

**Received(Date):** 7 MAY 2003 17:47:56  
**From:** Ashley Snee ( CN=Ashley Snee/OU=WHO/O=EOP@Exchange [ WHO ] )  
**To:** Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )  
**Subject:** : FW: 5/9 Judicial Independence #3 - to be staffed out  
[P\\_Z8S8G003\\_WHO.TXT\\_1.doc](#)

##### Begin Original ARMS Header #####  
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)  
CREATOR:Ashley Snee ( CN=Ashley Snee/OU=WHO/O=EOP@Exchange [ WHO ] )  
CREATION DATE/TIME: 7-MAY-2003 17:47:56.00  
SUBJECT:: FW: 5/9 Judicial Independence #3 - to be staffed out  
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN  
##### End Original ARMS Header #####

Ari is inclined to give a preview of the Friday event tomorrow. ; Are there many changes made to this version? ; I'll also need it for the fact sheet. ; thanks

-----Original Message-----  
From: Ritacco, Krista L.  
Sent: Wednesday, May 07, 2003 4:52 PM  
To: Snee, Ashley  
Subject: FW: 5/9 Judicial Independence #3 - to be staffed out

;  
-----Original Message-----  
From: Campbell, Anne E.  
Sent: Tuesday, May 06, 2003 6:07 PM  
To: Staff Secretary  
Cc: Ritacco, Krista L.; Hernandez, Israel; Ralston, Susan B.; Carroll, Colleen M.; Jones, Brian C.; Vargo, Erin A.; Reilly, Jeannette B.; Kropp, Emily L.; Kavanaugh, Brett M.  
Subject: 5/9 Judicial Independence #3 - to be staffed out

With Staff Secretary - to be staffed. ;  
Comments are due at 2pm tomorrow (5/7) ;  
Thank you.  
ATT CREATION TIME/DATE: 0 00:00:00.00  
File attachment <P\_Z8S8G003\_WHO.TXT\_1>

Remarks on Judicial Independence and Judicial Confirmation Process  
May 9, 2003  
Draft #3

Thank you all very much, and welcome to the White House. More than 200 years ago this month, our Founding Fathers gathered in Philadelphia to draft the Constitution. When they finished four months later, they had created something remarkable: a truly independent judiciary.

Our Founding Fathers were wise men. They knew that freedom and justice depend on fair and impartial judges. And they knew that politics can poison the judiciary, by preventing judges from doing their duty and upsetting the balance of power between our three branches of government. So they designed a system where the President alone would nominate judges, and the Senate would vote up or down on the nominees within a reasonable amount of time.

Today, we are facing a Constitutional crisis. The judicial independence that our Founding Fathers enshrined in the Constitution is in jeopardy. The swift justice promised to all Americans is endangered. And the judicial confirmation process is broken.

Highly qualified judicial nominees are waiting years to get up-or-down votes from the Senate, while partisans search in vain for reasons to reject them. Their obstructionist tactics are setting bad precedents that threaten judicial independence. Meanwhile, vacancies on the bench and overcrowded court dockets are causing lengthy delays for citizens seeking justice.

I want to fix this problem and make the judicial confirmation process work as the Framers intended. We have a responsibility to uphold the founding ideal of a truly independent judiciary.

### **Acknowledgments**

- Senators and bar leaders: TK

Exactly two years ago, I announced my first 11 judicial nominees to the federal appeals courts. I chose men and women of talent and integrity, highly qualified nominees who represent the mainstream of American law

and American values. Eight of them waited more than a year to get an up-or-down floor vote from the Senate. Four of them are still waiting. That's two years that these men and women have had to put their lives on hold. And that's a disgrace.

Since taking office, I have sent to the Senate 42 highly qualified nominees for the federal courts of appeals. To date, only 22 of them have received a vote in the Senate, and 10 of the remaining 20 nominees have been waiting more than a year for a floor vote. More appeals court nominees have had to wait over a year for a hearing in my Presidency than in the last 50 years combined. This is not just business as usual. This is absurd, and it's hurting America.

The Senators who are playing politics with these nominees are depriving the American people of top-notch judges. I take my Constitutional obligation to nominate judges seriously, and I choose my nominees with great care. The men and women I have nominated are a historically diverse group whose character and credentials are impeccable.

This group includes Miguel Estrada, my selection for the D.C. Circuit Court of Appeals. Miguel Estrada has served in the Justice Department under Presidents of both political parties. He has argued 15 cases before the U.S. Supreme Court, and he has earned the American Bar Association's highest mark, a unanimous rating of well-qualified. If confirmed, Miguel would be the first Hispanic American ever to serve on a court that is often considered the second highest in the land.

