

# Withdrawn/Redacted Material

## The George W. Bush Library

| DOCUMENT NO. | FORM       | SUBJECT/TITLE                                                                                                         | PAGES | DATE       | RESTRICTION(S) |
|--------------|------------|-----------------------------------------------------------------------------------------------------------------------|-------|------------|----------------|
| 001          | Memorandum | WH Activity [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]                                               | 2     | N.D.       |                |
| 002          | Memorandum | Infrastructure for High Court Nomination [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]                  | 2     | N.D.       |                |
| 003          | Email      | [Email] [3 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS] - To: Wendy Grubbs, et al. - From: Makan Delrahim | 3     | 05/23/2003 |                |
| 004          | Draft      | Before Announcement of Retirement [4 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]                         | 4     | 6/10       |                |

### COLLECTION TITLE:

Counsel's Office, White House

### SERIES:

Kavanaugh, Brett - Subject Files

### FOLDER TITLE:

High Court

### FRC ID:

9795

### RESTRICTION CODES

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

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

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

#### Deed of Gift Restrictions

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

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

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

#### Records Not Subject to FOIA

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



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|--------------|------------|------------------------------------------------------------------------|-------|------|----------------|
| 005          | Memorandum | Basic Plan [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS] | 2     | N.D. |                |
| 006          | List       | D.C. Cir [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]   | 2     | N.D. |                |
| 007          | List       | [List] [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]     | 2     | N.D. |                |

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# Withdrawn/Redacted Material SUPERSEDED

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|--------------|------------|-----------------------------------------------------------|-------|------------|----------------|
| 001          | Memorandum | WH Activity                                               | 2     | N.D.       | P5;            |
| 002          | Memorandum | Infrastructure for High Court Nomination                  | 2     | N.D.       | P5;            |
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| 004          | Draft      | Before Announcement of Retirement                         | 4     | 6/10       | P5;            |
| 005          | Memorandum | Basic Plan                                                | 2     | N.D.       | P5;            |
| 006          | List       | D.C. Cir                                                  | 2     | N.D.       | P5;            |
| 007          | List       | [List]                                                    | 2     | N.D.       | P5;            |

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series of milestones  
1) WH activity 2) Senate 3) coalition  
⊗ periodic closure votes not  
going to do it

Prayer

### General

- ✓ The group decided that it would be useful to have a WH briefing. To that end, develop list of 200 of our media surrogates and contacts with key organizations (in order of importance). [Joel, Jennifer]. List reviewed for additions/modifications/omissions and then submitted to Tim at WH. [Leonard]. 177
- Attend Wednesday ATR meeting for the purpose of providing a briefing on what the Umbrella Group is doing. [Boyden/Sean]

### Grassroots

- Contact Damon at Americans for Tax Reform to get them vested in the effort. [Joel, Jennifer]
- Establish Traci Sharp Day as point-of-contact for communications with the State Policy Network groups. [Joel].
- Contact Connie Mackey at FRC and establish her as a point-of-contact for communications with family policy groups. [Joel].
- Contact Don Hodel at Focus on the Family to get them vested in the effort, and to designate a principal to be involved in umbrella group efforts and meetings. [Ed].
- Draft a complete list of all grassroots organizations that would be a part of the coalition, along with a contact person for each (where known). [Joel, Jennifer]. Upon circulation, note additions and fill all gaps. [Everybody]. Kay Daly should be contacted for her list of grassroots organizations, and those should be consolidated. [Jennifer].
- Once comprehensive grassroots list is completed, each group should be approached to obtain information on: email capability; demographic strength in key southern states, Maine, Rhode Island, and Pennsylvania; and various publications and web pages at its disposal. Create a spreadsheet. [Jennifer].

### Earned Media/Media Outreach

- Identify point-of-contact at each public interest legal group for the purpose of having them serve as media spokesmen and to provide media contacts with whom they can be helpful. [Ed]. Contact each of them to secure their approval to be on the media surrogate list. [Joel]. Ascertain what media outlets they can each be helpful with. [Sean]
- Designate 24 people from media outreach list who would attend confirmation hearings. ✓ [Brett]. Communicate interest and need in having them there; secure attendance. [Leonard].
- Create spreadsheet of media contacts/outlets that each organization has a relationship with and with which they can be helpful in the event we need people/articles placed. This spreadsheet should include smaller papers, local/regional radio stations, radio talk show hosts or particular radio shows. [Sean].
- Suggest any suggestions to media surrogates list. [Everybody].



### Research



- Task out FEC database research re: connections between anti-nominee groups and their supporters vs. Senate Democrat campaigns. **[Kannon]**.
- Task out research re: opposition groups, including talking with Byron York, Barbara Ledeen, and Bob Huberty. **[Kannon]**.
- Complete question/answer exchanges research. **[Kannon]**

### Grass Tops

- Talk to Bridget Wagner about creating a grass tops list of 5-7 opinion elites from each major Center-Right organization. Have her ascertain what each can do: (1) contact Senators (which?); (2) complete op/eds or participate in editorial board meetings, and (3) be present at the confirmation hearings. **[Ed]**.

**NEXT MEETING:** Monday, June 23<sup>rd</sup>, 10 AM, Baker & Hostetler.



Americans for Tax Reform  
Grover Norquist

Cato Institute  
Robert Levy

Center for Individual Freedom  
Eric Schippers

Christian Coalition  
James Backlin

Citizens for a Sound Economy  
Paul Hilliar

Coalition for a Fair Judiciary  
Kay Daly

Committee for Justice  
Boyden Gray (and Wilmer Cutler & Pickering) + Sean Rushton

Competitive Enterprise Institute  
Fred Smith

Concerned Women for America  
Jan LaRue

Crisis Magazine  
Deal Hudson

Defender of Property Rights  
Chris Byrnes

Eagle Forum  
Lori Waters / Virginia Armstrong

Family Research Council  
Richard Lesner / Connie Mackey

Focus on the Family  
Tom Minery / James Dobson

Free Congress Foundation  
John Nowacki



Independent Women's Forum  
Patty Reed

Institute for Justice  
William Mellor / Clint Bollick

Knights of Columbus  
Jeffrey Bell / Carl Anderson

National Rifle Association  
Charles Cunningham

Prison Fellowship  
Mariam Bell

Progress for America  
Jennifer Oschal

Republican Attorney Generals Association  
Tim Barnes & Ben Cannating

Republican National Lawyers Association  
Michael Thielen + President from St. Louis

Salem Communications  
David Spady

Southern Baptist Convention  
Richard Land (SP?)

U.S. Chamber of Commerce  
Stan Anderson

---

Philip D. Oliver  
University of Arkansas at Little Rock

Professor Stephen M. Bainbridge  
UCLA School of Law

Charles H. Bell, Jr.  
Bell, McAndrews, Hiltachk & Davidian

John C. Eastman  
Professor of Law, Chapman University School of Law

Gail Heriot  
University of San Diego School of Law

Michael Ramsey  
University of San Diego Law School

Kent Scheidegger  
Criminal Justice Legal Foundation

Eugene Volokh  
UCLA School of Law

Joseph C. Smith, Jr.  
Bartlit Beck Herman Palenchar & Scott

Frank A. Shepherd  
Pacific Legal Foundation's Atlantic Center

Nicolas J. Gutierrez  
Diaz, O'Naghten & Borgognoni, LLP

Robert Barker  
Powell, Goldstein, Frazer & Murphy LLP

Betsy Dorminey  
Wimberly, Lawson, Steckel, Nelson & Schneider

Steven Calabresi  
Northwestern University School of Law

Richard W. Painter  
University of Illinois College of Law

Stephen B. Presser  
Northwestern University School of Law

James Bopp, Jr.  
Bopp, Coleson & Bostrom

Richard W. Garnett  
Notre Dame Law School

Steve McAllister  
University of Kansas School of Law



John S. Baker, Jr.  
LSU Paul M. Hebert Law Center

Bob Eitel  
Robert S. Eitel, L.L.C.

Randy E. Barnett  
Boston University School of Law

Jennifer Braceras  
Independent Women's Forum

Dean Ron Cass  
Boston University School of Law

Adam Pritchard  
University of Michigan Law School

David McGowan  
University of Minnesota Law School

Michael Stokes Paulsen  
University of Minnesota Law School

R. Pepper Crutcher, Jr.  
Balch & Bingham, LLP

Mike Wallace  
Phelps Dunbar LLP

Jeff Ballabon  
Primedia

Robert P. George  
Princeton University

Robert Giuffra  
Sullivan & Cromwell

John McGinnis  
Northwestern University School of Law

Geoffrey Miller  
NYU Law School

Mark Smith  
Kasowitz, Benson, Torres & Friedman, LLP

Margaret D. Stock  
U.S. Military Academy

Gerald Walpin  
Counsel to Katten Muchin Zavis Rosenman

Jonathan H. Adler  
Case Western Reserve University School of Law

David Forte  
Cleveland-Marshall College of Law

Andrew W. Lester  
Lester, Loving & Davies, P.C

Andrew C. Spiropoulos  
Oklahoma City University School of Law

Arthur D. Hellman  
University of Pittsburgh School of Law

David J. Porter  
Buchanan Ingersoll Professional Corporation

Alfred Putnam  
Drinker Biddle & Reath LLP

Wendy Keefer  
Barnwell Whaley Patterson & Helms, LLC

John Ryder  
Harris, Shelton, Dunlap, Cobb & Ryder

Virginia C. Armstrong  
National Chairman, Eagle Forum's Court Watch

Gregory S. Coleman  
Weil, Gotshal & Manges LLP

Thomas B. Griffith  
Brigham Young University



Lynn D. Wardle  
Brigham Young University

Fred Fielding  
Wiley, Rein & Fielding

Todd Gaziano & Ed Meese  
The Heritage Foundation

Michael S. Greve  
American Enterprise Institute

Judith Richards Hope  
Paul Hastings

Dean Douglas Kmiec  
Catholic University

Michael I. Krauss  
Professor of Law George Mason University

Andrew G. McBride  
Wiley Rein & Fielding LLP

John Norton Moore  
University of Virginia School of Law

Michael E. O'Neill  
George Mason University

Roger Pilon, Ph.D., J.D.  
Cato Institute

Alan Charles Raul  
Sidley Austin Brown & Wood LLP

Mr. David B. Rivkin Jr.  
Baker & Hostetler

Ronald D. Rotunda  
George Mason University School of Law

Jay Sekulow  
American Center for Law & Justice

Kannon K. Shanmugam  
Kirkland & Ellis

Jonathan Cohn  
Sidley & Austin

Kate Comerford  
Wiley, Rein, and Fielding

Ed Haden  
Balch & Bingham LLP

Chris Vergonis

Kenneth Lee  
Wachtell, Lipton, Rosen & Katz

Robert McConnell  
HYI - USA

Donald Kochan  
George Mason University School of Law

Grant Dixon  
Kirkland & Ellis

Ed Warren  
Kirkland & Ellis

John Yoo  
Visiting Fellow, American Enterprise Institute

Mike Young  
The George Washington University Law School

Steve Moore  
Club for Growth

Traci Sharp Day  
SPN

Karen Harned  
NFIB



Other groups that we need to fill the gaps in for include:

60 Plus

Seniors Coalition

American Conservative Union

National Federation of Republican Women

C.U.R.E.

