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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Memorandum	Discussion Draft [4 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]	4	01/31/2001	
002	Memorandum	Judicial Nomination and Confirmation Process [3 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS] - To: Alberto Gonzales - From: Kyle Sampson	3	01/05/2001	
003	Memorandum	Judicial Selection Issues [3 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS] - To: Alberto Gonzales - From: Kyle Sampson	3	01/04/2001	
004	Memorandum	Judicial Selection [9 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]	9	N.D.	

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Judges - White House Judicial Selection Committee - General

FRC ID:

9631

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).

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

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- 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]

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2017-0345-F

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
005	Memorandum	Selection of federal judges, U.S. Attorneys and U.S. Marshals [3 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/15/2025 JLS]	3	01/23/2001	

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Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

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FRC ID:

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SUPERSEDED

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Memorandum	Discussion Draft	4	01/31/2001	P5;
002	Memorandum	Judicial Nomination and Confirmation Process - To: Alberto Gonzales - From: Kyle Sampson	3	01/05/2001	P5;
003	Memorandum	Judicial Selection Issues - To: Alberto Gonzales - From: Kyle Sampson	3	01/04/2001	P5;
004	Memorandum	Judicial Selection	9	N.D.	P5;
005	Memorandum	Selection of federal judges, U.S. Attorneys and U.S. Marshals	3	01/23/2001	P5;

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BCC: Brett Kavanaugh

THE WHITE HOUSE
WASHINGTON

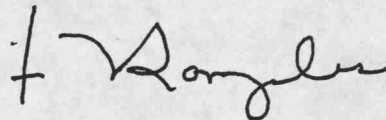
February 5, 2001

Dear General Ashcroft:

As we discussed this morning, here is a draft of the procedures for the Judicial Selection Committee. I understand we are scheduled to meet in the morning. It would be helpful if you could designate a point person in the Department of Justice for all judicial selection related matters. Additionally, I hope you can give some thought to which division within your agency we will be working with in vetting potential nominees.

I intend to send you later this afternoon a progress report of our work on potential nominees.

Sincerely,



Alberto R. Gonzales
Counsel to the President

The Honorable John Ashcroft
United States Attorney General
Department of Justice
Washington, DC 20530

⊗ Harvey Tulebaun {Danforth}
State Treasurer

COPY

THE WHITE HOUSE
WASHINGTON

FEBRUARY 5, 2001

MEMORANDUM FOR ANDY CARD
 NICK CALIO
 CLAY JOHNSON
 KARL ROVE

FROM: ALBERTO R. GONZALES *arg*

SUBJECT: JUDICIAL SELECTION PROCEDURES

Attached is a draft of the White House Judicial Selection Committee procedures. The draft is for discussion purposes only and is subject to changes that may be suggested by the Department of Justice. The procedures are intended to reflect our normal judicial selection process—a process we may have to accelerate with our initial slate of nominations.

I spoke with General Ashcroft this morning about our progress. He and I will meet tomorrow. Depending on everyone's schedule, I want to schedule a meeting of the Committee on Thursday, February 8, 2001. My office is preparing an agenda to discuss and implement a strategy for submitting an initial slate of judicial nominations to the Senate as quickly as possible—subject, of course, to discussion with the Attorney General.

I look forward to your comments.