Miguel Estrada's nomination has strong support from citizens and leaders in both parties, and from a majority of Senators. Yet after two years, he still cannot get an up-or-down floor vote. A group of Democratic Senators has forced Miguel to answer questions not asked of other nominees, sought confidential Justice Department memos not sought for other appeals court nominees, and filibustered for three months to prevent a vote on his nomination.

Never before has there been a successful filibuster to prevent an up-or-down floor vote on an appeals court nominee. This is an unprecedented move that threatens judicial independence. At a time when Americans are fed up with partisanship and our courts face a vacancy crisis, this is a dangerous move in the wrong direction.

Miguel Estrada is not the only judicial nominee who has been mistreated by partisans in the Senate. Justice Priscilla Owen, a nominee to the Fifth Circuit in Texas, has also become the target of a filibuster. Priscilla Owen is an extraordinarily qualified nominee who has served with distinction on the Texas Supreme Court since 1995. Like Miguel Estrada, she has earned the American Bar Association's highest rating of unanimous well-qualified. And she has strong bipartisan support, including endorsements from three former Democrat Texas Supreme Court Justices with whom she served and 15 past Presidents of the Texas Bar. Yet Priscilla Owen has been waiting two years for an up or down vote.

The list goes on, but the trend is clear. Of the 22 nominees waiting for a vote, most have served as judges and all who have been rated by the American Bar Association have received "well-qualified" or "qualified" ratings. Some Democrat Senators have referred to those ratings as the "gold standard." Yet these same Senators ignore those high marks when it comes to nominees they cannot pigeonhole, and opt instead to apply a double standard.

Senators Bill Frist and Orrin Hatch have worked hard to overcome these stall tactics and they are doing a great job. I know that these problems are not new. In the past three Presidential Administrations, too many nominees never received votes. Now the situation is worse than ever, and the need for reform is greater than ever.

While Senators bicker and stall and nurse old grudges, American justice is suffering. Dockets are overcrowded, judges are overworked, and citizens are waiting too long for their cases to be heard. Regional appeals courts have a 14 percent vacancy rate, and filings in those courts reached an all-time high again last year. The Sixth Circuit, which covers Ohio, Michigan, Kentucky, and Tennessee, has four vacancies on a 16-judge court. The D.C. Circuit has four vacancies on a 12-judge court.

Of the 22 open seats that could be filled by nominees waiting for Senate confirmation, 18 have been classified as "judicial emergencies" by the Judicial Conference of the United States. The secretary of that group says this shortage of judges is "staggering." The American Bar Association calls this an "emergency situation." And the Chief Justice recently said that these vacancies and rising caseloads threaten the proper functioning of the

federal courts, and asked the Senate to give every nominee a prompt up-or-down vote.

The bitterness and partisanship that have taken over the judicial confirmations process also threaten judicial independence, by forcing nominees to commit to a point of view on controversial issues before they have even taken the bench. In America, our entire rule of law – and our entire democracy – depend on judicial independence. A confirmations process that undermines judicial independence, while also failing to fill benches and possibly scaring away future candidates, is clearly broken.

Six months ago, I proposed a plan to fix this process and end the vacancy crisis. This plan would apply no matter who lives in this house, or who controls the Senate. Here's how it would work: Federal judges on the Courts of Appeals and District Courts would notify the President of their intention to retire at least a year in advance, whenever this is possible. The President would then submit a nomination to the Senate within 180 days of receiving notice of a federal court vacancy or intended retirement. The Senate Judiciary Committee would hold a hearing within 90 days of receiving a nomination. And the full Senate would hold an up-or-down floor vote on a nominee no later than 180 days after the nomination is submitted. That's six months, and that's plenty of time.

Since I announced this plan, the Judicial Conference has done its part, by adopting the one-year advance notice requirement for judges. I have done my part, by committing to submit nominations within 180 days and signing an Executive Order to formalize this commitment. Now we're waiting on the Senate to do its duty.

The bipartisan group of freshman Senators who are here today share my commitment to make this process work again. As newcomers, they see the futility of the endless bickering and one-up-man-ship that blocks good judges from the bench.

These Senators have proven that they are willing to put aside the past and restore civility and dignity to this process. Under the leadership of Republican John Cornyn of Texas and Democrat Mark Pryor of Arkansas, they sent a letter to the Senate leadership last week. This is what it said:

“None of us were parties to any of the reported past offenses, whether real or perceived. None of us believe that the ill will of the past should dictate the terms and direction of the future. Each of us firmly believes that the United States Senate needs a fresh start.”

I believe a fresh start is possible, and I stand with these Senators as they work toward making that happen. My plan offers a simple way to end the cycle of bitterness and move forward for the sake of the country. The American people – and the ideals of American justice – deserve no less.

May God bless each one of you, and may He continue to bless the United States of America.

*Drafted by Colleen Carroll, Office of Speechwriting*

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