Center for Freedom & Prosperity

National Association of Manufacturers

Citizens for an Alternate Tax System

Americas Future Foundation

Law Enforcement Alliance

BIPAC

Subject: there are more.....but here's my list for now....

To: lleo@fed-soc.org, jpardue@fed-soc.org

Frontiers of Freedom - Kerri Houston, George Landrith, Jason Wright  
State Troopers Association - James Doyle  
Advocacy Ink - Audrey Mullen  
ACLJ - Jay Sekulow, Dan Carter  
FRC - Ken Conner, Connie Mackey  
American Renewal -- Richard Lessner  
Prison Fellowship Ministries - Mariam Bell  
Republicans for Choice - Ann Stone  
American Family Association - Don Wildmon  
Institute for Justice - Clint Bolick  
American Association for Christian Schools - Jan Veerman  
Americans for Tax Reform - Grover Norquist  
National Legal and Policy Center - Ken Boehm  
American Tort Reform Association - Victor Schwartz, Mike Hotra  
CATO Institute -- Roger Pilon  
Concerned Women for America - Sandy Rios, Jan LaRue  
National Rifle Association - Chuck Cunningham  
Salem Broadcasting - David Spade  
Home School Legal Defense Fund - Caleb  
National Association of Manufacturers - Fred Nichols  
Law Enforcement Alliance of America - James Fortis, Kevin Watson  
Citizens Against Government Waste - Tom Schatz  
National Right to Life - Douglas Johnson  
ALEC - Duane Parde  
Christian Coalition - Jim Backlin, Roberta Combs, Tracy Ammons.  
Center for Equal Opportunity - Linda Chavez, Roger Clegg  
Enfoque a La Familia - James Oviedo  
Focus on the Family - James Dobson  
Center for Individual Rights - Curt Levey  
60 Plus - Jim Martin  
Republican Lawyers Association - Michael Thielen, Neil Gorsuch  
Hispanic Business Roundtable - Roberto Deposedo  
Center for Individual Freedom - Jeff Mazzella  
Second Amendment Sisters - Maria Heil  
BAMPAC - Alvin Williams  
Republican National Hispanic Assembly - Juan Henao  
Empower America - Seth Leibsohn  
US Chamber of Commerce - J. Clark  
Heritage Foundation - Todd Gaziano, Ed Meese  
USPAAC - Susan Au Allen  
Log Cabin Republicans - Patrick Guerrero  
Media Research Center - Doug Mills, Brent Bozell  
Preston, Gates - Dennis Stephens  
Eagle Forum - Lori Waters  
American Conservative Union - David Keene, Stephen Thayer  
Jewish Policy Council - Josh London  
Opiniones Latinas - Raul Damas  
Project 21 - David Almasi  
Free Congress Foundation - John Nowacki  
Traditional Values - Andrea Sheldon Lafferty, Dr. Lou Sheldon  
Southern Baptist Convention - Dr. Richard Land  
Capital Research - Terry Scanlon  
Center for New Black Leadership - Phyllis Berry Myers  
Victoria Toensing  
Patricia Meagher  
Claudia Barlow  
Virginia (Ginni) Thomas



Subject: couple more names  
To: lleo@fed-soc.org, jpardue@fed-soc.org

Deal Hudson -- crisis mag  
Larry Cirigniano -- catholicvote.org  
Doug Kmiec  
Barbara Ledeen, of course.....

— statistical data on CAB-OLP

Presidential  
Speech

## Infrastructure for High Court Nomination

### WH/DOJ

- Lead on personal profile and political message
- Lead on research and paper
- Host key media surrogates
- Select, and coordinate with Senate Shepard
- *Participate in Coordinated Response Team (CRT)*

Durbin 201

WH Media  
Surrogates

Finance  
Comm space

216

August

Financial  
Disclosure

### Judiciary Committee

- Prepare Chairman for daily defense
- In-hearing and on-floor defense
- Host War Room for special counsel and investigators
- Provide support for daily briefings (staff and outside groups)
- Facilitate press and surrogate participation at hearings
- Key research resource
- Key in-Senate information funnel
- *Participate in Coordinated Response Team (CRT)*

### Leader's Staff

- Prepare Leader for daily defense
- Host twice-daily leadership team meeting
- Coordinate daily briefings for staffs, supported by JC and others
- Facilitate coordination and communication among all Congressional components, including Steering Committee, Senate and House VAT, and House RSC
- Communicate with off-Senate grasstops and grassroots
- Support Conference media opportunities
- Key in-Senate information funnel
- *Participate in Coordinated Response Team (CRT)*

### Whip's Staff

- Support Leader's Office and Judiciary Committee as necessary
- Assist in planning floor strategy
- Whip issues/votes
- Work on key Member outreach
- *Participate in Coordinated Response Team (CRT)*

Kuhl  
Pryor  
Holmes

6th  
Circuit

Admin  
Office



### Conference

- Host War Room facilities for outside groups
- Host daily briefings for outside groups, supported by JC and others
- Inform Senators through unscheduled Conference meetings
- Facilitate off-Senate communication and daily media opportunities, including a twice daily Gallery event.
- Communicate with off-Senate grassroots / grassroots
- Key off-Senate information funnel
- Rally and organize Senate press offices
- *Participate in Coordinated Response Team (CRT)*

### Policy

- Host in-Senate information center
- Host daily briefings for staffs, supported by JC and others
- Inform Senators through weekly Policy meeting
- Coordinate or conduct specialized research
- Key research resource funnel from nomination to confirmation
- Monitor 50 State print press for per-State response
- Provide support for all daily briefings
- *Participate in Coordinated Response Team (CRT)*

### Steering and Senate VAT

- Inform key staffs through weekly meetings
- Inform key Senators through weekly Steering Lunch
- Support Leadership and *Coordinated Response Team (CRT)*

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### Regular Day Activity

Morning Leadership/CRT meeting

Morning Staff Briefing

Morning Coalitions Briefing

Noon Gallery Event

Late Afternoon Staff Distribution

Evening Leadership/CRT meeting

End of Day Coalitions Briefing

## Process Developments

- Internal White House day-to-day team  
Meet Friday to discuss post-nomination plan
- Department of Justice  
Preparing historical research papers on Supreme Court votes, Fortas filibuster, and nominee questions and answers
- Coordination with Senate
  - Leg Affairs has met with Frist/Hatch staff
  - Gonzales-Leahy meeting
  - Question of Presidential consultation
- Outside groups  
Met Monday and meet again this Monday to prepare

① Announcement -  
② Nominee  
③ Day 1  
post materials



**Grubbs, Wendy J.**

---

**From:** Delrahim, Makan (Judiciary) [Makan\_Delrahim@Judiciary.senate.gov]  
**Sent:** Friday, May 23, 2003 2:22 PM  
**To:** Grubbs, Wendy J.; Ojakli, Ziad ; ##BAG (Kennedy)  
**Cc:** Delrahim, Makan (Judiciary)  
**Importance:** High

Below is contents of brief outline from am memo we did for Sen. Hatch. We are expanding on this to fill it in and beginning in June, it would be great if Judiciary Committee and WH are on the same page to begin implementing this and taking actions to put this in place (and control egos):

Delivery of Floor Statements: Up until the announcement of a vacancy, we will provide you with two statements per week to deliver on the Senate floor or in the Committee markup. These statements will be designed to accomplish two primary purposes: (1) To discredit the liberal interest groups as out of the mainstream, and (2) to discredit the idea that the current Rehnquist Court hangs in a precarious balance and is sharply divided, as evidenced by the scores of 5-4 decisions it generates. You delivered the first of these statements, based on the Swanson op-ed that recently appeared in the *Washington Times*, today. Once you have delivered these statements, we will seek to place them as op-eds.

When a Supreme Court justice announces retirement, within minutes we will provide you with a statement to deliver on the Senate floor praising the retiring justice and defining his or her legacy. Similarly, within a half hour of the announcement of a nominee to fill the ensuing vacancy, we will provide you with a floor statement supporting the President's choice. We hope to have cooperation from WH to coordinate timely research and background info to facilitate this. We will provide you and other members with talking points for press appearances as well.

Government Components: We anticipate that you will play the lead role in coordinating the government components who will play a major role in the confirmation process. These components will include the White House Counsel's Office, the Justice Department Office of Legal Policy, and the press offices and legislative affairs offices of both the White House and Justice Department. We anticipate that the WH will control this from WH Counsel's office and will coordinate with us to have a seamless operation. We will need to make this as efficient as possible, and to identify one lead in the Senate (a person on the Committee) and one lead from Administration (a person at WH Counsel's office) for the direct communication and coordination of information and substantive material. I suspect there will be many staffers and components here in senate who will want to be in charge and that will be a recipe for disaster if it is not controlled up front. You will need to stress with Frist and Gonzales/Rove that coordination will be key if we are going to win this fight. It will also include the Senate Republican leadership (including Policy and Conference) and the Republican Committee Members, as well as key non-Committee Members who have demonstrated a particular affinity for nominations (such as Talent and Coleman) and the nominee's home state senators.