cc: Brett Kavanaugh
 Brad Berenson
 Kyle Sampson

DISCUSSION DRAFT: JUDICIAL SELECTION PROCEDURES

Draft: 1/31/01

U.S. District Courts

General

1. White House Judicial Selection Committee ("WHJSC") identifies vacancies. → keep catalogue of vacancies
2. Elected official from state of vacancy to submit slate of three choices for each vacancy to WHJSC. Preferences, if any, may be indicated.
 - a. Elected officials entitled to make the submission determined in the following order of preference: (i) senior Republican Senator; (ii) senior Republican Congressman; (iii) Republican Governor; (iv) Republican state Attorney General (if selected by statewide election).
 - b. Where no Republican Senator, next preferred official to be responsible for appropriate consultation with other interested elected officials within state; in certain cases, White House Legislative Affairs may work with next preferred official to ensure appropriate regional and political input.
 - c. Elected official submitting slate may indicate preferences and strength of preferences.
 - d. WHJSC to be chaired by the Counsel, with active participation by Department of Justice designees; other White House components, such as Legislative Affairs, the Chief of Staff's Office, Presidential Personnel, or the Office of Senior Advisor to the President, may have designees to the WHJSC.
 - e. All sensitive contacts with Capitol Hill to be cleared through and coordinated by Chair of WHJSC and Legislative Affairs.
3. DOJ to perform background research and vetting function, with final output delivered to WHJSC.
 - a. DOJ, through offices or individuals designated by the Attorney General, to review and summarize public record regarding candidate.
 - b. DOJ to research suitability through personal contacts with acquaintances of potential nominee.
 - c. DOJ to conduct interview of candidates, with possible participation by representative of White House Counsel's Office.
 - d. DOJ, upon identification of the likely nominee by the WHJSC, to begin and coordinate process of process background investigation forms and background checks.

- e. DOJ to submit any written work product concerning potential nominees to WHJSC, including identification of any specific problems revealed by review of the FBI background file (subject to clearance requirements).
3. WHJSC selects potential nominee to recommend to the President.
 - a. Unless questions exist with respect to the fitness and qualifications of the candidates, the White House may routinely defer to the slate of choices made by the elected official submitting the slate.
 - b. Weight will be given to any strongly expressed preferences of the elected official for particular individuals on the slate, especially where that official is a Senator.
 - c. WHJSC will consult Democratic Senators from the nominee's home state prior to making nomination to obtain consent.
4. President nominates desired candidate.
5. White House Legislative Affairs and DOJ work with nominee and Senate to ensure confirmation.
6. Exception to this process: D.C. district judges, as to which the procedure for the circuit courts will be followed.

U.S. Courts of Appeals

1. WHJSC identifies vacancies and develops list of potential candidates.
 - a. Senior Republican elected officials from states within circuit encouraged to provide input and names for inclusion on list with understanding that President retains prerogative of appointment. *Pres reserves to himself*
 - b. Input obtained, as appropriate, from sources outside government identified and approved by WHJSC.
 - c. List narrowed to *two to* ~~between one and~~ three candidates for each vacancy. *don't want just one*
 - d. Potential nominees contacted to verify interest in being considered and to obtain authorization for background checks.
2. DOJ to perform preliminary research and vetting functions, with final output delivered to WHJSC.
 - a. DOJ surveys, summarizes, and analyzes public records and substantive writings of prospective nominees.

- b. DOJ and WHC conduct interview of candidates.
 - c. Abbreviated FBI check with candidate's consent.
 - d. Suitability verified through contacts with associates and acquaintances of candidates.
3. WHJSC selects a candidate to present to the President.
- a. WHJSC will consult home-state Senators prior to nomination to obtain consent.
 - b. Memo prepared for President's review summarizing status of circuit and evaluation of candidates considered and rationale for recommending nominee.
4. President selects nominee.
5. DOJ performs final background checks with any problems noted for WHJSC.
7. President nominates desired candidate.
8. White House Legislative Affairs and DOJ work with nominee and Senate to ensure confirmation.

major databanks
elevated risks

U.S. Supreme Court

1. White House Counsel's Office, in consultation with the Attorney General, the President's Chief of Staff, and other senior White House advisors, develops list of potential nominees.
 - a. President will establish criteria to be applied and may provide specific names to be considered.
 - b. Input obtained, as appropriate, from sources outside government identified and approved by White House Counsel's Office.
2. DOJ prepares research reports concerning potential nominees.
 - a. Thorough public records check and evaluation of all legal and political writings.
 - b. Abbreviated FBI check with candidates' consent.
 - c. Discreet contacts with selected associates of candidates.
3. DOJ and White House Counsel interview candidates and assess potential obstacles to confirmation.

- AG confer with you
4. White House Counsel selects 2-4 candidates to present to the President, with a one-page summary memorandum concerning the status and qualifications of each.
 5. President interviews final candidates.
 6. President nominates desired candidate.
 - a. Goal is to nominate successor within 72 hours of announced vacancy.
 7. DOJ-OLC manages process of final vetting and full background check. — add'l resources
 8. White House Legislative Affairs and DOJ work with nominee and Senate to ensure confirmation.

