk.

But Mr. Haynes' nomination is expressly opposed by Sen. John McCain, an ally of Sen. Graham. And both have cited concerns over Mr. Haynes' advice to the administration on captured enemy combatants facing potential terrorist charges, according to a report in Monday's Post and Courier. But Sen. Graham denies that he is delaying Mr. Haynes' nomination in committee, in comments to The Hill, a newspaper covering Congress.

Mr. Haynes' professional qualifications are outstanding. So is his long service to the nation. A Harvard Law School graduate, he was previously confirmed unanimously by the Senate as general counsel of the Department of Defense in 2001 and as general counsel of the Department of the Army in 1990.

As former Judiciary Committee Chairman Orrin Hatch, R-Utah, told The Hill newspaper, 'Haynes is one of the better nominees that I've seen. I can't believe what the Democrats are doing to him. I sure hope no Republican is doing it.'

Sen. Graham's spokesman, Kevin Bishop, had this to say in our report: 'The role Mr. Haynes played as DOD general counsel formulating these [detainee] policies and whether he was receptive to legal advice from the military will be a line of inquiry when his nomination is brought up.'

Fair enough. The sooner his nomination is brought up the better.

Bloomberg
 June 12, 2006
 Republican Activists Urge Senate to Vote on Judicial Nominees
 By James Rowley

June 12 (Bloomberg) -- Republican activists want their allies in the U.S. Senate to revive the debate over President George W. Bush's judicial nominees to mobilize the party's core voters for the November elections. Republicans risk losing one or both houses of Congress unless the base is motivated to vote, the activists warned at a news conference in Washington. They urged Senate Republican leader Bill Frist of Tennessee to focus on judicial nominees instead of a proposed constitutional amendment to ban flag burning that is set for debate this month.

"Our constituents will not be put off being told that the Senate has more pressing business than judicial nominees," said Jan LaRue, chief counsel of Concerned Women For America. Unless Senate Republicans confirm more judicial nominees, "come Nov. 8, the votes they want may not be there."

The flag-burning amendment is more a symbolic issue than judicial nominations, which have concerned voters in past elections since Bush took office, said Manuel Miranda, a former Senate Republican aide who heads the Third Branch Conference.

"Appealing only with symbolic issues, is, in essence, patronizing," Miranda told reporters. Still, he defended Frist's doomed effort to pass legislation to ban same-sex marriage because that issue "is very much linked to our concern for the judiciary."

Making a Difference

David Keene, chairman of the American Conservative Union, said a debate on judges is a good way for Republicans to distinguish themselves from Democrats in November.

Conservatives are more likely to vote "if they are happy, active and energized," he told reporters. Frist has tried to avoid battles over nominees who have generated the most controversy. After vowing earlier this year to seek a vote on Terrence Boyle, nominated to the 4th U.S. Circuit Court of Appeals, he has ducked questions about plans to seek Senate votes on Boyle and another nominee for the same Richmond-based court, William J. Haynes II.

Boyle, 60, a federal trial court judge in North Carolina, is accused of breaking a conflict-of-interest law by purchasing stock in General Electric Co. while overseeing a case involving an employee in a pension dispute with the company. Boyle ruled in favor of the company. Those allegations emerged after Frist had announced his plan to seek a Senate vote on Boyle, who Bush first nominated five years ago.

Suspected Terrorists

Haynes, 48, the Defense Department's general counsel, faces questions from Republicans and Democrats alike over his role in drafting the policies for detaining and interrogating suspected terrorists.

Critics say those policies blur legal prohibitions on abuse of prisoners, leading to the torture of captives at the Abu Ghraib prison in Iraq. About a dozen soldiers have been prosecuted for the alleged mistreatment.

Activists last week urged South Carolina Republican Senator Lindsey Graham to drop his objections to Haynes and permit a vote by the Judiciary Committee on his nomination.

Graham, acknowledging he has concerns about Haynes's role in drafting the detention and interrogation policies, has declined to say how he would vote on the nomination.

In a June 8 letter to the activists, he said he took "very seriously" the criticisms by two retired Navy judge advocate generals who opposed Haynes. "I am troubled that very distinguished military leaders have expressed strong opposition to the Haynes nomination," the letter said.

Second Hearing

Miranda said he wouldn't oppose a second confirmation hearing for Haynes, who was questioned by the committee before the revelations about Abu Ghraib.

Haynes's nomination is still in the Judiciary Committee, where Democrats say they would ask for another hearing before the panel votes to send the appointment to the full Senate.

"Jim Haynes does not condone torture," Republican activist Pat M. Woodward Jr., told reporters. Opponents "are trying to blame Jim Haynes for this administration's policies in the war on terror."

More than 60 activists, including Paul Weyrich of Coalitions for America and Donald E. Wildmon of the American Family Association, have signed a letter urging Republican leaders to drop the flag-burning debate in favor of judicial nominations.

Conservative Leaders Ask Frist To Emphasize Judges

CONGRESS DAILY PM

by Greta Wodele

More than 60 conservative leaders today called on Senate Majority Leader Frist to set aside this month's planned debate on a constitutional amendment to ban flag burning and instead schedule votes on several pending appellate court nominations. "We write to remind you of your duty, but also because we are concerned that if the majority that assured the confirmation votes of Chief Justice Roberts and Justice [Samuel] Alito lose just one seat in the next election, the future of the Supreme Court and the federal appellate bench will again be imperiled by use of filibusters," members of the coalition of conservative groups wrote in a letter to Frist and Republican senators. The group, which is expected to pick up nearly 100 signatures, plans to send the letter Tuesday. The coalition argued the judges debate, which has pitted Republicans against Democrats, ranks higher in surveys with conservatives than the flag burning proposal.

Frist's spokeswoman today responded that the flag burning amendment is a key proposal to Americans, especially for veterans as well as soldiers in Iraq and Afghanistan. She added that Frist has "methodically" pushed through several of President Bush's judicial picks and would continue to do so this year. The spokeswoman declined to give a timeline for scheduling a vote on pending nominees. The Senate is slated to vote on the flag proposal at the end of the month. One conservative group, Americans for Tax Reform, opted against signing onto the coalition's letter and instead sent its own letter encouraging Frist to schedule votes on judicial nominees.

Manuel Miranda, executive director of the conservative Third Branch Conference, praised Frist today for his previous efforts on judicial nominees, but argued Republicans must demand the majority leader schedule votes for the pending judicial nominees in order to help energize conservative voters this fall. "It will get out small margins," Miranda told reporters, conceding the issue would not mobilize large numbers of conservative voters. "It is by small margins that several [GOP] senators currently hold their seats." Miranda said the judge debate is a

"signature issue" for Frist, who would need conservatives for a potential White House bid in 2008. "He began with a bang, but if he ends on a whimper that could hurt him," Miranda said. "We want to help him." One GOP Senate aide dismissed Miranda's news conference today as a media ploy to pressure Republicans on a single issue. "The 'Flag Amendment' is not preventing movement on judges," said the aide, arguing the flag proposal gave conservatives a "juicier hook" than other legislative measures slated for floor debate this year.

Miranda said he expects Frist to commit to a vote on Terrence Boyle's nomination to the 4th U.S. Circuit Court of Appeals before the July Fourth recess. But conservatives worry that Frist and GOP leaders will not continue pushing votes on other pending judges in the months leading up to the November elections. "Under the old Senate tradition, judges stop after June and July," said Miranda. Frist's spokeswoman declined to comment about whether Frist would schedule a vote on Boyle's nomination before next month.

THE HILL
June 13, 2006

Conservative activists question Sen. Bill Frist's floor priorities
By Jonathan Allen

Senate Republican leaders hope to rally their base this week by passing a constitutional amendment banning flag desecration, but some GOP activists are balking at the move.

"While most of us would support such an amendment, we believe this is a misguided use of time," a coalition of dozens of interest-group leaders wrote to Republican senators in a letter they will send today.

The broadside by nomination-focused conservatives raises the prospect that an effort to fire up conservatives could backfire on Senate Majority Leader Bill Frist (R-Tenn.) as Republicans try to draw distinctions between the parties before the November election.

The line of attack echoes that of liberal Democrats who argued that last week's debate over a constitutional amendment banning gay marriage showed a Republican Party out of touch with the American public.