Press Surrogates: We will need to identify and coordinate persons who can appear on talk radio and television, and write op-eds and letters to the editor, particularly in the home states of swing-vote senators. They should be available for print and on-screen interviews about the implications of a Supreme Court vacancy and the nominee. Possible surrogates include Ed Gillespie, Victoria Toensing, Laura Ingraham, and Ann Coulter. We should also advise WH to look into the popular governors who could be press allies for us. It is important to note that Gillespie is being rumored to take on RNC job



and he is one of the few in our party who gets communications and strategy. Nevertheless, we should focus heavily on the radio shows and get to our grass roots and do it early.

Outside Groups: We will need to coordinate the conservative interest groups so that they will be ready to begin grassroots efforts supporting the nominee and countering the liberal interest groups. Key conservative groups will include Committee for Justice, the Federalist Society, Concerned Women for America, the Free Congress Foundation, Coalition for a Fair Judiciary, Center for New Black Leadership, Project 21, Family Research Council, National Rifle Association, and the Republican National Lawyers' Association.

In addition, we are working on a series of hearings focusing on the influence of the liberal interest groups on the confirmation process. Ideas for these hearings include focusing on the poor track record of groups' attempts to predict how nominees will rule once they are confirmed, and whether groups who weigh in on the confirmation process should be required to register as lobbyists and to disclose their sources of funding.

Selection of a Shepherd: Once a nominee is announced, he or she must have a shepherd who will serve as the liaison to the nominee. This person will be the nominee's primary non-Administration and non-Committee advocate, serving a role similar to that served by Senator Danforth for Justice Thomas. The White House should naturally be heavily involved in the selection of a shepherd. Possible candidates include Marc Racicot and Mel Martinez (contingent on his resignation from HUD). Again, Racicot is rumored to head the re-election campaign, so he may not be available. Others might be Sen. Deconcini or Dole who can be very helpful with the 'club'.

Development of a War Room: The figurative "war room" will consist of persons who will provide us with general guidance on strategy. They will familiarize themselves with the nominee's record and work to counter criticisms of the nominee. These persons will work behind the scenes and have no official role, but will be trusted members of the team. Possible participants include Doug Cox, Chuck Cooper, John Yoo, Mike O'Neill, Mark Paoletta, Tom Lee, Manus Cooney, Mark Disler, Paul Clement, Lee Otis, Brian Jones, Eric George, and Jeff Taylor. Many are here in town and could help out well.

A separate component of the war room will be an investigative team, headed perhaps by David Bossie or someone with equivalent experience. The investigative team will examine any factual allegations that may arise and gather data regarding the credibility of persons who seek to undermine the nomination. This is something not done before by Republicans, but we had to do it for Brooks Smith, Ted Olsen, Miguel Estrada (recall ethicist photos and Paul Bender). WH might want to be totally distanced from this, as they should, and frankly so should the Committee from having a direct relationship. But I cannot emphasize enough the importance of the counter-investigation that will be needed.

Yet another component of the war room will be a group of law professors who can be called upon to decipher complex allegations and to respond to allegations by liberal law professors (Tribe, Sunstein et al.) about the Court and the nominee's record. This group may include Brad Clark, Greg Mags, Doug Kmiec, and Ron Rotunda.

Compilation of Binder: Once there has been a nomination, we will compile a binder of talking points for use by all Republican senators. Again, we hope WH has already done this for potential nominees and we hope to have early cooperation and coordination from them. The talking points will list the nominee's accomplishments in crucial areas, and provide defensive ammunition if necessary. Topics we anticipate covering include abortion, race, consumer rights, antitrust, prisoners' rights, environmental protection, homosexual rights, employment rights, disability rights, civil rights, federalism, *Bush v. Gore*, law enforcement (including terrorism, drugs, death penalty, and pornography), pro-family record,



the Court's "balance" and "5-4 decisions," Second Amendment rights, and judicial philosophy. We already have identified our research teams in charge of each of these topics and hope to coordinate with WH and DOJ to use all resources as soon as possible.

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DRAFT (6/10)

*Sustained*

**BEFORE ANNOUNCEMENT OF RETIREMENT**

- (1) Identify and research candidates
  - Prepare memos on writings and speeches
  - Review existing FBI background files
  - Investigate background issues
- (2) Analyze and evaluate candidates based on:
  - Approach to judging
  - Integrity/Character
  - Experience
  - Intellect
  - Bipartisan and interest-group support
  - Life background
  - Likely assessment by American people
  - Likely Senate confirmation prospects and possible criticisms
- (3) Team forms plans and recommendations for different scenarios
- (4) Team presents candidates and recommendations to President
- (5) Prepare communications/legislative teams and strategy, and research past Supreme Court Justices and confirmations, including:
  - Qualifications and statistics regarding Justices: age, experience, background
  - Candidate Activity after Nomination: Senate, media, groups
  - Preparation Sessions: Who conducted? How many?
  - Legislative Strategy and Group Activity: Who coordinated? What has been done
  - Hearings: What subjects and questions? What was considered appropriate?
  - What issues have caused problems?
  - Filibusters (Fortas filibuster in particular)
- (6) Agree on communications/legislative plan and teams (see below)



**IMMEDIATELY AFTER ANNOUNCEMENT OF RETIREMENT**  
(if no advance notice)

**Beginning within 2 hours:**

- President issues statement about outgoing Justice
- Press Secretary has prepared statement on timing, process, and qualifications
- Team holds meetings to discuss

**Within 48 Hours:**

- Finalize list of three names
- Have FBI perform preliminary vet
- Team interviews candidates

Pres. calls those  
four on day  
of announcement

**Within 72 hours maximum:**

- Team presents candidates and recommendations to President.
- President meets with or talks to Sens. Frist, Daschle, Hatch, and Leahy.
- President meets with candidates, makes decision, and announces nominee.

**ANNOUNCEMENT CEREMONY**

- Announce at White House East Room, White House Rose Garden, or possibly in home town of nominee.
- Hold prime-time announcement depending on nominee (President Nixon was last to do so).
- President makes ~~forceful~~ speech on behalf of nominee with emphasis on record, character, integrity, and support. Define the mainstream and define the debate.

## DAY OF ANNOUNCEMENT -- AFTERMATH

- Chief of Staff and Counsel conduct background briefing with reporters (WH press room)
- Chief of Staff, Attorney General, Counsel, and others brief key national and regional editorial boards, columnists, and reporters (identify in advance).
- President, Vice President, Chief of Staff, Attorney General, Counsel, and Assistant to President for Legislative Affairs contact key Republican and Democrat Senators to discuss, explain, and encourage (identify in advance). Staff calls key staff.
  - Republican Senators immediately echo President and immediately respond with Senate floor speeches and media outreach.
- Conduct conference calls with interest-group leaders and identified surrogates to discuss, explain, and encourage.
  - Karl Rove talks to key group leaders (identify in advance).
  - Public Liaison organizes conference calls with all relevant groups (Goeglein)
  - Karl Rove, Matt Schlapp, and Ruben Barrales talk to key party and elected officials around country (identify in advance).
  - David Hobbs talks to key House members (identify in advance).
  - Brian Montgomery and Ed Ingle conduct conference call for Cabinet officials.
- Administration officials, Senators, House members, state and local officials, and surrogates fan out to identified media and grass roots.
- Distribute media binders and materials and place them on WH and DOJ web site (see below).

⊗ months battle  
⊗ this can work against them  
-very aggressive stance

⊗ keep R's united w/ 1 or 2 D's  
⊗ Specter, Chafee, Snowe, + Collins  
⊗ hearings live on networks

⊗ excite the base  
\* unified R team is best chance

\* person has got to  
have a story  
\* ~~don't~~ break the ice →  
feeling it from colleagues  
\* former Governors  
\* old bulls



## POST-NOMINATION PLAN

### Tools

#### **Management Team**

- Identify primary members of White House team responsible for day-to-day coordination and management (from Counsel, Legislative Affairs, Communications, Public Liaison, Political Affairs).
  - Team meets twice daily.
- Identify specific chain of communication and command to Senate staffers, DOJ, surrogates, and interest groups.

#### **Rapid Response Team (Counsel/Communications/DOJ)**

- Establish team responsible for ensuring rapid response to any allegation and charge (WH and DOJ).
- Rapid response team should update web sites on daily basis and otherwise coordinate with Counsel, Legislative Affairs, and Communications.

#### **Basic Communications Materials (Counsel/Communications/DOJ)**

- Basic binder for all Senators, interest groups, and media with:
  - (i) biography, (ii) summary of primary talking points, (iii) human interest stories, (iv) supporter quotes, (v) responses to likely main allegations, (vi) historical context, and (vii) important letters of support.
- Large binder with 1-2 page summary and points for every case, article, and speech (for internal and Hill use)
- Large binders with longer responses to every possible allegation (for internal use)
- Establish link on White House and DOJ web sites for all information, as well as daily updates and messages
- E-mail message of the day fact sheets and rapid response fact sheets

## **Basic Plan**

### **Focus on Key States**

- Key swing R states likely to be Alaska, Maine, Pennsylvania, and Rhode Island
- Key swing D states likely to be Arkansas, Florida, Indiana, Louisiana, Nevada, New Mexico, North Dakota, South Carolina, West Virginia, and Wisconsin

### **Media Outreach/Response Plan (Communications, Press, Media Affairs, and Counsel)**

- **Presidential remarks in key states and radio addresses**
- Identify, prepare, and arrange White House and Administration officials and surrogates for:
  - Talk radio
  - Television talk shows and news shows
  - National and regional editorial boards
  - National and regional reporters
  - Administration and surrogate op-eds
  - Speeches by Administration, Senate, and other Republican officials

### **Political and Intergovernmental Affairs**

- Ensure that state and local officials are briefed and engaged
- Encourage state legislature resolutions
- Ensure that national, state, and local party leaders are engaged

### **Legislative**

- Administration coordinates daily with Senate on message and strategy
  - Identify core group of Senate staff as direct link to White House team
- Administration officials identify and talk regularly to key Senators
- Nominee Meetings
  - Lead Republicans (Frist, Hatch, McConnell, Santorum, Kyl, Hutchinson, Specter)
  - All Committee Republicans and Democrats
  - Moderate Republicans (Chafee, Snowe, Collins, Murkowski, and Specter)
  - Moderate Democrats (Miller, Breaux, Feinstein, Ben Nelson, Bill Nelson, Lincoln, Pryor, Landrieu, Byrd, Hollings)

### **Liaison/Grass Roots**

**(outside group rallies, press conferences, letters, e-mails, FAXes, advertisements, and calls)**

- Constant Administration briefings to and meetings with key groups
- Meece/Boyden/Sekulow



### **Nominee Preparation**

- Prepare for meetings with Senators
- Attend meetings with Senators
- Consider off-the-record editorial board meetings
- Prepare for questions at hearing
  - Prepare for appropriate boundaries of questions with reference to history.