MEMORANDUM

To: Justice Gonzales
From: Kyle Sampson
Date: January 5, 2001
Re: Judicial Nomination and Confirmation Process

The judicial nomination and confirmation process may be described as follows:

1. Judicial Selection

The judicial selection process usually does not begin until after a vacancy has arisen in the federal judiciary. Vacancies arise when a sitting judge dies, resigns or takes senior status, or when a new position is created by federal statute. A list of the vacancies currently existing in the federal judiciary is attached for your information.

As a general matter, the President selects candidates for judgeships after consulting with the Senators from the state where the judgeship is located. This is especially so with regard to district court nominees (as well as U.S. Attorneys and Marshals). It is my understanding that selection consists of a comprehensive vetting process, which includes a review of the candidate's academic and legal record and a full-field investigation by the FBI. In addition, the ABA historically has conducted its own academic and legal review of the candidate that has been incorporated by the President in the selection process.

The judicial selection process may take from several weeks to several months to complete, depending on the length of time needed to settle on a candidate and complete the FBI investigation.

2. Nomination and Senate Referral

After a candidate is selected and cleared, the President transmits the nomination to the Senate. By Senate rule, the Secretary of the Senate immediately refers all judicial nominations (as well as all U.S. Attorney and U.S. Marshal nominations) to the Senate Judiciary Committee. Executive Branch officials handling the nomination provide the Senate Judiciary Committee with (1) the raw FBI files generated from the full-field investigation of the candidate and (2) the candidate's answers to the Judiciary Committee's "Questionnaire for Judicial Nominees." By agreement between the President and the Senate (which may need to be re-negotiated and memorialized), all FBI materials and sensitive portions of the Committee Questionnaire are classified as top secret and may only be handled by designated staff.

Upon receipt of the nomination, Questionnaire and FBI materials, Judiciary Committee staff of both parties conduct a legal and background review of the nominee. Committee staff interview nominees as needed. In addition, Committee staff brief key

Senators about particular issues that might affect the Senator's decision whether to support the nominee. In most instances, the legal and background review of the nominee conducted by Judiciary Committee staff can be completed in a couple of days.

3. Confirmation Hearing

Confirmation hearings for judicial nominees (U.S. Attorneys and U.S. Marshals do are not given hearings) are scheduled by the Chairman of the Senate Judiciary Committee at his discretion. Background problems, opposition from home-state Senators, and other issues, may prevent a nominee from getting a hearing. There is no formal procedure for forcing the Chairman to schedule a hearing. As a practical matter, individual Senators and the White House lobby the Chairman constantly in an effort to get hearings for particular nominees. After the Chairman determines to hold a hearing for a nominee, Judiciary Committee staff notify the appropriate Executive Branch officials who then notify the nominee. In my experience, nominees usually were notified only three days in advance of a hearing. In most instances, the nominees arrive in Washington a day in advance of the hearing in order to prepare. Because the Chairman schedules hearings at his discretion, nominees may remain pending before the Committee for the entire duration of the Congress. By Senate rule, nominations carryover from the 1st to the 2nd sessions of Congress, but are returned to the President if pending at the close of the 2nd session.

At the hearing the Chairman (or his designee) presides and makes an opening statement, followed by the Ranking Member (or his designee) who also makes a statement. Any other Senators on the Committee who wish to speak then are recognized. Senators from the home state of the nominee then appear as witnesses and introduce the nominee to the Committee. The nominees then are given the chance to make a statement (which they usually decline, other than to thank the Chairman for giving them a hearing). Nominees then are questioned by Committee members about their ideology, judicial philosophy, background, temperament and so forth. After all questioning is completed, the hearing is adjourned. If the nomination is particularly controversial, other witnesses who wish to weigh in on the merits of a nominee may testify. Usually, however, confirmation hearings may be completed in a couple of hours.