The conservative activists, led by Third Branch Conference chairman and former Frist aide Manuel Miranda, warned that Republicans will suffer damage to their majority if they do not escalate a simmering battle over judges before the November elections.

"If Americans continue to see obstruction and hear excuses rather than debate and votes on nominees, senators should not be surprised that, come Nov. 8, the votes they want may not be there," said Jan LaRue, Concerned Women for America's chief counsel.

Miranda, LaRue and others have been pushing Frist to adopt a more confrontational strategy on nominations before the election, in part because they fear Republican losses could doom nominees who are in the pipeline. To this point the conservatives have been on the losing end of a battle over whether to circumvent Senate rules to force simple majority votes on judicial nominations.

That maneuver, known as the "nuclear option," was placed on the shelf last year after a bipartisan group of 14 senators struck a deal in which the seven Republicans said they would oppose the move in exchange for a promise from the seven Democrats that they would support filibusters of judicial nominees only under "extraordinary circumstances," a nebulous term that leaves senators significant wiggle room.

Miranda predicted yesterday that Frist will bring the nomination of 4th U.S. Circuit Court of Appeals nominee Terrence Boyle to the floor soon but that Frist may be reluctant to move other judges.

"They are ready to give us Boyle and end there," he said.

But the Gang of 14 has not given its blessing to Boyle, whose nomination has been plagued by conflict-of-interest allegations. The Gang's seven Democrats wrote to Judiciary Committee Chairman Arlen Specter (R-Pa.) last month to ask for another hearing on Boyle. At the same time, Republicans declined to offer support, raising questions about Boyle's viability on the Senate floor.

But some Republicans argue Frist should schedule "prime time" debates over the nominees and try to force floor votes, even if he is stymied by Democratic filibusters. The battle, they say, will rally the base.

"If opponents engage, we believe the debate itself is a gain," they wrote. "If opponents obstruct through abuse of Senate rules, highlighting that obstruction is vitally important, and not just for political advantage."

While Miranda and his allies raised hackles at a press conference yesterday, many conservatives are clearly pleased with the effort to ban flag burning. It has been among the highest priorities for some conservative interest groups for years.

Tom McClusky, vice president of government affairs for the Family Research Council, acknowledged yesterday that he was "going a little off message" when he thanked Frist for bringing up the amendments to ban flag burning and gay marriage.

The flag-burning issue does not cut neatly across party lines. Majority Whip Mitch McConnell and fellow GOP Sens. Bob Bennett (Utah) and Lincoln Chafee (R.I.) have voted against similar constitutional flag-burning bans, while past Democratic supporters number in double digits.

Democrats said conservatives who think the flag-burning amendment should be on the back burner are half-right.

"The push to confirm radical judicial nominees and the flag amendment both reflect misplaced Republican priorities," said Rebecca Kirsznner, spokeswoman for Minority Leader Harry Reid (D-Nev.).

Reid has supported the amendment and will again if it comes to a vote, Kirsznner said. "But he still believes this is not what the Senate should be debating right now," she said.

It does not appear that the flag-burning measure will attract enough votes to clear the two-thirds threshold for passage of constitutional amendments.

DESERET MORNING NEWS (Utah)

Flag debate may be superseded

By Suzanne Struglinski

WASHINGTON — A coalition of conservative groups wants Senate Majority Leader Bill Frist to focus Senate floor debate on pending judicial nominations during time set aside later this month for Sen. Orrin Hatch's amendment on flag desecration.

At least 100 groups signed a letter to be sent to Frist, R-Tenn.; Hatch, R-Utah; and all the Republican senators today by the Third Branch Conference, Coalitions for America, American Family Association, 60 Plus Association, the Family Research Council and a long list of others.

The groups do not oppose Hatch's proposed constitutional amendment, which would allow Congress to pass a law outlawing the physical desecration of the U.S. flag, but say a majority of conservatives would rather see the time spent on getting judges approved.

"You are planning to devote valuable Senate floor time to debating a flag-desecration constitutional amendment," according to the letter. "While most of us would support such an amendment, we believe this is a misguided use of time."

Out of 125 conservative organization leaders who responded to a survey on whether the flag-burning amendment is a priority to get done before Nov. 1, only 18 put it toward the top of the list, according to the letter. But all 18 agreed to put judges over the flag amendment when told to pick between the two.

"We all agree that debate on judicial nominations is time better spent, and time well spent early to build up steam," according to the letter.

The letter points to 9th Circuit nominee William Myers, and 4th Circuit nominees Terrence Boyle and William Haynes as those waiting for confirmation that should be addressed.

"There's no reason why we can't consider the flag amendment along with pending judicial nominations," Hatch said. "Ultimately, the majority leader runs the floor schedule. He knows that with 60 senators publicly behind the amendment, and several more who have voted for it in the past, we're primed to bring this to the floor for a vote. But that doesn't mean we can't consider nominations as well."

The amendment had 58 co-sponsors last week, but Sen. Mary Landrieu, D-La., signed on as a co-sponsor Monday moving it up to 59, with Hatch's support making it 60. It will need 67 votes to pass.

Third Branch Conference Chairman Manuel Miranda said "time is precious" on the Senate's election-year calendar and that the flag amendment is "kind of yesterday's issue" so he would rather see the time spent on filling the vacant bench positions.

Miranda, a former Hatch aide who resigned from a position in Frist's office in 2004 amidst a scandal involving accessing Democrat computer files on judicial nominees, said this is nothing personal but that Hatch just happens to be tied to the amendment the majority of the group's members think should be put on hold — at least for now.

"These are important times and that's just the way it is," Miranda said.

Frist's office said he has not seen the letter yet but is committed to the judicial nominees and the flag amendment.

"Both issues are important," a spokeswoman said.

Vote on Judges, Not Flags, Say Conservatives
By Monisha Bansal
CNSNews.com Staff Writer
June 13, 2006

(CNSNews.com) - Sixty conservative leaders sent a letter to Republican senators Monday, urging them to vote on judicial nominations and not "waste time" on a constitutional amendment to ban flag burning.

"We write because we fear that the Majority is ignoring the impact of the nominations debate on its ability to gain the support of those small margins of voters that the Majority needs to secure unobstructed nominations," the letter states.

"By contrast, and for example, you are planning to devote valuable Senate floor time to debating a flag-desecration constitutional amendment," it continues. "While most of us would support such an amendment, we believe this is a misguided use of time."

"Our constituents will not be put off by being told that the Senate has more pressing business than judicial nominees," said Jan LaRue, chief counsel for Concerned Women for America. "We know that judges affect every area of our lives and certainly the most important issues of life, liberty and property.

"We want actions, not excuses," LaRue said at the National Press Club in Washington, D.C. "If Americans continue to see obstruction and hear excuses rather than debate and votes on nominees, senators should not be surprised that come November 8, the votes they want may not be there."

But Carolyn Weyforth, press secretary for Senate Majority Leader Bill Frist (R-Tenn.), said that since 2003, the Senate has made "considerable progress" on confirming President Bush's judicial nominees, noting that two Supreme Court justices, 28 Circuit Court judges and 116 District Court judges have been confirmed.

"[Frist] remains committed to working hard to confirm qualified judicial nominees and is still discussing with his colleagues which nominee will be brought forward next," Weyforth told Cybercast News Service.

"Both issues of judicial nominees and flag burning are important to him," Weyforth added, "and he feels that both can be addressed on the Senate floor."

The conservative coalition is pushing for votes on William Myers, a nominee for the 9th Circuit, and 4th Circuit nominees Jim Haynes and Judge Terrence Boyle. The group's letter noted that there are currently 18 Circuit Court vacancies, but these three nominees have been waiting more than a year for a vote.

Kim Gandy, president of the National Organization for Women, is strongly opposed to the three nominees.

"The three who are currently being held up are also extremely problematic in terms of their judicial record and

their record of their decisions and past political involvement," Gandy told Cybercast News Service . "I think that senators who respect the Constitution and respect individual rights really should be filibustering those nominations."

Gandy added that the push by conservatives is not new.

"The Right has tried to accomplish a vote on judicial nominees from the beginning, and have in fact succeeded in getting onto the bench some of the worst nominees in the history of the planet," Gandy said.

"The reason that so many of the other nominations have gone forward and these haven't is because there is such a strong feeling that they would not be fair judges," Gandy said.