D.C. Cir.

Ray Randolph (1943) – PP

**Karen Henderson** (1944)

2nd Cir.

Jose Cabranes (1940) – JY

3rd Cir.

**Samuel Alito** (1950)

4th Cir.

**Michael Luttig** (1954)

**Karen Williams** (1951)

**Paul Niemeyer** (1941)

**Harvie Wilkinson** (1944)

5th Cir.

**Edith Jones** (1949)

**Jerry Smith** (1946)

Rhesa Barksdale (1944) – JY

**Emilio Garza** (1947)

6th Cir.

**Danny Boggs** (1944)

7th Cir.

**Frank Easterbrook** (1948)

**Kenneth Ripple** (1943)

9th Cir.

**Andrew Kleinfeld** (1945)

10th Cir.

Deanell Tacha (1946) – PP



S.D. Tex.

**Ricardo Hinojosa** (1950)

Senators

Jon Kyl (1942) – PP

Mike DeWine (1947) – SB

Jeff Sessions (1946) – JY

Mitch McConnell (1942) – JL

Representatives

Chris Cox

State Judges

Priscilla Owen (TX)

Janice Brown (CA) – EW

**Carolyn Kuhl** (CA)

Governors

Frank Keating

Professors

**Mike McConnell** (1955)

Mary Ann Glendon (1938)

Lillian BeVier (1939)

Others

Gail Norton

**Alberto Gonzales**

**Theodore Olson**

**William Barr** (1950)

**John Ashcroft**

**Spence Abraham**

**Larry Thompson**

Miguel Estrada

Michael Powell

|                     |        |                           |   |
|---------------------|--------|---------------------------|---|
| Eduardo C. Robreno  | (1945) | USDJ PA                   |   |
| Ricardo H. Hinojosa | (1950) | USDJ TX                   |   |
| Irma E. Gonzalez    | (1948) | USDJ CA                   |   |
| Jorge A. Solis      | (1951) | USDJ TX                   |   |
| Eduardo C. Prado    | (1947) | USDJ TX                   |   |
| Paul J. De Muniz    | (1947) | OR SUP CT                 |   |
| Patricio M. Serna   | (1939) | NM SUP CT                 |   |
| Petra Jinenez Maes  | (1947) | NM SUP CT                 |   |
| Emilio M. Garza     | (1947) | US 5 <sup>th</sup> CIR CA | * |
| Raul Gonzalez       | ( )    | TX SUP CT (former)        |   |
| Jose Cabranes       | (1940) | US 2 <sup>nd</sup> CIR    |   |
| Miguel Estrada      | (1961) | PRIV. PRACTICE            |   |

|                         |        |                           |   |
|-------------------------|--------|---------------------------|---|
| Danny J. Boggs          | (1944) | US 6 <sup>th</sup> CIR    |   |
| J. Harvie Wilkinson III | (1943) | US 4 <sup>th</sup> CIR    | * |
| Gerhard Casper          | (1932) | PROF. STANFORD UNIV       |   |
| Samuel A. Alito, Jr.    | (1950) | US 3 <sup>rd</sup> CIR    | * |
| J. Michael Luttig       | (1954) | US 4 <sup>th</sup> CIR    | * |
| Rhesa Barksdale         | (1944) | US 5 <sup>th</sup> CIR    |   |
| William P. Barr         | (1950) | Former US AG              |   |
| Ed Carnes               | (1950) | US 11 <sup>th</sup> CIR   |   |
| Frank Easterbrook       | (1948) | US 7 <sup>th</sup> CIR CA |   |
| Orrin Hatch             | (1934) | US Senator                |   |
| Alex Kozinski           | (1950) | US 9 <sup>th</sup> CIR CA |   |
| Mike McConnell          | ( )    | PROF. UNIV OF UTAH        |   |
| Ray Randolph            | (1943) | D.C. CIR                  |   |
| Jerry Smith             | (1946) | US 5 <sup>th</sup> CIR CA |   |
| Paul Niemeier           | (1941) | US 4 <sup>th</sup> CIR CA |   |
| Kenneth Ripple          | (1943) | US 7 <sup>th</sup> CIR CA |   |
| Andrew Kleinfeld        | (1945) | US 9 <sup>th</sup> CIR CA |   |
| John Kyl                | (1942) | US Senate                 |   |
| Mike DeWine             | (1947) | US Senate                 |   |
| Fred Thompson           | (1942) | US Senate                 |   |
| Jeff Sessions           | (1946) | US Senate                 |   |
| Mitch McConnell         | (1942) | US Senate                 |   |
| Chris Cox               | (1952) | US House                  |   |
| Frank Keating           | (1944) | OK Governor               |   |
| Ted Olson               | (1940) | US Solicitor General      |   |
| John Ashcroft           | (1942) | US AG                     |   |
| Spencer Abraham         | (1952) | SEC ENERGY                |   |



|                        |        |                            |   |
|------------------------|--------|----------------------------|---|
| Karen Johnson Williams | (1951) | US 4 <sup>th</sup> CIR CA  | * |
| Deanell Reece Tacha    | (1946) | US 10 <sup>th</sup> CIR CA |   |
| Edith H. Jones         | (1943) | US 5 <sup>th</sup> CIR CA  | * |
| Maryann Glendon        | (1938) | Professor                  |   |
| Karen Henderson        | (1944) | D.C. CIR                   |   |
| Carolyn Kuhl           | ( )    | CA Trial Judge             |   |
| Lillian BeVier         | (1939) | Professor                  |   |
| Gail Norton            | (1954) | SEC INTERIOR               |   |

|                     |        |           |   |
|---------------------|--------|-----------|---|
| Robert Young, Jr.   | (1944) | MI SUP CT |   |
| Janice Rogers Brown | (1943) | CA SUP CT | * |
| Larry Thompson      | (1945) | US DEP AG |   |
| Michael Powell      | (1963) | FCC COMM  |   |

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## *The Use of Presidential Capital during the Supreme Court Confirmation Process*

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### **Abstract**

The Supreme Court nomination and confirmation process has become one of the most contentious aspects of American politics in recent years. This process represents a seismic struggle between the president and the U.S. Senate over the ideological makeup of the nation's highest court. Our recent work (Johnson and Roberts 2001) finds strong support for the hypothesis that presidents are more successful in the nomination game when they have large amounts of political capital to spend. In this paper we examine, in greater detail, the precise use of political capital to obtain confirmation for Supreme Court nominees facing an ideologically hostile Senate. By content analyzing public statements of the president during confirmation battles we find strong support for the hypothesis that president's strategic public "in order to help secure confirmation for their nominees.

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*Tell your senators to resist the politicization of our court system. Tell them you support the appointment of Judge Bork."*

--President Ronald Reagan



The Supreme Court confirmation process has become one of the most contentious aspects of American politics in recent years, and it often represents a seismic struggle between the president and the U.S. Senate over the ideological makeup of the nation's highest court. Indeed, when President Nixon suggested that the Senate should always acquiesce to the president's choices (Maltese 1995, 12), current Senate Judiciary Committee Chairman Patrick J. Leahy (D-VT) recently argued that the Senate's role, "...is advise and consent. It isn't advise and rubber stamp." <sup>1</sup> Because of the importance of Supreme Court nominations, this tension often becomes particularly great. It is also the reason that political scientists and legal scholars have studied many aspects of this process, including how presidents choose nominees, the ideological differences between the president and the Senate, and what drives individual Senator's confirmation decisions.

While scholars have addressed the rhetorical style that presidents use on behalf of Supreme Court nominees (Caliendo and Medvic 1999), presidents' decision to "go public" (Kernell 1997) to assist a nominee has not been systematically analyzed. Such a strategy is crucial to answering questions of how presidents secure confirmation for their most important nominees especially when it is clear that Senate confirmation will be difficult. Scholars simply assume that presidents use the bully pulpit to help win confirmation for their Supreme Court nominees in the face of a hostile Senate, but assuming they do so, and systematically

<sup>1</sup> Quoted in *The Washington Post* March 15, 2002, Page A-01. While Senator Leahy's comments came in the wake of the Senate's rejection of Charles Pickering to the U.S. Circuit Court of Appeals, the sentiment applies to Supreme Court nominees as well. Nixon fully argued that, "If the Senate attempts to substitute its judgment as to who should be appointed, the traditional constitutional balance is in jeopardy and the duty of the President under the Constitution is impaired. What is at stake is the duty of the preservation of the traditional constitutional relationships of the president and the Congress" (quoted in Maltese 1995, 12).

demonstrating that they do are different questions. No empirical evidence yet exists to demonstrate such a claim.

In this paper we seek to fill this void in the literature by analyzing the president's decision to make public statements invoking their political resources during the Supreme Court confirmation process. We test our hypotheses on the universe of Supreme Court nominations from 1949 through 1994. By content analyzing presidential public statements between the time of nomination and when the Senate takes action, we provide detailed insight into the president's public use of political capital in order to "win" the confirmation game.