4. Executive Business Meeting

A nominee who has had a hearing may be placed on the Judiciary Committee's Executive Business Meeting agenda (or "Markup" agenda). Again, this is done at the sole discretion of the Chairman. Accordingly, even nominees who have had a hearing may languish in Committee if they do not make it on the Executive Business Meeting agenda.

At the Executive Business Meeting, the Chairman (or another member of the Committee) may move that the nomination be reported to the Senate. The Committee may report the nomination to the Senate with a favorable recommendation, with no recommendation or with a negative recommendation. In addition, the Committee may

vote against reporting the nomination, in which case it is returned to the President. Historically, a tie vote has meant that the nomination would not be reported. It is my understanding, however, that under the agreement reached by Senators Lott and Daschle today, a tie vote will result in the nomination being reported to the Senate. Under Judiciary Committee rule, any member of the Committee may ask that the vote on the nomination be held over until the next meeting of the Committee (usually the next week). A nomination that has been held over once must be voted on.

5. Senate Floor

After a nomination is reported to the Senate by the Judiciary Committee, it is placed on the Senate's Executive Calendar. Sometime thereafter (sometimes weeks or months later), the Majority Leader, in consultation with the Minority Leader, will move that the Senate go into Executive Session to consider the nomination. The nomination may then be debated prior to any vote. A nominee needs only secure a majority of Senators voting to be confirmed. Nominations may be filibustered, in which case 61 Senators must vote to invoke cloture and cut off debate. By Senate tradition, however, the filibustering of nominations is very rare. In most instances, judicial nominees are confirmed by a voice vote or unanimous consent agreement.

6. Commission

The Secretary of the Senate notifies the President when a nominee has been confirmed. Sometime thereafter, the President signs the nominee's commission, and the nominee becomes a federal judge (or U.S. Attorney or U.S. Marshal).

S.D. Tex.	Pub. L. No. 106-553	New Position	12/15/00
W.D. Tex.	Pub. L. No. 106-553	New Position	12/15/00
SIXTH CIRCUIT			
Court	Vacancy Created By	Reason	Vacancy Date
6th Cir. (Michigan)	Damon Keith	Senior Status	5/1/95
6th Cir. (Michigan)	Cornelia Kennedy	Senior Status	3/1/99
6th Cir. (Ohio)	David A. Nelson	Senior Status	10/1/99
6th Cir. (Michigan)	James L. Ryan	Senior Status	1/1/00
D. Ky.	Pub. L. No. 106-553	New Position	12/15/00
E.D. Mich.	Patrick J. Duggan	Senior Status	9/29/00
N.D. Ohio	George W. White	Retired	2/26/99
W.D. Tenn.	Jerome Turner	Deceased	2/12/00
SEVENTH CIRCUIT			
Court	Vacancy Created By	Reason	Vacancy Date
E.D. Wis.	Pub. L. No. 106-553	New Position	12/15/00
EIGHTH CIRCUIT			
Court	Vacancy Created By	Reason	Vacancy Date
8th Cir. (Iowa)	George Fagg	Senior Status	5/1/99
E.D. Mo.	George F. Gunn, Jr.	Senior Status	12/1/96
W.D. Mo.	D. Brook Bartlett	Deceased	1/21/00
D. Neb.	William Cambridge	Senior Status	7/11/00
D.N.D.	Patrick Conmy	Senior Status	1/5/00
NINTH CIRCUIT			
Court	Vacancy Created By	Reason	Vacancy Date
9th Cir. (California)	James R. Browning	Senior Status	9/1/00
9th Cir. (California)	Cynthia Holcomb Hall	Senior Status	8/31/97
9th Cir. (Nevada)	Charles E. Wiggins	Senior Status	12/31/96
D. Ariz.	Pub. L. No. 106-113	New Position	11/29/99
D. Ariz.	Roger G. Strand	Senior Status	4/28/00
D. Ariz.	Pub. L. No. 106-553	New Position	12/15/00
C.D. Cal.	John J. Davies	Retired	7/18/98
C.D. Cal.	William Keller	Senior Status	10/29/99
C.D. Cal.	Richard A. Paez	Elevated	3/9/00
C.D. Cal.	Kim McLane Wardlaw	Elevated	7/31/98