But Manuel Miranda, chairman of the Third Branch Conference, said the appropriate response for senators who agree with such criticisms of the three nominees is to argue and vote against them on the Senate floor, not to filibuster the nominations.

"We need scheduled floor time, as if [confirming judicial nominees] was a priority," Miranda said, "like it is to us."

American Spector's Blog

Waiving the Flag for Judges - Monday, June 12, 2006

Yes, that is supposed to be "waiving," not "waving."

Just a little earlier today, a coalition of conservative groups organized by Manny Miranda of the Third Branch Conference held an important press conference to announce an overwhelming agreement that, if the choice is between passing an amendment banning flag burning, as the Senate is scheduled to consider this week, or spending the time necessary to confirm more judicial nominees, the groups strongly prefer the confirmation of judges. (In other words, they would waive the flag issue in favor of the judges.) Not that they don't approve of the flag amendment but, in the words of the American Conservative Union's David Keene, the flag issue is "more symbolic than substantive," whereas the confirmation battles are of highest substantive AND political importance. The flag issue, Keene said, is "not very salient" right now.

Of course, a bunch of GOP senators obviously consider both issues to be the equivalent of "boob bait for the Bubbas," in other words just throwaway crumbs every once in a while to keep the natives on the right from getting too restless. IN other words, the senators consider themselves to be sort of slumming with us either way, rather than understanding that judicial confirmations are crucially important not just for right-wing hot-button issues but for the protection of the Constitution itself more broadly -- AND important as well for political reasons, because voters motivated by the issue can mean the difference between victory and defeat. Such is not necessarily the case with an 18-year-old issue like flag burning. (Of course, in the best of all worlds, the Senate would consider both issues, because it wouldn't waste so much time either on other issues or, even worse, out of session. But that's a topic for another day.)

Random notes and quotes from the press conference:

From Keene: "The purpose of our gathering here today is to let members of the Senate know that we do not have a 29-minute attention span." "On the right, people are CONTINUALLY concerned" about judges. "We hope that people in the Senate don't just say, 'oh, we've done some of that' (i.e. confirmed a single judge or two judges) and move on." Also, making judicial confirmations an issue in Senate campaigns "will work to the benefit of Republican candidates."

From Jan LaRue of Concerned Women of America: Senators must understand that is is "their constitutional DUTY...[to perform their jobs] of advice and consent." "Our constituents will not be put off by being told 'we have more pressing business.'" LaRue also took direct shots at South Carolina Republican U.S. Sen. Lindsey Graham and, to a lesser extent, at Sen. John McCain, for obstructing 4th Circuit nominee Jim Haynes, a counsel at the Department of Defense.

William Greene of RightMarch.com said judicial confirmations are one of the two or three biggest issues for conservative activists nationwide, and he echoed LaRue (in effect) when he also said that the senators "better answer to their constituents" and that "they have a duty" to give final floor votes to the nominees.

Lars Liebler, a former law clerk for long-embattled circuit court nominee Terrence Boyle (now a federal district judge), noted that of the 16,000 opinions Boyle has joined, a whopping 99% have been either NOT appealed or, if appealed, not overturned -- and that of the ones that have been appealed, 93% have been affirmed by higher courts -- which is higher than the national average.

Jeff Lord, author of "The Borking Rebellion" and sometime contributor to the American Spectator web site, called on the Senate to pass reforms long pushed by Judiciary Committee Chairman Arlen Specter that would establish more formal rules and a formal timetable for considering all nominees.

Also speaking were the wonderful Jim Martin of "60-Plus," Tom McClusky of the Family Research Council, and

Pat Woodward of the Republican National Lawyers Association, while Sean Rushton of the Committee for Justice also took questions (as did Miranda, who answered them at length, but I wasn't taking notes as extensively during Q&A).

All I have to add is that these speakers were all correct. Confirming good judicial nominees with dispatch preserves the Constitution, it's good politics...and it's only fair to the nominees themselves to let them know, up or down/yes or no, whether they will become judges, rather than forcing them to put their lives on hold, often at great personal and financial cost, while waiting for senators to preen and play nasty political games.

Posted By: Quin Hillyer

CITIZENLink

Conservatives Say Senate Must Champion Judicial Nominees

by Pete Winn, associate editor

Some are setting records for length of time spent waiting for a vote.

At the National Press Club today, a coalition of conservative legal activists called on the Senate and Majority Leader Bill Frist, R-Tenn., to make up-or-down votes for the president's judicial nominees a top priority before the fall elections.

Sean Rushton, executive director of the Committee for Justice, said it's crucial the Senate proceed right away.

"Many of these nominees have been waiting a record amount of time for a vote, either on the Senate floor or at the Senate Judiciary Committee," he told CitizenLink. "We think it's important to fill these vacancies for the sake of justice and the smooth operation of our federal courts."

But Rushton — along with Manuel Miranda's Third Branch Conference — said that a few Senate Republicans may be willing to allow some nominees languish in order to avoid a confrontation with Democrats over judicial filibusters. That, they say, is unacceptable.

"We're asking that the Senate not only debate those nominees, but take ownership and actually defend these nominees publicly," Rushton said. "The Democrats have been allowed to smear these nominees without adequate rebuttal."

Lars Liebeler, a Washington, D.C., attorney, said one nominee who has been attacked unfairly is his old boss, federal District Judge Terrence Boyle, who was nominated more than five years ago to a seat on the 4th U.S. Circuit Court of Appeals.

"If you are a district-court judge, you don't have a press secretary or a PR firm who's going to be out there defending you, so you're open to attacks," the former Boyle law clerk said. "It's very difficult for you to stand up and defend yourself. That process, I think is frustrating."

Liebeler, who said he is part of an "apolitical" group of 20 or so former Boyle law clerks who have banded together to set the record straight, said the news media have wrongly attacked the judge's integrity and ethics. To say the allegations are wrong would be an understatement.

"I think people sometimes play pretty fast and loose with the facts," he said. "In this case, it's important to call people on those facts. Judge Boyle is a good judge, and his record proves that beyond question."

Emily Barton, a lawyer in private practice in Chicago who clerked for Boyle for two years, pointed to the fact that his nomination has been languishing for a record-setting time.

"In less than a week, he'll commemorate the fact that it has been one year since his nomination was voted out of committee," she said. "In a month, he'll set a second record by being the longest-standing nominee having been voted out of committee and not having received an up-or-down vote."

She called the situation simply outrageous.

"I think it's time those records stop being set — and we need to set a better precedent for future nominees."

Barton said the allegations against Boyle largely center on whether he ruled in a case in which it is alleged he had a financial interest — and the baseless charges, she said, came not from informed sources, but from a single Web article.

"This was a Web article published by a project which is funded by George Soros," the billionaire liberal activist, she said. "People can draw their own conclusions."

Barton believes the whole judicial-nominations process is in need of an overhaul.

"I think Judge Boyle is just one in a number of nominations that people have attempted to sidetrack for political reasons," she said. "I think the system is at one of the most contentious levels ever in history, and I think it is broken. We need to take a good look, as a policy matter, at what this is doing to the likelihood of getting fair, honest and experienced people on the bench when their personal lives can be attacked like this."

Bruce Hausknecht, judicial analyst at Focus on the Family Action, said one need only think of the name of Miguel Estrada to understand how broken the system is.

"He was filibustered for several years before he gave up and withdrew his own name," he said. "There was also Carolyn Kuhl, a California judge who experienced something similar with her nomination to the 9th Circuit, and she said — my interpretation — "I don't need this" and withdrew her nomination.

Add to the list Henry Saad, who was nominated for the 6th Circuit.

"Just this year, after three years of being filibustered, he withdrew his name and went home," Hausknecht said. The real trouble, according to Hausknecht, is that good judges who want to serve their country are suffering abuse at the hands of liberal politicians who have a political agenda in obstructing judges.

"Because of that, other potential appellate judges are going to look very hard at whether they truly want to force their families to go through the same type of defamation and slander and obstruction and filibuster that these other good nominees have gone through."

TAKE ACTION:

Please let your senators know you think it's unfair to let the nominees of any president languish for years without the courtesy of an up-or-down vote. Please ask your lawmakers to champion the cause of Judge Terrence Boyle and other nominees.

If you are a CitizenLink Daily Update subscriber, click on the blue Take Action button on the right side of the e-mail to be automatically logged in to our Action Center. Otherwise, [click here](#).