### **Existing Literature and Theory**

In order to derive hypotheses about when presidents are likely to publicly invoke political resources, we turn to two bodies of research that analyze relationships between presidents and Congress. First, we are interested in the literature that addresses when presidents are more likely to go public to support their policy agenda in Congress. Second, we are interested in the literature that seeks to explain presidential and Senate behavior during the Supreme Court nomination and confirmation process. Findings from these two literatures lead us to propose several hypotheses about when we expect presidents to publicly invoke their political resources during the Supreme Court nomination and confirmation processes.

*When and Why Presidents Go Public*



*When and Why Presidents Go Public*

In his famous treatise on presidential power, Richard Neustadt argues that president's greatest resource is the power to, "convince such men [or women] that what the White House wants of them is what they ought to do for their sake and on their authority" (1990, 30). (1997) supports this claim and posits that a variety of factors including the presidential selection process, divided government, and the advent of the electronic media have led

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presidents to change the way in which they try to persuade Congress. As Kernell points out, presidents have increasingly turned to public statements to "go over the heads" of members of Congress in an attempt to persuade reluctant members.

Presidents are acutely aware that they have overlapping constituencies with all members of Congress, and have come to realize that members are often more responsive to constituents than to governing partners. Kernell presents an array of fascinating stories describing both the benefits and limitations of "going public" as a political strategy. Ronald Reagan scored major budget victories early in his first term by imploring citizens to, "contact your senators and congressmen. Tell them of your support for this bipartisan proposal" (150). Additionally, he quotes a reporter who sums up the power of going public: "Lawmakers believed their constituents supported that program [Reagan's budget] and they were afraid that Mr. Rea-

could galvanize that support through an adroit use of television and punish any dissident polls" (151).

In general, Kernell believes that "going public" is a powerful tool, but he is also point out the risky nature of using this strategy. Reagan's early successes are contrasted l occasions late in his tenure where his public appeals seemed to fall on deaf ears and wer ultimately ignored by Congress. To explain this phenomenon, Kernell argues that one of limitations of going public is the extent to which doing so closes off bargaining options President and Congress (1997, 4). If the President draws a line in the sand on a budget o he has strictly limited his ability to compromise without appearing to have given in to C thus effectively constraining his policy options. Going public is also a risky strategy bec loses its effectiveness the more it is used, especially if it ever proves to be ineffective. Tl presidents must carefully weigh the potential costs and benefits of going public on each

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While going public is perhaps not the best strategy for all issues facing presiden seems particularly well suited for Supreme Court nominations. Public statements on nor present the president's position in clear and unambiguous terms, and recent research sug that the mass media tend not to alter the frame with which presidents discuss their nomi



(Caliendo 2000). Furthermore, while there is evidence that presidents may bargain with members of the Senate *prior* to a nomination, once a nominee is forwarded to the Senate, formal bargaining takes place. In other words, a nomination is an ultimatum that leaves no room for compromise: either the Senate will accept, or vote to reject, the nominee. <sup>2</sup>

There is also reason to believe that the benefits of going public to support a Court nominee outweigh the risk involved in using this strategy because Supreme Court nominations are such important and high profile events. As President Nixon argued, "The most important appointments a President makes are those to the Supreme Court of the United States" (qtd. in Segal 1987). This means that the loss of a Supreme Court nominee is viewed as a catastrophic event for a president, and is therefore to be avoided at all costs. As such, there is reason to expect that a president would not find it in his best interest to let a nominee languish in committee and thus preserve the power of going public for future policy issues.

### ***The Supreme Court Nomination and Confirmation Game***

Existing theoretical accounts of Supreme Court nominations and Senate confirmation votes teach scholars a great deal about interactions between the president and the Senate. Nemacheck and Wahlbeck explore the initial phase of the process in their analysis of factors presidents consider when creating short lists of possible nominees. They find that presidential choices are "related to efforts to reduce uncertainty over the nominee's future behavior on the Court" (1998, 20). More importantly for our analysis, Nemacheck and Wahlbeck provide

<sup>2</sup>We include sustained filibusters in our definition of votes to reject nominees.

evidence that these choices are strategic because presidents account for the political environment generally, and specifically how the Senate may react to a nomination. In other words, the ideological relationship between the president, the nominee, and the Senate plays a key role in the president's decision of whom to place on the short list.

Other theoretical and empirical work explores the president's explicit choice of nominees. This research focuses on the spatial dynamics of the confirmation game, and that the alignment of the pivotal players (the President, the Senate, and the Court Median) on an ideological continuum allows scholars to accurately predict the ideology of a president's chosen nominee (Moraski and Shipan 1999; Johnson and Roberts 2001). These works differ in how they operationalize ideology, but they both conclude that the spatial alignment of the president, the Senate, and the Court Median is crucial to understanding the ideology of the president's nominee. Together, they suggest that presidents act strategically when choosing Supreme Court nominees.

Johnson and Roberts (2001) make an additional contribution to the literature. They find that presidents often secure a confirmation despite severe ideological constraints in the Senate. In other words, the spatial model utilized by Moraski and Shipan (1999) cannot account for the fact that the Senate often confirms nominees not in its win set. This empirical reality suggests that factors outside the spatial model have important impacts on the confirmation process. Johnson and Roberts account for these factors by demonstrating that presidents with high levels of political capital secure confirmation for their nominees, when facing an ideologically hostile Senate, more often than weak presidents.



Senate, more often than weak presidents.

Finally, scholars have learned a great deal about what drives the aggregate Senate on Supreme Court nominees, as well as what drives individual senators' confirmation votes. Binder and Maltzman (2002) suggest that the presence of divided government slows the

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confirmation process for lower court nominees. Additionally, Segal (1987) demonstrates that confirmation battles are as much about partisanship as they are about a struggle between the Senate and the president. In line with Nemacheck and Wahlbeck's (1998) findings, this is an important point for us because it indicates that the president must consider how the Senate will react when choosing nominees to the Supreme Court.

To more explicitly understand Senate action, Cameron, Cover, and Segal (1990). Segal, Cameron, and Cover (1992) use spatial models to analyze individual level confirmation votes. Their initial findings (1990) indicate that senators' votes are a product of the spatial distance between the nominee and a senator, a nominee's qualifications, and the political strength of the president. In their later work, Segal, Cameron, and Cover (1992) correct a shortfall in their earlier work by including measures of interest group involvement in the model. Importantly, they continue to find strong support for the hypothesis that senators' confirmation votes largely depend on the spatial distance between a nominee and the ide

a senators' constituency. Further, a nominee's qualifications and the strength of the president continue to affect senators' Supreme Court confirmation votes.

In general, this literature makes it clear that the ideological relationship between president and the Senate, and the nominee and the Senate, plays a key role in the choices presidents make during the nomination process. Nemacheck and Wahlbeck (1998) and (1987) find that presidents generally consider how the Senate will react to their choice of Supreme Court nominees. Shipan and Moraski (1999), Johnson and Roberts (2001) and Cameron, and Cover (1990, 1992) use one-dimensional spatial models to explore how the ideological relationship between presidents, nominees, and the Senate clearly drives white confirmation battles. Finally, to explain confirmation successes that models based on ide

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distance would not predict, Johnson and Roberts (2001) argue that the mere presidential political capital is an important predictor of success in the confirmation game. This is a key finding as it suggests that factors beyond ideological distances between the nominee, president, and the Senate can help determine whether presidents ultimately secure confirmation for their nominees.

### Hypotheses



Together, the two literatures discussed in the previous section lead us to several conclusions. First, presidents will risk going public to support their agenda in Congress, do so sparingly so the strategy remains an effective one. Second, because of the importance of Supreme Court nominations, presidents are willing to take the risk of going public to secure confirmation for their nominee. Third, the ideological distance between presidents, the Court, and the Senate affects the ideology of the Supreme Court nominee. Finally, other factors may affect a president's ability to win the confirmation game. Combining these findings with our general hypothesis that presidents will go public to help secure confirmation for their Supreme Court nominees especially when the president and the Senate cannot agree on the ideology of a nominee.

More specifically, the existing literature leads us to several predictions about what we expect presidents to go public to fight for their chosen Supreme Court nominee. First, when the president and the Senate are on opposite ends of the ideological continuum, the president's choice is severely constrained (see Moraski and Shipan 1999) and he must rely on factors other than the spatial model in order to win a confirmation (Johnson and Roberts 2001). Thus, we hypothesize that when the president faces an ideologically distant Senate he is more likely to go public.

publicly invoke political resources, or "go public" in order to win confirmation for his Supreme Court nominee.<sup>3</sup>

Second, we hypothesize that when the president's nominee is ideologically distant from the Senate **filibuster** pivot, the president will have to rely on political resources to secure confirmation.<sup>4</sup> That is, we expect the president to be more likely to make public statements that will help his nominee win Senate approval as the ideological distance between the nominee and the pivotal senator increases. Finally, existing literature leads us to predict that when the Supreme Court median justice is ideologically distant from the Senate the president is more likely to publicly support his nominee. The logic is that the Senate will be more recalcitrant to presidential nominees in this situation so that it can force the president to nominate someone who will move the Court ideologically closer to the Senate. In this case, if the president wants to keep the Court close to his preferred point, or to move it even closer, he may have to persuade or cajole the Senate into acquiescing to his choice.

### Data and Methods

To test these hypotheses we analyze all presidential press conferences and public addresses from the time a nomination is made until the Senate takes action on the nomination for all Supreme Court nominees between 1949 and 1994. We code every sentence of answers that presidents give to questions from the press about a nominee, and every sentence of presidential public statements pertaining to the Supreme Court during this time period. Appendix 2 lists the press conference and public speech dates that we code for this analysis. Using these sources

<sup>3</sup> Throughout the paper, distance is operationalized as absolute value of the difference in 1-DIMENSIONAL NOMINATE coordinates.