E.D. Cal.	Lawrence K. Karlton	Senior Status	5/27/00
D. Haw.	Alan C. Kay	Senior Status	1/1/00
D. Mont.	Charles Lovell	Senior Status	6/14/00
D. Nev.	Pub. L. No. 106-553	New Position	12/15/00
D. Ore.	Robert E. Jones	Senior Status	5/1/00
W.D. Wash.	Robert J. Bryan	Senior Status	11/1/00

TENTH CIRCUIT

Court	Vacancy Created By	Reason	Vacancy Date
10th Cir. (Utah)	Stephen H. Anderson	Senior Status	1/1/00
10th Cir. (Colorado)	John C. Porfilio	Senior Status	10/15/99
D. Colo.	Zita L. Weinshienk	Senior Status	4/3/98
D.N.M.	John Edwards Conway	Senior Status	9/1/00
D.N.M.	Pub. L. No. 106-553	New Position	12/15/00
N.D. Okla.	Thomas R. Brett	Senior Status	10/3/96
W.D. Okla.	Wayne E. Alley	Senior Status	5/16/99
W.D. Okla.	Ralph G. Thompson	Senior Status	12/16/99
D. Utah	David Sam	Senior Status	11/1/99

ELEVENTH CIRCUIT

Court	Vacancy Created By	Reason	Vacancy Date
N.D. Ala.	Sam C. Pointer, Jr.	Senior Status	11/19/99
S.D. Ala.	Alex T. Howard, Jr.	Senior Status	10/21/96
M.D. Fla.	Pub. L. No. 106-113	New Position	11/29/99
S.D. Fla.	Edward Davis	Senior Status	7/1/00
S.D. Fla.	Pub. L. No. 106-553	New Position	12/15/00

D.C. CIRCUIT

Court	Vacancy Created By	Reason	Vacancy Date
D.C. Cir.	James L. Buckley	Senior Status	8/31/96
D.C. Cir.	Laurence H. Silberman	Senior Status	11/1/00
D.C. Cir.	Patricia M. Wald	Retired	11/16/99
D.D.C.	Stanley S. Harris	Senior Status	2/1/96
D.D.C.	Stanley Sporkin	Senior Status	2/12/99

FEDERAL CIRCUIT

Court	Vacancy Created By	Reason	Vacancy Date
Fed. Cir.	S. Jay Plager	Senior Status	11/30/00

MEMORANDUM

To: Justice Gonzales
From: Kyle Sampson
Date: January 4, 2001
Re: Judicial Selection Issues

This memorandum briefly sets forth some of my thoughts on several issues relating to judicial selection in the Bush Administration. I hope to discuss them with you further at a mutually convenient time.

1. Selection of Judicial Nominees

As we discussed yesterday, there has been some dispute historically over whether judicial selection should be conducted in the White House Counsel's office or by the Justice Department. You may wish to consider establishing that the bulk of judicial selection will be conducted by the White House Counsel's office. There is nothing more important to a Senator than to have the person of his or her choosing nominated by the President and confirmed by the Senate in an expeditious matter. A Senator's ability to do this is viewed as a referendum on that Senator's influence with the White House and in the Senate. If the bulk of judicial selection is conducted in the White House Counsel's office, then it is the President and his Counsel that will be able to build important relationships with Senators.

Already Senators are (somewhat impatiently) inquiring about where judicial selection will take place and whom they can contact about getting their candidates nominated. You may wish to consider reaching out to Senators and key Congressmen in the next several days, including Senator Hatch and then Senator Leahy, the Senate Judiciary Committee's Chairman and Ranking Member. Early contact will establish the White House Counsel's office as the place for Senators to turn for the selection of federal judges, U.S. Attorneys and U.S. Marshals.