(Paid for by Focus on the Family Action.)

Family Research Council Joins Conservative Leaders to Urge Action on Judicial Nominees

6/12/2006 1:49:00 PM

To: National Desk

Contact: Bethanie Swendsen or JP Duffy, 866-372-6397, both of Family Research Council

WASHINGTON, June 12 /U.S. Newswire/ -- Today, Tom McClusky, vice president for Government Affairs at the Family Research Council, joined conservative leaders at a press conference to urge Senate GOP leadership to move delayed judicial nominees to the floor for a final vote.

McClusky released the following statement today:

"Throughout our history, America's judiciary has expanded its power. This attitude of judicial supremacy even led judges in the Ninth Circuit to rule that the phrase 'under God' in the Pledge of Allegiance was unconstitutional.

"Constitutional amendments are but one step in the solution to address issues under attack. We are here today to ensure our courts are stocked by judges who interpret the law -- not those who seek to make it.

"Judges such as Terrence Boyle, who was first nominated in the spring of 2001, have been held up for years by inaction in the U.S. Senate. Michael Wallace has been subject to unwarranted attacks by the highly political and leftward leaning American Bar Association and is now awaiting action by the Senate Judiciary Committee.

"If we hope to return to the days when we had three equal branches of government instead of a court that overrules them all, President Bush must continue to nominate high caliber nominees and not succumb to political deals which weaken his Constitutional authority. The U.S. Senate must move quickly to bring these nominees to an up-or-down vote; our system of justice requires it, and the American people deserve nothing less."

FOR IMMEDIATE RELEASE

JUNE 12, 2006

FOR MORE INFORMATION:

STACEY HOLLIDAY

(202) 488-7000 ext. 126

CWA's Chief Counsel Urges Senators to Act on Judicial Nominees

Washington, D.C. – Concerned Women for America's (CWA's) Chief Counsel Jan LaRue joined other conservative leaders today at a press conference to urge U.S. Senators to stop delaying and start moving on the pending nominations of qualified judicial nominees. Senators must hold hearings and bring pending nominations to the floor in order to fill the remaining 49 vacancies in the federal courts.

LaRue said, "Concerned Women for America and our half million members in all 50 states expect the Senators they've supported in past elections to fulfill their constitutional duty in the judicial nomination process. Delay, neglect and obstruction are not advice and consent. Nominees deserve and must have a hearing and a Senate vote.

"Judge Terry Boyle has been waiting more than five years for a Senate vote. That is deplorable and can only be atoned for with an up-or-down vote. He must not wait any longer.

"Jim Haynes' nomination to the Fourth Circuit has been delayed in the Senate Judiciary Committee more than a year since his hearing. Sen. Lindsey Graham (R-South Carolina) needs to back up his statement of November 11, 2003: "[T]he President's nominees deserve a straight up-or-down vote. If they get this, they will be confirmed." Senators must show up at the hearing and vote and then vote on the Senate floor.

"Our people expect their senators to stand up for judicial nominees who are committed to preserving our constitutional republic by upholding the written Constitution and respecting the limited role of a judge. We expect them to vote. Vote yes or vote no, but vote.

"If Americans continue to see obstruction and hear excuses rather than debate and votes on nominees, senators should not be surprised that come November 8, the votes they want may not be there," concluded LaRue.

(Subscription only)

June 7, 2006

Wall Street Journal

A Different Judicial Battle

The Senate is back in session, and we'll soon see if Republicans are serious about confirming President Bush's nominees for the appeals courts. Majority Leader Bill Frist kept his promise to confirm Brett Kavanaugh to the D.C. Circuit before Memorial Day, after he'd waited three years for a vote.

So who's next? Mr. Frist wanted to move Fourth Circuit nominee Terrence Boyle by Memorial Day too, but no go. A federal judge in North Carolina, Mr. Boyle has the honor of waiting longer than any appeals-court nominee in history for a floor vote. He was in Mr. Bush's first group of nominees announced on May 9, 2001 and was first nominated by Mr. Bush's father in 1991, though Democrats denied him a vote.

Democrats now say they'll filibuster his nomination. They are distorting a couple of Judge Boyle's civil rights decisions and making conflict-of-interest allegations that add up at worst to minor infractions. But Republicans don't want a fight in an election year over race or ethics. And Judge Boyle's onetime Senate champion -- Jesse Helms -- has long since retired. A controversial nominee without an angel to guide him through today's polarized Senate is in trouble.

Which brings us to William "Jim" Haynes II, another stalled Fourth Circuit nominee. Mr. Haynes was named on September 29, 2003, had a hearing two months later, and was voted out of committee in March 2004. But don't blame this delay only on Democrats. Two Republicans -- Senators John McCain and Lindsey Graham -- are also causing the holdup.

Mr. Haynes is the Pentagon's general counsel, and his transgression is to have offered legal advice on the treatment of detainees in the war on terror. The big point of contention is his role in Defense Secretary Donald Rumsfeld's decision in December 2002 to allow "coercive" interrogation techniques against al Qaeda detainees at Guantanamo.

The Pentagon says Mr. Haynes offered legal analysis; his critics distort this to say he was instrumental in forging a policy that could be used to justify "torture." But there is no evidence that anyone condoned torture, and it was the CIA, not the Pentagon, that used "waterboarding" that critics cite as the most coercive sanctioned technique. In any case, Mr. Rumsfeld rescinded his decision within six weeks after Pentagon lawyers took their concerns to Mr. Haynes, who then took them to Mr. Rumsfeld. Even if you believe the "coercive" techniques policy was a mistake, its reversal was due in no small part to Mr. Haynes, who did his duty of providing legal analysis. Mr. Haynes met with Senator McCain for an hour last month and agreed to answer written questions about the issue. Senator McCain's anger over the Air Force's tanker deal with Boeing also unfairly extends to Mr. Haynes. As general counsel, Mr. Haynes had the job of reviewing and, in some cases, redacting the small library's worth of documents the Senator demanded. A McCain spokeswoman tells us that the Senator has not made a decision about whether to support the nomination.

It's hard to see how opposing Mr. Haynes would achieve anything except win the Senators some fleeting praise in the establishment media. It wouldn't impress GOP primary voters in Mr. Graham's home state of South Carolina, an important Presidential primary state in 2008 and home to many Haynes supporters. In defeating Mr. Haynes, Mr. McCain would mainly be validating those critics who want to punish anyone associated with the war in Iraq. Is this how a President McCain would treat his appointees who come under political fire for offering honest counsel? There are 18 vacancies on the appeals-court bench -- 10% of the total -- and not many weeks left to fill them before election-year campaigning makes judicial confirmations next to impossible. Seven nominees are currently waiting for a hearing or vote. With Republicans in danger of losing Senate seats, if not their majority, now is the time to honor one of their campaign pledges from 2004 by confirming Mr. Bush's judicial nominees.

<http://www.thehill.com/thehill/export/TheHill/News/Frontpage/060706/news3.html>

THE HILL

June 7, 2006

White House Renews Push for Nominees
By Alexander Bolton

White House officials are making a concerted effort to cooperate with outside conservative groups to support and defend President Bush's nominees to the federal bench, and they are also planning to work more closely with the Senate on confirming the nominees.

The greater focus on judges comes in the wake of privately expressed criticism from conservative leaders that the White House and the GOP-controlled Senate were doing little to defend high-profile nominees such as William "Jim" Haynes and Terrence Boyle, both picked for the 4th U.S. Circuit Court of Appeals, from attacks by liberals. The White House and Senate Republicans offered spirited defenses of prior embattled nominees, such as Priscilla Owen, who now sits on the 5th U.S. Circuit Court of Appeals, and Janice Rogers Brown, who is a member of the D.C. Circuit Court. But since their confirmations and the Supreme Court confirmations of Chief Justice John Roberts and Justice Samuel Alito, GOP leaders have done little to defend other controversial nominees.

The lack of an organized defense of languishing nominees such as Haynes, Boyle and William Myers, a nominee to the 9th Circuit, prompted former clerks of the nominees and conservative activists to take matters into their own hands. Boyle's former clerks, many of whom are now prominent lawyers, joined together on their own accord to defend him from accusations that he acted improperly while a district-court judge.