<sup>st</sup> dim



<sup>4</sup>The key difference between Shipan and Moraski (1999) and Johnson and Roberts (2001) is the operationalization of the pivotal voter in the Senate. Shipan and Moraski use the Senate median, whereas Johnson and Roberts use the senator occupying the **filibuster** pivot (Krehbiel 1998). We think the **filibuster** pivot is a more appropriate representation of the strategic dynamic facing the President in confirmation battles with the Senate and thus use the **filibuster** pivot in all of the analyses that follow.

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count the total number of statements made by the president that focus on 1) a nominee's qualifications; 2) claims of public support for the nominee; and 3) calls for the Senate to fairly and quickly during the confirmation process. <sup>5</sup>

Examples of each category illustrate how we conducted the coding. Most often presidents make claims about the qualifications of their nominees. For instance, President Johnson said Thurgood Marshall "...is best qualified by training and by very valuable service to the country. I believe it is...the right man in the right place" (Johnson, 1967). <sup>6</sup>

public opinion are exemplified by President Reagan's support for Robert Bork: "And if the people want a measure of how the American public feels on the nomination of Robert Bork to the Supreme Court, they should ask...about the 72,000 petitions, pro-Bork petitions, that flooded in over the last 3 weeks with more coming in all the time" (Reagan 1987). Finally, President Nixon publicly called on the Senate to, "...approve their (Lewis Powell and Warren Burger) nominations promptly, so that the Court can move forward in the backlog of cases that is building up because of the two vacancies which have occurred in recent weeks" (Nixon 1971). Table 1 presents the frequency with which each president made public statements

fall into these categories.

[Table 1 about here]

Because our dependent variable is a discrete measure we cannot use traditional regression to model this phenomenon. As Long points out, "The use of LRM models for outcomes can result in inefficient, inconsistent, and biased estimates" (1997, 217). These are just statistical problems, however. Rather, King (1988, 846) argues that these shortfalls are

<sup>5</sup> We expected the president to use other tactics as well. For instance, we thought presidents would invoke the fact that during the honeymoon period the Senate should follow acquiesce to his choices, or that a president with high approval ratings should be able to nominate whomever he pleases to the Supreme Court. We did not find any evidence of these tactics, however.

<sup>6</sup> Many of the remarks made about qualifications reiterate the American Bar Association ratings.

result in substantive problems where coefficients are the wrong size and the wrong sign. In fact, many reasonable alternatives to OLS regression have been suggested for models with discrete independent variables. King's (1989) generalized event count model (GEC) allows researchers to model discrete events when unknown dispersion exists in the dependent variable.

King (1988, 859) points out that his technique allows researchers to analyze very small samples (even with an N as small as 10). Thus, his GEC model is appropriate for our purposes.

The model includes three independent variables to test our three hypotheses. Table 1 provides descriptive statistics for these variables as well as for the dependent variable and



controls used in the model. First, we calculate the absolute value of the distance between president's ideology and the ideological score of the Senate **filibuster** pivot.<sup>8</sup>To

distance we utilize DW-NOMINATE scores for the president and the pivotal Senator in that a nomination takes place.<sup>9</sup>We expect that as this distance increases, the presiden

<sup>7</sup> While a Poisson model is also an appropriate modeling choice for count outcomes, the data we employ do not lend themselves to this technique. Indeed, the variance of the dependent measure is 13.86, which is greater than its mean of 8.07. This means that the Poisson model would produce consistent but inefficient estimates as well as downwardly biased standard errors (Long 1997, 230). We could also use a Negative Binomial Regression model (Long 1997; Greene 1997), which accounts for overdispersion by allowing "the conditional variance of  $y$  to exceed its conditional mean" (Long 1997, 230). However, because we did not have *a priori* expectation dispersion, King's generalized event count is the most flexible and appropriate model for these data.

<sup>8</sup> Using the **filibuster** pivot comports with Krehbiel's (1998) theory of "pivotal politics," which holds that supermajoritarian institutions such as the Senate **filibuster** and the presidential veto have an important influence on the legislative process because policy makers often must obtain large supermajority coalitions to secure passage of legislation. Moraski and Shipan (1999: 1093) explain why the **filibuster** is pivotal explicitly during the nomination process: "The reason for this...is that the Senate can **filibuster** on a nomination, a tactic that the president will need to take into account. While the use of the **filibuster** for a Supreme Court nomination is a rare event, its infrequency does not denote its unimportance."

<sup>9</sup> Other work in this area (Moraski and Shipan 1999) has used adjusted ADA scores to model the dynamics of this game. However, we think DW-NOMINATE scores are more appropriate for this type of analysis for a number of reasons. DW-NOMINATE scores are constructed using an overwhelming majority of the roll-call record (only unanimous and near-unanimous votes are excluded), whereas the ADA selects only 20 "key votes" for each calendar year. While the two sets of scores are highly correlated ( $r > .9$  for most Congresses), DW-NOMINATE scores are less sensitive to missed votes and strategic manipulation. By design, the ADA chooses votes that will separate perceived "liberals" from "conservatives," which as Arnold (1990: 82) notes can lead to cases where legislators intentionally vote against the ADA position to insure that they do not receive a "perfect" ADA score which might attract potential challengers. The DW-NOMINATE procedure clearly precludes this type of behavior from severely contaminating the analysis.

a more difficult time securing confirmation, and will therefore be more likely to make p  
statements that support the nominee.



statements that support the nominee.

[Table 2 about here]

Second, we calculate the absolute value of the distance between the nominee's ideology and the ideological score of the Senate **filibuster** pivot. For the nominee's ideology we use Segal/Cover (1989) scores that are converted to a 0-1 scale (Epstein and Mershon 1996, Finally, to test whether the ideological distance between the Senate and the current Court (on the 8 remaining justices when a vacancy occurs) affects the president's decision to go forward, we calculate the absolute difference between the **filibuster** pivot's ideology and the ideology of the Court median. Both of these variables should have significant and positive relationships with a president's decision to publicly pressure the Senate during the confirmation process.

Beyond the spatial variables, we include two necessary control variables in the model. First, we must consider whether the president's public role in the confirmation process has changed over time. When we ran a GEC model for the president's propensity to publicly pressure the Senate on year, we find a very strong time trend. Controlling for no other factors, the year variable predicts that President Truman would make an average of 2.09 statements per nominee, whereas it predicts an average of 20.25 statements per nominee for President Clinton. Our model therefore includes a measure for time as a control variable that is coded as the year of nomination. Second, the time period between a nomination and Senate action is finite and varies across presidents. Further, some presidents hold more press conferences than others during the confirmation process, which means that more questions may be asked about a particular

<sup>10</sup> The reader should note that our measures of ideal points (DW-NOMINATE scores and Segal/Cover scores) might not be based on an identical policy space. That is, while both sets of scores have face validity, DW-NOMINATE represents Sen. Ted **Kennedy** as being very liberal and Segal/Cover scores show Justice Antonin Scalia as a staunch conservative, we cannot be sure that a specific Segal/Cover score maps directly onto the DW-NOMINATE space. However, a better and more compatible measure does not exist, but see Bailey and Chang (2001).



nominee. Some presidents may also make more public statements than others about their nominees. Thus, we include the natural log of the time (in days) between a nomination and Senate action to account for the maximum number of statements that could be made (see 1988).

In general, we expect the president to publicly invoke political resources when ideologically constrained by the Senate. At the same time, we are interested in whether strong presidents publicly pressure the Senate at the same rate as weak presidents. To test whether a difference exists, we include three additional controls in the model that measure levels of a president's political capital. First, we include a measure of the president's public approval at the time of the nomination. Second, we include a measure of qualifications for each nominee.<sup>11</sup> Presidents may find that highly qualified nominees are easier to sell by going public. Finally, we include a measure of the number of years a president has left in his current term to control for possible "honeymoon" or "lame-duck" effects. We suspect that presidents are more likely to use the bully pulpit when they are weak because strong presidents who nominate highly qualified candidates will let their nominations speak for themselves (Cameron, Cover, and 1990).

## Results

Table 3 presents the results of a GEC model with the number of uses of political capital as the dependent variable. <sup>12</sup> Parameter estimates for our three ideological distance variables are in the hypothesized direction and statistically significant at or below the .05 level. These results indicate that as the distance between the president and the pivotal Senator increases, the

<sup>11</sup> Qualifications are based on scores derived from the Supreme Court Compendium (1996, 329)

<sup>12</sup> In Appendix 1 we report the findings for the GEC model without the outlier (Bork), as well as the results of negative binomial regression models with and without the Bork nomination included. We provide these results to demonstrate the robustness of the findings even without the outlying observation included in the model, and when using alternative modeling techniques.

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president is more likely to invoke public statements on behalf of a nominee. The same relationship holds for the distance between a nominee and the pivotal Senator, which suggests that presidents are more likely to use political capital when trying to sell a nominee that is ideologically distant from the pivotal Senator. Finally, as the distance between the current president and the pivotal Senator increases, the president is more likely to make public statements in support of a nominee. Thus, as we expected, the ideological alignment of the key institutional players has a clear effect on the presidents' use of capital during this process.

[Table 3 about here]

Beyond the statistical findings, these results have substantive meaning as well. When we control for all other variables at their mean value, the predicted number of public statements varies



low of 1.8 to a high of 4.77 as the distance between the president and the pivotal Senator from its lowest to its highest value. Thus, presidents who are ideologically distant from the Senate are more than twice as likely to go public to fight for their chosen nominee. Similarly, the predicted number of public statements ranges from a low of 1.22 to a high of 6.03 as the distance between the nominee and pivotal Senator increases. This means that presidents make almost six times as many public statements for nominees who are ideologically distant from the Senate than they do for nominees who are ideologically close to the pivotal Senator. Finally, the predicted number of public statements varies from 2.18 to 5.9 as the distance between the Court median and the pivotal Senator increases from its lowest to highest observed value.

Turning to other variables in the model, it is clear that presidential approval has a negative effect on the number of public statements by the president. This suggests that very popular presidents do not have to expend as much capital to secure confirmation for their preferred nominee (even controlling for ideological distance), and that unpopular presidents

exert much more capital to secure their nominees than do popular presidents.

the predicted number of statements varies from 6.06 at the lowest observed level of approval to 1.56 at the highest observed level of approval. The model reveals that there is no discernible impact from nominee qualifications or years remaining in the president's term on the frequency of public statements.