2. The ABA's Role

In the 1950s, at the Eisenhower Administration's invitation, the American Bar Association was given a formal role in the selection of judicial nominees. A Committee of ABA lawyers reviewed the qualifications of potential nominees and conducted interviews, and then determined whether the candidate was qualified, well qualified or not qualified. In most instances, if a majority of the ABA Committee determined that a candidate was not qualified, then the President would not nominate the candidate. As the ABA became more of a political (as opposed to professional) organization, candidate ratings also became political. For example, some members of the ABA Committee determined that Robert Bork was "not qualified," even though he had served with distinction for many years in academia, the Justice Department, in private law practice and as a circuit judge on the U.S. Court of Appeals for the D.C. Circuit. After several

other conservative candidates for judicial office received negative ratings from the ABA, Presidents Reagan and Bush indicated that they would consider removing the ABA from the process. Democratic Senators (including then Judiciary Committee Chairman Joseph Biden) responded by stating that they would oppose any nominee not approved by the ABA. As a result, the ABA remained a part of the process. In 1995, after Republicans gained control of the Senate, Senator Hatch removed the ABA from the confirmation (as opposed to selection) process. Now, the Senate Judiciary Committee, in carrying out its confirmation duties, does not consider whether a nominee has been blessed by the ABA.

It can be expected that the ABA and Democratic Senators will insist that the White House continue to give the ABA a formal role in judicial selection. This is of great importance to the ABA and is viewed by Democratic Senators (and liberals generally) as a way to influence judicial selection. Indeed, Senator Leahy (and/or other Democratic Senators) may state that they will oppose any judicial nominee that has not first been blessed by the ABA.

3. Senatorial Courtesy

I am preparing a more thorough memorandum for you on the historical development of "senatorial courtesy" – the process by which Senators attempt to influence judicial selection. The following, however, briefly summarizes the process.

When the Senate receives a nomination from the White House, it is immediately referred to the Senate Judiciary Committee. The Committee then sends "blue slips" to the home-state Senators of the nominee, irrespective of party. The blue slips ask the home-state Senators to indicate whether the Senator approves or disapproves of the nominee. If the home-state Senators approve of the nominee, then in most instances a confirmation hearing is scheduled and the nominee begins to move through the confirmation process. If a home-state Senator disapproves of the nominee, then the deference given to that Senator by the Judiciary Committee Chairman and the Senate varies depending on certain factors.

First, with regard to district judges, U.S. Attorneys and U.S. Marshals, a so-called "negative blue slip" from a home-state Senator historically has been dispositive. That is, the Chairman of the Judiciary Committee will not move the nomination of a district court, U.S. Attorney or U.S. Marshal nominee that is opposed by that nominee's home-state Senator. For Senators, these positions are viewed as the last vestige of patronage and are guarded closely. When there is a split delegation (a Republican and a Democrat Senator), either the Senator whose party does not control the White House will defer to the Senator whose party controls the White House, or the Senators will have worked out some other, "power sharing" arrangement. When both home-state Senators are of the party out of power, they usually will consent to the President's nomination if (1) the senior House member from the state, of the party in control of the White House, has been involved in the selection and (2) the Senators have been consulted *prior to the nomination being made*.

Second, with regard to circuit judges, a negative blue slip from a home-state Senator is not dispositive, but nevertheless carries great weight and is almost never overcome. A negative blue slip technically is not dispositive for a circuit judge nominee because (1) circuit courts cover more than a single state and (2) circuit judgeships are "located" in a particular state only as a matter of tradition and Senate understanding. AS a practical matter, however, the Administration must consult with home-state Senators of both parties in order to avoid confirmation battles.

Finally, with regard to district judges in D.C., circuit judges on the D.C. and Federal Circuits, Supreme Court Justices, and "national" Department of Justice positions, the blue slip process is not operative because there is no home-state Senator with whom to deal.

4. President Clinton's Nominations Yesterday

President Clinton took the unprecedented step last night of nominating eight circuit judges. This action followed on his recess appointment of Roger Gregory to the U.S. Court of Appeals for the Fourth Circuit. Six of the eight nominees are women or minorities and most, if not all, are for seats that have been declared a "judicial emergency" by the Administrative Office of the U.S. Courts. These nominations will remain pending before the Senate for the entire length of the 107th Congress, unless withdrawn by President Bush. Obviously there are political costs associated with withdrawing the nominations. I would like to discuss this issue with you further.