Conservative activists and intellectual leaders, such as Sean Rushton, executive director of the Committee for Justice, and Professor John Yoo of the University of California at Berkeley, also began laying plans to form committees to defend other embattled nominees. Yoo was in the national spotlight earlier this year during the Alito hearings because of his writings on the legal theory of the unitary executive, which Bush has used to justify his wartime powers.

But since the Senate confirmation of Brett Kavanaugh to the D.C. Circuit Court of Appeals two weeks ago, the White House has begun to take a more active role in defending the nominees. For example, talking points circulated at the end of last week defending Boyle from accusations that he did not recuse himself from cases where he may have had conflicts of interest were written in the signature style of the White House and its ally the Republican National Committee. And administration officials are also working more closely with conservative activists to defend the nominees. Also, the Department of Justice is crafting a memo on Boyle's conduct as a judge and activists close to the White House such as Edward Whelan, president of the Ethics and Public Policy Center who authored a recent article in the conservative Weekly Standard, are stepping up their advocacy on behalf of the judicial nominees.

"I sense that," said Sen. Jeff Sessions (R-Ala.), a member of the Senate Judiciary Committee, when asked yesterday if he noticed more effort by the White House to support the judicial nominees. He added that he met with Boyle and a White House aide Monday in a meeting he said he assumed was set up by the administration. "I guess that represents a stepping up and talking about judges," Sessions acknowledged.

Sessions also said that conservatives are right to be concerned about the lack of action by Senate Republicans to defend the nominees, something he attributed to distractions caused by the busy schedule and big political issues such as immigration reform.

"I think it's time to get more serious in defending the nominees," he said.

Sen. Jim DeMint (R-S.C.), a rising star in the upper chamber's conservative circles, said that the White House is working more closely with Senate Majority Leader Bill Frist (R-Tenn.) on the judicial nominees.

"We've got to get moving faster on judicial nominees," said DeMint, who added that Frist has told him judicial nominees are a priority.

A White House official said that several of the nominees have sat in the Senate for a long time and that the administration is asking senators to make a decision about whether to confirm them or not, whether to "fish or cut bait."

The greater cooperation between the White House and conservative groups comes several weeks after White House political adviser Karl Rove and counsel Harriet Miers told conservatives in a private meeting that they would begin sending more judicial nominees to the Hill. But so far few nominees have been sent.

The White House official said that to the extent there is a push on judges it is an effort to wrap up background checks on judicial nominees and send them to the Senate more quickly. The effort is a direct recognition that the window of opportunity for getting nominees confirmed in the Senate may be closing as Election Day and the end of the 109th Congress approaches.

Sen. Lindsey Graham (R-S.C.), a member of the Judiciary Committee, has come under heavy fire from conservatives for blocking Haynes's nomination.

Yesterday, nearly 80 prominent conservative leaders including David Keene, chairman of the American Conservative Union; Paul Weyrich, chairman of Coalitions for America; Manuel Miranda, chairman of the Third Branch Conference; and Saul Anuzis, chairman of the Michigan Republican Party, delivered a letter to Graham rebuking him for "effectively blocking" Haynes's nomination in the Judiciary Committee.

"We understand that you and Senator [John] McCain [R-Ariz.] have concerns about the Bush Administration's policies on prisoners captured in the War on Terror, and about Mr. Haynes's role in implementing those policies at the Defense Department," the conservative leaders wrote.

Graham defended himself yesterday by saying that he is not blocking Haynes in committee and arguing that the

conservative leaders who signed the letter do not represent all conservatives. But Graham refused to say whether he would cast a crucial vote to pass Haynes out of committee.

<http://powerlineblog.com/archives/014324.php>

POWERLINE

June 6, 2006

Jim Haynes' listening skills

Last night, I discussed the incoherent criticism directed at Fourth Circuit nominee Jim Haynes by two retired military legal officers. It since has been pointed out to me that one of the officers, Retired Admiral Hutson, served as the Navy Judge Advocate General during the Clinton Administration, retiring in 2000. Thus, he never worked directly with Haynes, and presumably lacks first hand knowledge as to whether Haynes listens to others. The other Retired Admiral, Donald Guter, was the Navy JAG from 2000 to 2002. He retired in 2002, and so had a relatively brief overlap with Haynes.

By contrast, Major General (ret.) Michael Marchand served with Haynes until July 2005. He was an Army JAG for 31 years. During the last 12 of them, he served in positions that provided him with "significant exposure" to the various General Counsels of the Department of Defense. Marchand states, in a letter to Senators Specter and Leahy that

In my experience Mr. Haynes has been more inclusive of the Judge Advocates General and the senior service lawyers of the armed services than any General Counsel of the Department of Defense. He has consistently and repeatedly reached out to the senior lawyers of the Department of Defense on some of the most difficult legal issues to confront our armed services, our Department, and our Country. He has done so throughout his tenure in formal and informal ways. He has been respectful of our views, even on those occasions when he may not have agreed with one of more of us. The Department and its legal community -- and the Country -- have been well served.

UPDATE: William Suter, Major General, USA (Ret.), and clerk of the U.S. Supreme Court, served in the JAG Corps from 1962-1991. He worked closely with Jim Haynes in 1990-1991 when Haynes was General Counsel of the Army. Suter has written to various Senators in support of Haynes. He states:

Mr. Haynes is a superb lawyer in every respect. He performed his duties as the Army General Counsel with great distinction. He was very knowledgeable concerning military matters and fully supported the Army's mission. I found him easy to work with and considered him a valuable professional colleague. He was always available to discuss pending legal issues and we kept each other informed about important matters. He respected Judge Advocates and their opinions. He is also a man of great character and integrity.

Mr. Haynes deserves a vote on his nomination. I am confident that he will be an outstanding appellate judge.

(Subscription required)

Congress Daily PM

6 June 2006

Conservatives Rap Graham Over Judge; He Defends Stance

More than 80 conservative leaders today sent a letter to Sen. Lindsey Graham, R-S.C., accusing him of waging a "silent filibuster" against the nomination of William Haynes to the 4th U.S. Circuit Court of Appeals. While Graham today dismissed the coalition's charges, he also outlined his concerns with the nominee. "We represent a coalition of organizations that cares deeply about putting constitutionalist judges on the federal courts," wrote the leaders. "We are writing to express our concern about your lack of support for the nomination of William Haynes to the U.S. Court of Appeals for the Fourth Circuit, effectively blocking him in [the Judiciary] committee." The leaders further accused Graham of violating the constitutional prerogative of the president and the GOP majority to have an up-or-down vote on nominations, comparing his opposition to "Democrats' minority-obstructionist tactics." Graham brushed off the group's efforts to demand he support the nominee. "They are a group of people that organize around a specific event. That doesn't mean they represent conservatives," said Graham. "I represent a conservative state with a conservative philosophy on judges. But I also believe added scrutiny is needed. And I am ready to vote on all nominees that I know about." Graham said Bush administration officials that worked with Haynes on the administration's policies involving torture of war prisoners have expressed to him their concerns with Haynes' role in the "formulation of the interrogation policy. I'm listening to those people." But Graham insisted he is not officially blocking the Judiciary Committee from voting on Haynes' nomination and predicted other senators would "call for more hearings" on controversial nominees, including Haynes. Graham declined to say how he would vote on the nominee if requests for additional hearings are not met. Sen. John McCain, R-Ariz., also shares Graham's concerns with Haynes' nomination.

Despite their anger over Graham's participation in the Gang of 14 last year, the conservative coalition declined to mention Graham's role in today's letter. The bipartisan Gang of 14 prevented Majority Leader Frist from changing Senate rules to prohibit the minority from filibustering a president's judicial nomination. The Committee for Justice, which signed today's letter, said recently the conservative groups would launch a national campaign via e-mails

and telephone calls to Graham in hope of persuading the senator to support Haynes' nomination. One conservative leader predicted recently that Graham's conservative base could lash out against the senator when he runs for re-election in 2008. Haynes, who was nominated three years ago, has twice received the American Bar Association's highest rating. The group today defended Haynes' involvement in the 2003 torture scandal when he served as the Pentagon's general counsel, arguing Haynes had an "obligation to defend the legal rights of his client, the Defense Department, and to follow the legal advice of the Justice Department." -- by Greta Wodele

<http://powerlineblog.com/archives/014317.php>

June 6, 2006

POWERLINE

The incoherence of Jim Haynes' critics

According to the Washington Post, "some retired military officers have served notice" that they will oppose the nomination of Jim Haynes in the event of a confirmation battle. The two officers mentioned by the Post are both former military lawyers.