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of public statements about a Supreme Court nominee.

The two time variables are also significant and signed correctly. There is a positive relationship between how much time transpires between a nomination and Senate action and the number of public statements made by a president. This result is intuitive for two reasons. First, as the time between nomination and Senate action increases, there are more opportunities for public statements, as well as more press conferences where questions may be asked about the nomination pending confirmation. Second, troubled nominations tend to have a longer time between nomination and Senate action (i.e., Bork and Thomas), and presidents tend to speak more frequently about these troubled nominations. Finally, the time variable suggests that, *ceteris paribus*, presidents are more likely to use public statement to secure confirmation. This is most likely the product of the fact that nominations have become more political and more contentious since the mid-1980s. Additionally, modern presidents seem more willing to make public statements to support their nominees even when the process is not viewed as a battle. Indeed, President Truman literally refused to answer any questions about his nominees while confirmation was pending, while modern presidents seem to take it upon themselves to initiate public discussion of their nominees.

<sup>13</sup> This result is consistent with the "win at all costs" view of Supreme Court nominations discussed earlier. Despite considerable evidence that the effectiveness of presidential speeches declines along with presidential approval (Ragsdale 1984), these data suggest that presidents may try to make up for the lack of effectiveness by increasing quantity.



## Conclusion

The most important contribution that we make with this paper is providing evidence of how presidents use their political capital when presidents choose to exercise their political capital by "going public" to support their nominations to the United States Supreme Court. These findings comport with, and add to, Maltese's (1995, 11) argument that presidents have developed:

"...their own strategic resources to help secure confirmation of their judicial nominees. Presidents now have an unprecedented ability to communicate directly with the American people, to mobilize interest groups, and to lobby the Senate."

We confirm Maltese's argument by demonstrating that presidents, at least since the Nixon Administration, have used public statements to pressure the Senate by publicly selling their nominees. Our findings also add to Maltese's argument by providing a systematic account of when we should expect presidents to use this tactic during the Senate confirmation process.

At the same time, our findings add to the recent empirical works that seek to explain how presidents choose the ideology of nominees to the United States Supreme Court (Shipan and Moraski 1999; Johnson and Roberts 2001). Shipan and Moraski show how presidents avoid confirmation battles by nominating individuals who the Senate will not object to ideologically. Johnson and Roberts extend this analysis by demonstrating that, even when nominating ideologically incompatible with the Senate, presidents can win the confirmation battle if they are politically strong. What neither of these studies fully answers, however, is when presidents actually invoke their political resources in a public manner to fight for their chosen nominees.

actually invoke their political resources in a public manner to fight for their chosen nominee.

The findings in this paper do so. *Indeed, we provide the first systematic evidence of when presidents will use public statements during the confirmation process.*

At the end of the day, most presidents probably feel the way President Nixon did when he faced a hostile Senate, and most senators probably believe what Senator Leahy argued a

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Pickering nomination process. What we show here is that while the Senate does advise consent on Supreme Court nominations, the president will do anything, including invoking political resources in an attempt to make the consensual aspect of the Senate's role much more likely.



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**Table 1:**  
**The Frequency of Presidential**  
**Political Statements about Supreme Court Nominees**

| <i>Nominee</i>          | <i>President</i> | <i>Nun</i> |
|-------------------------|------------------|------------|
| Clark Truman 0          |                  |            |
| Minton Truman           |                  |            |
| Warren Eisenhower       |                  |            |
| Harlan Eisenhower 3     |                  |            |
| Brennan Eisenhower      |                  |            |
| Whittaker Eisenhower    |                  |            |
| Stewart Eisenhower      |                  |            |
| White <b>Kennedy</b> 2  |                  |            |
| Goldberg <b>Kennedy</b> |                  |            |
| Forts (1)               | Johnson          |            |
| Marshall Johnson        |                  |            |
| Fortas (2)              | Johnson          |            |
| Burger Nixon 4          |                  |            |
| Haynsworth Nixon        |                  |            |
| Carswell Nixon          |                  |            |
| Blackmun Nixon          |                  |            |
| Powell Nixon 5          |                  |            |
| Rehnquist (1)           | Nixon            |            |
| Stevens Ford            |                  |            |
| O'Connor Reagan         |                  |            |
| Scalia Reagan 12        |                  |            |



Rehnquist (2)

Bork Reagan 70

**Kennedy** Reagan

Souter Bush 19

Thomas Bush

Ginsburg Clinton

**Breyer** Clinton 3

Reagan

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**Table 2:**  
**Variables Affecting a President's Public**  
**Invocation of Political Resources**

| Minimum                      |      | Maximum | Mean |
|------------------------------|------|---------|------|
| <b>Dependent Variable</b>    |      |         |      |
| Count of Public Statements   |      |         |      |
| Invoking Political Resources | 0.00 | 70.00   | 8.07 |
| <b>Independent Variables</b> |      |         |      |
| Ideological Distance between |      |         |      |

Ideological Distance between

|                                                                          |      |      |      |      |
|--------------------------------------------------------------------------|------|------|------|------|
| Nominee and <b>Filibuster</b> Pivot<br>Ideological Distance between      | 0.00 | 0.62 | 0.36 | 0.19 |
| Court Median and <b>Filibuster</b> Pivot<br>Ideological Distance between | 0.01 |      | 0.37 | 0.14 |
| President and <b>Filibuster</b> Pivot<br>Presidential Approval           | 0.22 | 0.37 | 0.30 | 0.05 |
| at time of Nomination<br>Nominee                                         | 0.40 |      | 0.79 | 0.59 |
| Qualifications<br>Years Remaining in Office                              | 0.11 | 1.00 | 0.77 | 0.27 |
| For President<br>Time (Year of Nomination) 1949 1994 1971                | 0.25 | 1.00 | 0.73 | 0.22 |
| Natural Log of Time Between<br>Nomination and Senate Action              | 1.15 | 2.18 | 1.71 | 0.31 |

Table 3:  
Generalized Event Count Regression Model



**Generalized Event Count Regression Model  
of a President's Public  
Invocation of Political Resources**

|                                                                       | Coefficient    | Standard<br>Error (two-tailed t) |
|-----------------------------------------------------------------------|----------------|----------------------------------|
| Intercept                                                             | -122.32        | 24.55                            |
| Ideological Distance between<br>President and <b>Filibuster</b> Pivot | 6.24           | 2.99                             |
| Ideological Distance between<br>Nominee and <b>Filibuster</b> Pivot   | 2.57           | 0.78                             |
| Court Median and <b>Filibuster</b> Pivot                              | 2.80           | 1.21                             |
| Presidential Approval<br>at time of Nomination                        | -3.48          | 1.76                             |
| Nominee<br>Qualifications                                             | 0.12 0.41 0.80 |                                  |
| Years Remaining in Office                                             |                |                                  |
| For President                                                         | 0.87 0.79 0.28 |                                  |
| Time (Year of Nomination)                                             | 0.06           | 0.01                             |
| Natural Log of Time Between                                           |                |                                  |
| Nomination and Senate Action                                          | 2.55           | 0.89                             |
| gamma Estimate                                                        | 0.77 0.33 0.02 |                                  |
| Log-Likelihood                                                        | 407.58         |                                  |
| N                                                                     | 28             |                                  |

<sup>a</sup> A significant gamma indicates that the model is overdispersed.

**Appendix 1:  
Other Possible Models  
of a President's Public  
Invocation of Political Resources**

|                                                | <b>GEC (without Bork)</b> |           | <b>NBREG</b>    |
|------------------------------------------------|---------------------------|-----------|-----------------|
|                                                | <b>Estimate</b>           | <b>SE</b> | <b>Estimate</b> |
| Intercept                                      | -105.46                   | 24.55     | -122            |
| President and <b>Filibuster</b> Pivot Distance | 4.35                      | 3.37      | 4               |
| Nominee and <b>Filibuster</b> Pivot Distance   | 1.55                      | 1.36      | 2               |
| Court and <b>Filibuster</b> Pivot Distance     | 2.32                      | 0.74      | 2               |
| Presidential Approval                          | 0.40                      | 1.13      | -1              |
| Nominee Qualifications                         | -0.15                     | 0.49      | 0               |
| Years Remaining in Office                      | 0.56                      | 0.96      | 0               |
| Time (Year of Nomination)                      | 0.05                      | 0.05      | 0               |
| (ln) Time between Nomination and Vote          | 1.52                      | 1.08      | 2               |
| gamma estimate <sup>a</sup>                    | -0.54                     | 2.68      | 0               |
| alpha estimate <sup>d</sup>                    |                           |           | -63             |
| Log-Likelihood                                 | 197.41                    |           | 28              |
| N                                              | 27                        |           |                 |

<sup>a</sup> A significant gamma indicates that the model is overdispersed.

<sup>b</sup> Negative binomial Regression Model

<sup>c</sup> Without the Bork nomination in the model, the NBREG model collapses to a Poisson

<sup>d</sup> A significant alpha estimate indicates the model is overdispersed.



