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Subject: Memos

Support Grows For Judicial Memo Whistleblower

By Jeff Gannon

Talon News

December 3, 2003

WASHINGTON (Talon News) -- A Republican staffer on the Senate Judiciary Committee was placed on administrative leave last week in the wake of a U.S. Capitol Police investigation into the release of memos describing strategies for Democrats to use regarding judicial nominees.

Committee Chairman Sen. Orrin Hatch (R-UT) told reporters he took the action because, "I am mortified that this improper, unethical and simply unacceptable breach of confidential files may have occurred on my watch."

Democrats on the committee have expressed outrage over the memos' release to the Wall Street Journal in which their strategy to delay and defeat President Bush's judicial nominees when they were in the majority was outlined. The memos detailed meetings with liberal groups like People for the American Way and NARAL who suggested which judges to block and the tactics to use against them.

Democrats have remained silent on the content of the memos, instead focusing on how they were obtained.

The unnamed staffer has denied the allegations to investigators. Some suggest that there may have been no criminal activity at all, depending upon when the memos were obtained and considering their content.

It is believed that the memos came from the committee's servers, but it was not until the Republicans took control of the Senate in 2003 that the computers were segregated according to party affiliation. When the Democrats ruled the panel, the servers were accessible to all staffers.

Kay Daly, President of the Coalition for a Fair Judiciary told Talon News, "If Kennedy and Durbin have heartburn over some of these things, they should go see Patrick Leahy."

She pointed out that it was Leahy who opened up the servers when Democrats took control.

She added, "Hatch changed it back. If these were accessed when the Democrats were still in charge, no crime has been committed."

Daly praised the actions of the staffer who blew the whistle on what she considers unethical conduct by Senate Democrats.

She said, "This guy should be given a medal -- he's a hero, he saw wrongdoing and did something about it."

Daly asserts that the content of the memos describes unethical conduct, the most egregious of which is the racial and sexual discrimination against certain judicial nominees. Equally troubling to her is the NAACP's successful attempt to convince Senate Democrats to delay confirming judges to the 6th Circuit to assure that the landmark University of Michigan affirmative action case was decided in their favor.

Jonathan Stein of the Hofstra University Law Review believes that firing the staffer may be unconstitutional under whistleblower laws. He cites several cases to support his argument that the staffer's actions were consistent with his First Amendment Rights.

Gary Aldrich, a former FBI agent and whistleblower on the Clinton White House agreed, but was less certain of the legal basis for such a defense. Still, he urges the staffer to contact the Patrick Henry Center for Individual Liberty, of which he is president and founder for assistance.

Both Aldrich and Daly expressed disappointment in the Republican leadership's capitulation to the Democrat demands on the matter. Democrats on the Senate Intelligence Committee have yet to apologize, disavow or discipline one of their staffers who authored a memo that Chairman Sen. Pat Roberts (R-KS) called an "attack plan" to use classified information against President Bush in the upcoming election.