This is old news to anyone who has been reading Power Line. Indeed, as we have long noted, Sen. Lindsey Graham reportedly has been preventing a confirmation battle based partly on reports from military lawyers who are unhappy with Haynes about his role regarding the administration's policy towards war on terrorism detainees. One of the officers, retired Rear Admiral John Hutson, claims that Haynes' "unwillingness to listen to others caused him to preside over the DOD legal system during the time of its greatest debacle in memory, the abuse of detainees by military personnel around the world." This is the familiar argument of the bureaucrat on the losing side -- "they didn't listen to me," which almost always means "they didn't agree with me." In Haynes' case, moreover, it was his obligation to defer to the legal advice and policy preferences of the Justice Department and the White House, not those of career military lawyers.

As for the "great debacle" claim, Hutson's tortured formulation, ("caused [Haynes] to preside over the legal system in the time of its greatest debacle," not "caused a debacle"), betrays the weakness of his argument. And what precisely was the debacle? If Hutson is referring to Abu Ghraib, he's talking nonsense. Nothing Haynes (or Justice Department lawyers) did caused that debacle; otherwise, whatever they did to cause it would have caused other Abu Ghraibs. Indeed, the controversial memo that Haynes produced (which adhered to the legal position laid out by the Justice Department) did not include sexual humiliation as one of the permitted interrogation devices. If Hutson is referring to Guantanamo Bay, then there is no debacle. Evidence of mistreatment of prisoners there is scant. It can be argued that the decision to hold so many people at Gitmo indefinitely (regardless of how they are treated) has been a public relations set-back. But that decision was not made by Haynes. Meanwhile, retired Rear Admiral Donald Guter, apparently in response to the argument that Haynes was following Justice Department policy as he was obliged to, doubts that as a judge Haynes would have the independence or judgment to oppose unwise policies being pushed by his superiors. Either Guter is being misquoted or he was absent the day they taught law in law school. As an appeals court judge, Haynes' "superiors" would be the Supreme Court, and it would be Haynes' obligation not to oppose their decisions. It would also be Haynes' obligation as a judge not to focus on whether policies being "pushed" by the executive or the legislature are "unwise," as opposed to unlawful.

Against the incoherent views of the retired admirals, we have the testimony of Bernard Meltzer, a distinguished law professor and former assistant trial counsel at Nuremberg, who worked with Haynes in formulating the procedure for trying detainees before military tribunals. Meltzer apparently had no difficulty in getting Haynes to "listen." He reports that Haynes showed "informed and sensitive concern for the rights and legitimate interests of those who might be tried before a military commission."

No wonder Lindsey Graham has been trying to prevent a debate on the merits of Haynes.

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/05/AR2006060501124.html>

Washington Post

June 6, 2006

Opposition to Nominee

By Shailagh Murray and Charles Babington

Some retired military officers have served notice that if conservatives keep pressing for a Senate confirmation vote for judicial nominee William J. Haynes II, it won't come without a fight.

Haynes, the Defense Department's general counsel, is President Bush's choice for a seat on the U.S. Court of Appeals for the 4th Circuit. Democrats have opposed Haynes since 2003, and now some Republicans are joining them. They object to his role as the Pentagon's top lawyer when controversial policies were adopted regarding harsh treatment of detainees captured in Afghanistan, Iraq and elsewhere.

The conservative group Committee for Justice has launched a telephone and e-mail campaign against one of those Republicans, Sen. Lindsey O. Graham (S.C.). Last week, some retired military lawyers came to Graham's defense, sending letters to the Judiciary Committee that call Haynes unfit for a lifetime appointment to the appellate court.

Haynes's "unwillingness to listen to others caused him to preside over the DOD legal system during the time of its greatest debacle in memory, the abuse of detainees by military personnel around the world," wrote John D. Hutson, a retired rear admiral who was a senior Navy lawyer. Donald J. Guter, who held the same rank, wrote that he doubted Haynes would have the independence or judgment to oppose unwise policies being pushed by his superiors.

Among those praising Haynes in letters to the committee is Bernard D. Meltzer, a retired law professor and former assistant trial counsel in the trials before the International Military Tribunal in Nuremberg. Meltzer wrote that he got to know Haynes while consulting with the Pentagon and that "I was impressed by his informed and sensitive concern for the rights and legitimate interests of those who might be tried before a military commission."

<http://www.weeklystandard.com/Content/Public/Articles/000/000/012/290ixcht.asp>

6/12/2006

WEEKLY STANDARD

Lowering the Bar

The corrupt ABA judicial evaluation process.

By Edward Whelan

IF THERE WERE A LIST of lawyers least suited to assess Brett Kavanaugh's fitness to serve as a judge on the D.C. Circuit, Marna Tucker would be very high on it. Tucker's narrow specialty, divorce law, is far removed, in both substance and sophistication, from the work of the federal appellate courts--especially from the complex cases of administrative law that are the staple of the D.C. Circuit. Even worse, Tucker could hardly pretend to be impartial towards Kavanaugh. A fervent gender activist and supporter of other left-wing causes, she is a longtime ally of those who have vituperated the conservative Kavanaugh on account of his work for Kenneth Starr's independent-counsel investigation and his service as White House lawyer and staff secretary under President George W. Bush.

After nearly three years of Democratic obstruction, Kavanaugh's nomination was recently confirmed by the Senate, and he has taken his seat on the D.C. Circuit. But the untold story of his recent treatment by the ABA's Committee on the Federal Judiciary, which rates all federal judicial nominees, deserves attention, for it illustrates a longstanding defect that periodically plagues the committee's evaluations of Republican nominees.

When President Bush first nominated Kavanaugh in July 2003, the ABA committee gave him its top overall rating of "well qualified" (with a "substantial majority"--10 to 13 of the 14 voting members--rating him "well qualified" and the remaining minority rating him "qualified"). When Kavanaugh was renominated in early 2005, the committee's supplemental evaluation yielded the same "well qualified" rating. Then, as the Senate's 2005 session was wrapping up, Democratic leadership in the Senate, in a curious move, insisted that Kavanaugh's nomination, alone among all the pending judicial nominations, be sent back to the White House. The Democrats' insistence seemed at the time peevis, requiring President Bush to go through the formality of renominating Kavanaugh in January 2006. Little noticed was the fact that, under the ABA committee's practices, the renomination would trigger yet another supplemental evaluation of Kavanaugh.

There was every reason to expect the ABA's 2006 supplemental evaluation to be routine, as its purpose was simply to cover the one-year period since the previous rating. But a key fact had changed over that year: Tucker had been assigned to the ABA committee as the member responsible for the D.C. Circuit. Instead of focusing on the previous year--the only period of time not covered in the earlier evaluations--Tucker launched a scorched-earth review of Kavanaugh's entire career. She conducted 91 witness interviews--far more than the 55 that underlay the original 2003 evaluation--but showed little interest in witnesses identified by Kavanaugh. When ABA judiciary committee chairman Stephen Tober discovered (in his words) that "this was a nominee that Ms. Tucker was spending a considerable amount of time on," he did not rein her in but instead enlisted a second committee member--liberal civil-rights activist John Payton--to assist her.

Kavanaugh's relations with the previous D.C. Circuit member--also a Democratic woman--had been cordial and professional. In sharp contrast--according to administration officials whom Kavanaugh spoke with at the time--Tucker and Payton were adversarial and partisan when they interviewed Kavanaugh. Tucker criticized the White House for ending the ABA committee's privileged role in reviewing judicial candidates before they were formally nominated. Tucker and Payton displayed a bizarre interest in an internal Senate dispute (not involving Kavanaugh) that arose in late 2003 after a Republican staffer discovered on a shared computer directory a Democratic strategy memo that urged that a Sixth Circuit nominee be stonewalled in order to affect the outcome of the University of Michigan racial-preferences cases pending in that court. And Payton, who had argued those same cases in the Supreme Court in 2003, tried to probe what part Kavanaugh had played in the White House's formulation of the administration's position in those cases.