**Appendix 2:  
Presidential Public Addresses  
about Supreme Court Nominees**

| <i>President</i>  |      | <i>Nominee</i> | <i>Speech</i> | <i>Date</i> |
|-------------------|------|----------------|---------------|-------------|
| Truman            | none |                | May           | 2, 1945     |
| Burton            |      |                | July          | 5, 1945     |
| Burton            |      |                | August        | 16, 1945    |
| Burton            |      |                | August        | 23, 1945    |
| Burton            |      |                | September     | 6, 1945     |
| Burton            |      |                | September     | 12, 1945    |
| Burton            |      |                | September     | 18, 1945    |
| Vinson            |      |                | May           | 2, 1946     |
| Vinson            |      |                | May           | 9, 1946     |
| Vinson            |      |                | May           | 16, 1946    |
| Vinson            |      |                | May           | 31, 1946    |
| Vinson            |      |                | June          | 6, 1946     |
| None              |      |                | June          | 14, 1946    |
| Clark             |      |                | July          | 21, 1949    |
| Clark             |      |                | July          | 24, 1949    |
| Clark             |      |                | July          | 28, 1949    |
| Clark             |      |                | August        | 24, 1949    |
| Minton            |      |                | September     | 15, 1949    |
| Eisenhower Warren |      |                | September     | 30, 1953    |
| None              |      |                | November      | 23, 1954    |
| Harlan            |      |                | February      | 7, 1955     |

|                   |                  |           |                  |
|-------------------|------------------|-----------|------------------|
| Brennan           |                  | September | 11, 1956         |
| Brennan           |                  | September | 27, 1956         |
| Whittaker         |                  | February  | 6, 1957          |
| Kennedy           | White            | March     | 29, 1962         |
| White             |                  | March     | 30, 1962         |
| Goldberg          |                  | August    | 29, 1962         |
|                   | None             | September | 20, 1962         |
| Johnson           | none             | July      | 20, 1965         |
| Fortas            |                  | July      | 28, 1965         |
| Marshall          |                  | June      | 13, 1967         |
| Thornberry/Fortas |                  | June      | 26, 1968         |
| Thornberry/Fortas |                  | July      | 31, 1968         |
| Thornberry/Fortas |                  | September | 6, 1968          |
| Thornberry/Fortas |                  | October   | 2, 1968          |
| Thornberry/Fortas |                  | October   | 10, 1968         |
| None              |                  | December  | 17, 1968         |
| Thornberry/Fortas |                  | January   | 17, 1969         |
| Nixon             | Burger           | May       | 21, 1969         |
| Burger            |                  | May       | 22, 1969         |
| Burger            |                  | June      | 23, 1969         |
| Haynsworth        | September        |           | 26, 1969         |
| Haynsworth        | October          |           | 20, 1969         |
| Haynsworth        | November         |           | 21, 1969         |
| Haynsworth        | December         |           | 4, 1969          |
| Carswell          |                  | January   | 19, 1970         |
| Carswell          |                  | January   | 30, 1970         |
| Carswell          |                  | March     | 21, 1970         |
| Carswell          |                  | April     | 1, 1970          |
| Carswell          |                  | April     | 9, 1970          |
| Blackmun          |                  | April     | 14, 1970         |
| None              |                  | October   | 24, 1970         |
| Carswell          |                  | October   | 28, 1970         |
| Powell/Rehnquist  |                  | September | 23, 1971         |
| Powell/Rehnquist  |                  | September | 25, 1971         |
| Powell/Rehnquist  |                  | October   | 12, 1971         |
|                   | Powell/Rehnquist |           | October 21, 1971 |
| Powell/Rehnquist  |                  | December  | 10, 1971         |
|                   | None             | August    | 23, 1972         |
| None              |                  | September | 26, 1972         |

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| President | Nominee | Speech    | Date     |
|-----------|---------|-----------|----------|
| Nixon     | none    | October   | 12, 1972 |
| None      |         | October   | 15, 1972 |
| None      |         | October   | 28, 1972 |
| None      |         | November  | 4, 1972  |
| Ford      | none    | September | 21, 1975 |
| Stevens   |         | November  | 14, 1975 |
| Stevens   |         | November  | 26, 1975 |



|                  |                  |           |          |
|------------------|------------------|-----------|----------|
| Stevens          |                  | December  | 31, 1975 |
| None             |                  | March     | 5, 1976  |
| None             |                  | October   | 25, 1976 |
| Reagan           | O'Connor         | July      | 7, 1981  |
| O'Connor         |                  | September | 18, 1981 |
| O'Connor         |                  | September | 21, 1981 |
| O'Connor         |                  | October   | 7, 1981  |
| None             |                  | December  | 21, 1981 |
| O'Connor         |                  | June      | 3, 1983  |
| O'Connor         |                  | August    | 26, 1983 |
| O'Connor         |                  | September | 19, 1983 |
| Scalia/Rehnquist |                  | June      | 17, 1986 |
| Scalia/Rehnquist |                  | June      | 21, 1986 |
| Scalia/Rehnquist |                  | June      | 23, 1986 |
| Scalia/Rehnquist |                  | June      | 25, 1986 |
| Scalia/Rehnquist |                  | August    | 5, 1986  |
| Scalia/Rehnquist |                  | August    | 9, 1986  |
| Reagan           | Scalia/Rehnquist | September | 17, 1986 |
| Scalia/Rehnquist |                  | September | 26, 1986 |
| Bork             |                  | July      | 1, 1987  |
| Bork             |                  | July      | 4, 1987  |
| Bork             |                  | July      | 29, 1987 |
| Bork             |                  | August    | 12, 1987 |
| Bork             |                  | August    | 13, 1987 |
| Bork             |                  | August    | 15, 1987 |
| Bork             |                  | August    | 28, 1987 |
| Bork             |                  | September | 8, 1987  |
| Bork             |                  | September | 9, 1987  |
| Bork             |                  | September | 11, 1987 |
| Bork             |                  | September | 14, 1987 |
| Bork             |                  | September | 17, 1987 |
| Bork             |                  | September | 19, 1987 |
| Bork             |                  | September | 25, 1987 |
| Bork             |                  | September | 30, 1987 |
| Bork             |                  | October   | 1, 1987  |
| Bork             |                  | October   | 2, 1987  |
| Bork             |                  | October   | 3, 1987  |
| Bork             |                  | October   | 6, 1987  |
| Bork             |                  | October   | 7, 1987  |
| Bork             |                  | October   | 8, 1987  |
| Bork             |                  | October   | 9, 1987  |
| Bork             |                  | October   | 10, 1987 |
| Bork             |                  | October   | 13, 1987 |
| Bork             |                  | October   | 14, 1987 |
| Bork             |                  | October   | 15, 1987 |
| Bork             |                  | October   | 16, 1987 |
| Bork             |                  | October   | 22, 1987 |
| Bork             |                  | October   | 23, 1987 |
| Reagan           | Ginsburg         | October   | 29, 1987 |
| Ginsburg         |                  | October   | 31, 1987 |
| Ginsburg         |                  | November  | 2, 1987  |
| Ginsburg         |                  | November  | 6, 1987  |
|                  | Ginsburg         | November  | 7, 1987  |
| Reagan           | Kennedy          | November  | 11, 1987 |
| Kennedy          |                  | November  | 14, 1987 |
| Kennedy          |                  | November  | 19, 1987 |
| Kennedy          |                  | November  | 23, 1987 |
| Kennedy          |                  | November  | 30, 1987 |
| Kennedy          |                  | December  | 4, 1987  |
| Kennedy          |                  | December  | 8, 1987  |
| Kennedy          |                  | January   | 2, 1988  |
| Kennedy          |                  | January   | 19, 1988 |

| <i>President</i> | <i>Nominee</i> | <i>Speech</i> | <i>Date</i> |
|------------------|----------------|---------------|-------------|
| Reagan           | <b>Kennedy</b> | January       | 27, 1988    |
| <b>Kennedy</b>   |                | February      | 3, 1988     |
| <b>Kennedy</b>   |                | February      | 11, 1988    |
| <b>Kennedy</b>   |                | February      | 18, 1988    |
| None             |                | December      | 13, 1988    |
| Bush             | Souter         | July          | 23, 1990    |
| Souter           |                | July          | 24, 1990    |
| Souter           |                | July          | 27, 1990    |
| Souter           |                | July          | 30, 1990    |
| Souter           |                | August        | 20, 1990    |
| Souter           |                | September     | 12, 1990    |
| Souter           |                | September     | 14, 1990    |
| Souter           |                | September     | 27, 1990    |
| Souter           |                | October       | 8, 1990     |
| Thomas           |                | June          | 27, 1991    |
| Thomas           |                | June          | 28, 1991    |
| Bush             | Thomas         | July          | 1, 1991     |
| Thomas           |                | July          | 10, 1991    |
| Thomas           |                | July          | 24, 1991    |
| Thomas           |                | August        | 5, 1991     |
| Thomas           |                | August        | 6, 1991     |
| Thomas           |                | August        | 7, 1991     |
| Thomas           |                | August        | 14, 1991    |
| Thomas           |                | August        | 18, 1991    |
| Thomas           |                | September     | 4, 1991     |
| Thomas           |                | September     | 6, 1991     |
| Thomas           |                | September     | 11, 1991    |
| Thomas           |                | September     | 12, 1991    |
| Thomas           |                | September     | 13, 1991    |
| Thomas           |                | September     | 16, 1991    |
| Thomas           |                | September     | 27, 1991    |
| Thomas           |                | October       | 10, 1991    |
| Thomas           |                | October       | 11, 1991    |
| Thomas           |                | October       | 13, 1991    |
| Thomas           |                | October       | 15, 1991    |
| Thomas           |                | October       | 17, 1991    |
| Thomas           |                | October       | 18, 1991    |
| Clinton          | Ginsburg       | June          | 14, 1993    |
| Ginsburg         |                | June          | 15, 1993    |
| Ginsburg         |                | June          | 16, 1993    |
| Ginsburg         |                | June          | 24, 1993    |
| Ginsburg         |                | July          | 20, 1993    |
| Ginsburg         |                | August        | 3, 1993     |
| Ginsburg         |                | August        | 10, 1993    |
| Ginsburg         |                | October       | 3, 1993     |
| Clinton          | <b>Breyer</b>  | April         | 6, 1994     |
| <b>Breyer</b>    |                | April         | 12, 1994    |
| <b>Breyer</b>    |                | April         | 19, 1994    |
| <b>Breyer</b>    |                | May           | 5, 1994     |
| <b>Breyer</b>    |                | May           | 12, 1994    |
| <b>Breyer</b>    |                | May           | 13, 1994    |
| <b>Breyer</b>    |                | May           | 16, 1994    |



Breyer

May

1 /, 1994

Breyer

July 29, 1994

**NOTE** : "Speech Date" indicates the day on which at least one public comment about the nomination or vacancy was made. Numerous speeches, in fact, have occurred on that day.