Judicial Selection

This memo addresses the process recent Presidents have used for the selection of district and circuit court nominees. (It does not discuss the Supreme Court, which will be the topic of a separate memorandum.) While the processes have varied, every President since Ronald Reagan has employed some combination of the Department of Justice and the White House Counsel, in consultation with Senators from the President's party, to select and vet district and circuit court nominees.

At present there are 67 total judicial vacancies on the federal bench (see attached listing). Given the precariousness of Republican control in the Senate and the time inherent in vetting and preparing judicial nominees, it would be highly advantageous to establish the mechanism for and begin the process of selecting those nominees as soon as possible. In so doing, several basic decisions should be resolved:

- Which office should have primary responsibility for managing the selection, vetting and preparation of judicial candidates? (OPD, OLC, the AG's Office, or the White House Counsel's Office)
- What process should be used, including whether the ABA should continue to play a official role?
- How much deference should the President show to Senators in district and circuit court selections? Who should initially propose potential names, and how many names should they put forth?
- How can the Administration move nominations quickly through the Senate?

The following provides more detailed background to aid in resolving the questions.

I. Judicial Selection Committee

There have been significant similarities between the processes used by the last three Presidents in the selection of judicial nominees. President Reagan, President Bush and President Clinton have all used a Committee chaired by the Counsel to the President (with significant representation from the Department of Justice) as their principal source of advice regarding whom to nominate. Other White House components (including the Chief of Staff's office, Legislative Affairs and Presidential Personnel) have participated, but as lesser players. This Committee met regularly once a week, Thursday afternoons under Presidents Reagan and Bush, Thursday mornings under President Clinton, to discuss and agree upon recommendations for these positions, which it then forwarded to the President. It has essentially operated by consensus in making these recommendations.

While retaining a veto over candidates severely deficient in professional qualifications or other criteria it has laid out, this Committee has largely deferred to Senators of the President's party in its recommendations of nominees for the district court. With regard to the circuit court, it has given respectful consideration to candidates

proposed by Senators of the President's party, but has also freely considered and frequently recommended candidates from other sources, for the most part with Senatorial acquiescence. None of the last three Presidents has given a similar role to Senators of the other party, although at least under President Bush and President Clinton, these members have asked for advance "consultation" before a nomination has been made.

This process is the creation of President Reagan, and differs significantly from the approach to judicial nominations taken by President Carter. Under President Carter, nominations for both the district and circuit court were processed at the Department of Justice, but originated from the recommendations of "merit selection panels" established by Senators of his own party, the establishment of which was pushed very strongly by his Department of Justice. Although so far as we are aware, the Democrats have not been calling for the reinstatement of the Carter regime, should they do so, it is important to note that President Clinton chose not to use it and has not done so for the past eight years. Rather he has followed the Reagan model, under which the Administration made clear to the relevant Senators that they could follow any process they chose, but that nominees had to meet certain Administration standards no matter what process the Senators used.

The relative role of the Justice Department and the Counsel's office has varied somewhat under the last three Presidents. These variations are likely explained as much as anything by the relationships these Presidents have had with their Attorneys General and White House Counsels. Under President Reagan, the Department of Justice was in practice almost solely responsible for the recommendations presented to the President. Under President Bush, the White House Counsel's office played a more significant role, especially with regard to the circuit courts, where it frequently suggested names for consideration in the first instance, and where the names it suggested frequently were those that the Department of Justice recommended. President Clinton has followed a model closer to that followed by President Bush, with, if anything, an even more significant role for the White House Counsel's Office. AAG Acheson noted that the Counsel's office would take the lead in the selection process, acting as the intermediary with Senators. She indicated that all "political" or sensitive contacts with Senators usually occurred through the Counsel's office – such as differences within a state delegation, or historical disputes about the balance of seats among the states in the circuit.