Returning from the interview, Kavanaugh told his White House colleagues that Tucker's conduct of the interview

deeply concerned him. Fortunately for Kavanaugh, his strong record and the previous ratings he had received from the ABA committee made it difficult for Tucker to do him serious damage. Her evaluation reduced his overall rating from "well qualified" to "qualified" (with a minority of the committee still finding him well qualified), but even that rating meant that he had met the committee's "very high standards with respect to integrity, professional competence and judicial temperament."

But the ABA committee and Tucker weren't through with Kavanaugh. Responding to hyperbolic Democratic rhetoric about Kavanaugh's downgrade, Tober took the extraordinary step of submitting to the Senate Judiciary Committee a statement that presented, in isolation and without attribution, the committee's supposed dirt on Kavanaugh. And Tober and Tucker supplemented this statement in a telephone conference with senators and staffers.

One witness, Tober explained, had charged that Kavanaugh had "dissembled" in an oral argument. And (among a few other criticisms) several witnesses, all supposedly using the same word, had characterized Kavanaugh's White House work as "insulated." Tober and Tucker asserted that, consistent with their committee's policies, Kavanaugh had been informed of all negative items and had been given a full opportunity to answer them. The ABA's disclosures, and the manner in which they were presented, astounded Kavanaugh and his advisers. Tucker had never told him the incendiary charge about having "dissembled" in court, he explained to White House colleagues. Had he heard it, he pointed out compellingly, he certainly would have tried to learn more about it from Tucker in order to dispute it. And, indeed, it appears that in the original charge the term "dissembled" was misused. Questioned in the telephone conference about the charge, Tucker stated that the "quote was 'He did not handle the case well as an advocate; he was not forceful, and when he dissembled, he did not argue his case clearly.'" The quoted statement makes little sense: It would be peculiar to criticize dissembling (a form of lying) merely for its effect on clarity, rather than as an intrinsic evil. Tucker herself, according to an unpublished transcript of the telephone conference, interpreted the charge merely to mean that Kavanaugh "did not respond appropriately" to questions. But Kavanaugh was never given a chance to contest the charge. And Senate Democrats, handed the ammunition by Tober and Tucker, profligately highlighted the "dissembling" charge to impugn Kavanaugh's integrity.

As for the charge that Kavanaugh's White House experience was "insulated": It was clear to Kavanaugh that Tucker herself was committed to that view. She even ignorantly insisted that, as staff secretary overseeing the full range of executive-branch decisions, he was exposed only to a "very narrow band" of views.

With hindsight, only a naïf would believe that Tucker and Senate Democrats did not work together to engineer the return of Kavanaugh's nomination in December 2005. The most sensible hypothesis is that Tucker signaled that she was well positioned to inflict damage on Kavanaugh--and that sending the nomination back to the White House would enable her to do so through a supplemental evaluation. Why else would Senate Democrats have insisted on sending the nomination back?

The bigger question is why a highly partisan divorce lawyer was ever appointed to the committee in the first place. The sitting ABA president, during his one-year term, has plenary authority to fill the five or so vacancies that arise each year. (The committee chairman and the 14 other members serve staggered three-year terms.) With the ABA's transformation over the last few decades from an apolitical professional organization into a liberal interest group, ABA presidents and the bar activists who vie for influential ABA positions have trended leftwards. Current ABA president Michael S. Greco, a zealous liberal, presumably selected Tucker because of, not in spite of, her partisan credentials.

Tober's role in Tucker's excesses is also significant. Under the committee's procedures, the chairman and the circuit member who conducts the investigation have extraordinary practical clout in shaping the views of the other committee members, as they prepare the report that goes to the full committee. That Tober did not try to restrain Tucker, but instead teamed her up with another liberal activist, suggests a woeful inattention on his part to partisan conflicts of interest.

Not coincidentally, Tober recently oversaw the committee's remarkable "not qualified" rating of Fifth Circuit nominee Michael B. Wallace, a highly respected attorney and former Supreme Court law clerk for the late William Rehnquist. In 1987, when Wallace served on the board of the Legal Services Corporation, Tober presented strikingly intemperate testimony to an LSC committee that Wallace chaired. Opposing a proposed regulation to require that boards receiving LSC funds have bipartisan membership (as does the LSC itself), Tober flamboyantly accused Wallace of attempting to "fashion a political bias litmus test" and of having a "hidden agenda," and he vowed to disobey the regulation if it became law.

The transcript of Tober's testimony, which also includes a number of loopy constitutional arguments, makes one wonder why Tober has any role in evaluating judicial nominees. It's even more disturbing that he would not see fit to recuse himself from reviewing the nomination of Wallace, for whom he plainly bears a strong animus.

Perhaps Tober will provide a persuasive explanation for the committee's negative rating of Wallace. But one lesson from the Kavanaugh process is that Tober's explanations should not be accepted at face value. In any event, it's long past time for the ABA to take serious steps to ensure the selection of committee members who will not let political bias infect their evaluations of judicial nominees. Absent such steps, the Senate Judiciary Committee should deprive the ABA committee of the privileged status it has long been accorded.

-Edward Whelan is president of the Ethics and Public Policy Center and a contributor to National Review Online's Bench Memos blog on judicial nominations.

<http://powerlineblog.com/archives/014292.php>

POWERLINE

June 05, 2006

Arlen Specter or Tom Daschle, take your pick

This lead in today's Post story by [Chris Cillizza](#) about Sen. Lindsey Graham is priceless:

No longer content with bashing Democrats for their obstruction of President Bush's judicial nominees, a coalition of conservative groups is now turning its attention to a prominent Republican -- Sen. Lindsey O. Graham (S.C.). Give that liberal a blog!

The story is great news, though. I've referred to Senator Graham as "the Arlen Specter of the south." In some ways, though, the better comparison is to Tom Daschle. As with Daschle, the voters in Graham's conservative home state probably have little idea of Graham's true ideological stance. Sean Rushton makes this point when he says:

A key reason why Lindsey Graham is Senator Graham is because he ran as opposed to the obstruction of the president's judicial nominees. We hope he'll remember that.

Graham is widely thought (along with Senator McCain) to be obstructing the nomination of Jim Haynes, the general counsel of the defense department. Graham apparently has tight connections with military lawyers who disliked the Pentagon's legal position on detainee interrogations. The Post quotes a spokesman for Graham who expresses concern that Haynes may not have been receptive enough to "advice from the military." However, Haynes was obliged to take his legal advice (if that's what the spokesman is referring to) from the Justice Department and the Office of White House Counsel, and he did so.

If Senator Graham nonetheless feels that Haynes is unfit to serve on the Fourth Circuit by virtue of his legal memos (or for any other reason) that's fine. But let's have the debate and the vote.

Note: This article was republished in the NY Sun (<http://www.nysun.com/article/33859>), The (SC) State

(<http://www.thestate.com/mld/thestate/news/nation/14742315.htm>), and The (TN) Commercial Appeal.

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/03/AR2006060300555.html>

WASHINGTON POST

June 4, 2006

Conservatives Backing Nominee Look at Graham

WASHINGTON POST

By Chris Cillizza

No longer content with bashing Democrats for their obstruction of President Bush's judicial nominees, a coalition of conservative groups is now turning its attention to a prominent Republican -- Sen. Lindsey O. Graham (S.C.). The campaign, led by the Committee for Justice, is aimed at persuading Graham to allow a vote on William James Haynes II, the general counsel at the Department of Defense and a nominee for the U.S. Court of Appeals for the 4th Circuit. Although the campaign is in its infancy, organizers expect it to develop into a national e-mail and telephone lobbying effort.

"A key reason why Lindsey Graham is Senator Graham is because he ran as opposed to the obstruction of the president's judicial nominees," said Sean Rushton, executive director of the Committee for Justice. "We hope he'll remember that."

Graham insists he has engaged in no formal obstruction of Haynes, nor has he enlisted other senators to do so. Along with colleague and political ally John McCain (R-Ariz.), Graham has expressed concern regarding the advice Haynes provided the Bush administration on the treatment of detainees captured in the war on terrorism.

"The role Mr. Haynes played as DOD general counsel formulating these policies and whether he was receptive to legal advice from the military will be a line of inquiry when his nomination is brought up," said Kevin D. Bishop, communications director for Graham.

Haynes was nominated in 2003.

Opposing conservatives on one of their pet issues carries political risks for both Graham and McCain. Since winning the seat vacated by the late Sen. Strom Thurmond (R) in 2002, Graham has faced occasional opposition from his party's base, a resistance that hardened when he joined a bipartisan group of senators -- the "Gang of 14" -- to defuse a showdown on judicial nominees.

Charleston developer Thomas Ravenel, who narrowly lost a bid for the GOP Senate nomination in 2004, has encouraged speculation that he might mount a primary challenge to Graham in 2008 but is seeking state office in 2006.

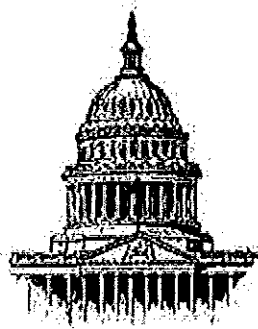
McCain, who has made clear his intentions to run for president in 2008, has openly courted conservatives over the past year in an attempt to heal rifts caused by his primary challenge to George W. Bush in 2000. That effort has met with considerable success to date, progress that could be jeopardized by another high-profile battle over

judicial nominations.

Sean Rushton
Executive Director
Committee for Justice
1275 Pennsylvania Avenue, NW
Tenth Floor
Washington, DC 20004
202-481-6853 direct
202-487-6439 cell
www.committeeforjustice.org

From: "Harder, Cherie (Frist)" <Cherie_Harder@frist.senate.gov>
Date: Thursday, July 20, 2006 4:45 PM
To: "Harder, Cherie (Frist)" <Cherie_Harder@frist.senate.gov>
Attach: image001.jpg; image001.jpg
Subject: Fyi: FRIST HAILS CONTINUED PROGRESS ON JUDICIAL NOMINEES

The Senate just confirmed Neil Gorsuch to the 10th Circuit of Appeals and Bobby Shepherd to the 8th Circuit, as well as two district court judges. Thought the below would be of interest:



BILL FRIST

U.S. SENATE MAJORITY LEADER • TENNESSEE

FOR IMMEDIATE RELEASE
July 20, 2006

Amy Call (202) 224-1865
 Bob Stevenson (202) 224-4445
 Carolyn Weyforth (202) 224-9346

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WASHINGTON, D.C. — U.S. Senate Majority Leader Bill Frist, M.D., (R-Tenn.) made the following statement today after the Senate confirmed two federal appeals court judges and two district court judges:

“Today, the Senate continued its progress on judicial nominees with the confirmation of four exceptionally qualified nominees to the federal bench. I will continue to fight to ensure that the Senate fulfills its constitutional duty of advice and consent by confirming qualified nominees to our judiciary who practice judicial restraint and respect the rule of law.”

The Senate confirmed Neil M. Gorsuch to the U.S. Court of Appeals for the 10th Circuit, Bobby E. St to the U.S. Court of Appeals for the 8th Circuit, Daniel Porter Jordan III to the U.S. District Court for the Southern District of Mississippi, and Gustavo Antonio Gelpi to the U.S. District Court for the District of Puerto Rico.

Currently, 95 percent of all judgeships are filled, including 91.6 percent of all circuit court judgeships and 95.8 percent of all district court judgeships. Since Sen. Frist became majority leader, the Senate has made considerable progress on President Bush’s judicial nominees, including confirming two Supreme Court justices, two circuit court judges, and 121 district court judges, and decreasing the number of circuit court vacancies by 40 percent. Overall, the Senate has confirmed 87 percent of President Bush’s judicial nominees, giving him the highest confirmation rate of federal judges since President Reagan.

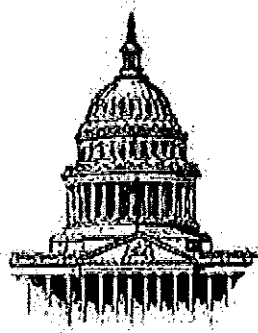
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06-343

3/4/2017

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From: "Goeglein, Tim"
Date: Thursday, July 20, 2006 5:32 PM
To: "Sinatra, Nicholas A."
Attach: image001.jpg; image001.jpg
Subject: FW: FRIST HAILS CONTINUED PROGRESS ON JUDICIAL NOMINEES

Nick,

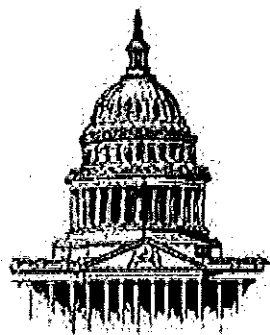
Please distribute widely.

Thanks,

tsg

From: Harder, Cherie (Frist) [mailto:Cherie_Harder@frist.senate.gov]
Sent: Thursday, July 20, 2006 5:45 PM
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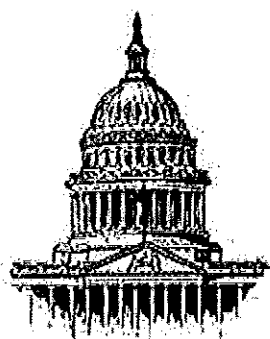
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Gelpi done!



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06-343

From: "Friedrich, Dabney"
Date: Thursday, July 20, 2006 8:54 PM
To: <Matthew.Friedrich2@usdoj.gov>
Attach: image001.jpg; image001.jpg; image001.jpg
Subject: Fw: Fyi: FRIST HAILS CONTINUED PROGRESS ON JUDICIAL NOMINEES

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

From: Harder, Cherie (Frist) <Cherie_Harder@frist.senate.gov>
Sent: Thu Jul 20 17:45:04 2006
Subject: Fyi: FRIST HAILS CONTINUED PROGRESS ON JUDICIAL NOMINEES

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Mississippi, and Gustavo Antonio Gelpi to the U.S. District Court for the District of Puerto Rico.

Currently, 95 percent of all judgeships are filled, including 91.6 percent of all circuit court judgeships and 95.8 percent of all district court judgeships. Since Sen. Frist became majority leader, the Senate has made considerable progress on President Bush's judicial nominees, including confirming two Supreme Court justices, 31 circuit court judges, and 121 district court judges, and decreasing the number of circuit court vacancies by 40 percent. Overall, the Senate has confirmed 87 percent of President Bush's judicial nominees, giving him the highest confirmation rate of federal judges since President Reagan.

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06-343

From: "Goeglein, Tim"
Date: Friday, July 21, 2006 7:49 AM
To: "Sinatra, Nicholas A."
Attach: image001.jpg; image001.jpg
Subject: FW: FRIST HAILS CONTINUED PROGRESS ON JUDICIAL NOMINEES

Please ask me

tsg

From: Harder, Cherie (Frist) [mailto:Cherie_Harder@frist.senate.gov]
Sent: Thursday, July 20, 2006 5:45 PM
Subject: Fyi: FRIST HAILS CONTINUED PROGRESS ON JUDICIAL NOMINEES

The Senate just confirmed Neil Gorsuch to the 10th Circuit of Appeals and Bobby Shepherd to the 8th Circuit, as well as two district court judges. Thought the below would be of interest:



BILL FRIST

U.S. SENATE MAJORITY LEADER • TENNESSEE

FOR IMMEDIATE RELEASE
July 20, 2006

Amy Call (202) 224-1865
Bob Stevenson (202) 224-4445
Carolyn Weyforth (202) 224-9346

FRIST HAILS CONTINUED PROGRESS ON JUDICIAL NOMINEES

WASHINGTON, D.C. — U.S. Senate Majority Leader Bill Frist, M.D., (R-Tenn.) made the following statement today after the Senate confirmed two federal appeals court judges and two district court judges

“Today, the Senate continued its progress on judicial nominees with the confirmation of four exceptionally qualified nominees to the federal bench. I will continue to fight to ensure that the Senate fulfills its constitutional duty of advice and consent by confirming qualified nominees to our judiciary who practice judicial restraint and respect the rule of law.”

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Currently, 95 percent of all judgeships are filled, including 91.6 percent of all circuit court judges and 95.8 percent of all district court judgeships. Since Sen. Frist became majority leader, the Senate has made considerable progress on President Bush's judicial nominees, including confirming two Supreme Court justices, 31 circuit court judges, and 121 district court judges, and decreasing the number of circuit court vacancies by 10 percent. Overall, the Senate has confirmed 87 percent of President Bush's judicial nominees, giving him the highest confirmation rate of federal judges since President Reagan.

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06-343