II. Presidential and Senatorial Roles in the Nomination Process

Despite the text of the Constitution, which vests the power to nominate all principal officers of the United States, including all federal judges, in the President, ever since the First Congress, home State Senators have played a very significant role in the selection of district court nominees. In the case of Senators from the President's party the roles are almost inverted from what the Constitutional language would suggest, with the Senators having come close to establishing themselves as the nominating authority, and the President reduced to advising and consenting. The mechanism for enforcing this has been the "blue slip," which, if not returned favorably by a home State Senator, results in the Senate's not moving forward on a district court nomination. By the time President

Carter took office, Senators from the President's party had also come to have almost as much authority over the selection of court of appeals nominees from their own State.

President Reagan was for the most part successful in reinstating the view that the selection of circuit court nominees is primarily the President's prerogative, recognizing that the home state Senator can veto someone if he has particular objections to the person. President Reagan's success on this score is explained in part by the fact that in such cases the President has greater leverage. Senate deference to an unfavorable blue slip for circuit court nominees has historically been less absolute, and circuit court seats are not allocated by law among the various States in the circuit. Thus, if a Senator attempts to exercise his veto authority unreasonably, so as, for example, to attempt to force a particular choice on the President, the Senate might not honor the blue slip, or at least might go along with a Presidential decision to nominate an individual from a different state in the circuit. By and large, the Reagan success in establishing that the President is not bound by the recommendation of a home-state Senator of his own party with respect to the nomination of circuit court judges has held up through the Bush and Clinton Administrations, albeit with disputes in individual cases.

President Reagan also tried to recapture a greater Presidential say in the selection of district court nominees, with less success. The Reagan DOJ did insist that home state Senators send it a list of three names, rather than just one, and theoretically reserved the right to select any of the three. In practice, however, our impression is that if a Senator had a strong preference for a candidate, even the Reagan DOJ would honor that preference unless it had strong reasons not to do so. The Bush Administration maintained the three name rule, but, after a dispute that resulted in a resolution of the Republican Conference making clear that the Conference would support a Republican Senator's negative blue slip on the ground that his nominee was not picked, made clear in a letter to then-Majority Leader Dole that it would give great weight to a strongly expressed first choice of a Republican Senator.

According to Acheson, the Clinton Administration has not had a three-name rule for district court judicial nominations. She advised that their interaction with Senators varied greatly, with some Senators arranging elaborate merit selection panels to find qualified candidates, while some were determined to send up whomever they wanted. Some had been burned on their choices and were gun shy about aggressively pushing a candidate, and some were so insistent that they appealed the Counsel's rejection of their choice to the President regardless of how deficient the candidate. Most Senators were open to the Administration conducting a "quick vet," consisting of a one day examination of the public record and a few discrete calls to provide a modicum of information before a Senator sent a name up. This was seen as useful by the Senator in protecting them, and was useful to the Counsel & DOJ in avoiding a Senator getting locked in on a bad candidate, thus precipitating a confrontation. Most Senators and staff were hesitant to ask the really tough questions of candidates, and this quick vet allowed problems to surface before a candidate was selected.

We would recommend at least the nominal three-name rule President Bush established. Some Senators complied with it without complaint. In the current Senate, moreover, there will be quite a number of Republican Senators who will be new to this whole area, so they may well be more open to it than some of their predecessors. Moreover, some assertion of Presidential prerogative over district court nominations is probably helpful in preserving the President's prerogative over circuit court nominations, which otherwise could easily become the only potential subject of negotiation between the Senator and the President.

The counter arguments are that maintaining this rule may lead to needless academic disputes and, given the number of district court seats, result in time being wasted looking into the qualifications of more potential nominees for relatively little gain. Both these problems, however, should be able to be largely avoided if the position is properly explained. It should also be noted that it is easier to relax a procedure on a case-by-case basis, than to assert a more inflexible process mid-stream.

III. Tasks Involved In Filling Judicial Vacancies

Filling a judicial vacancy requires the following: 1) finding out about a vacancy; 2) obtaining the Republican Senator's recommendations for the vacancy; 3) in the case of court of appeals vacancies, developing other names; 4) reviewing the potential nominee's or nominees' public record; 5) interviewing the potential nominee; 6) providing the potential nominee with background investigation forms from the Administration (if it wants to have the nominee fill out its own form), the FBI, possibly the ABA (see section V below), and (eventually) the Judiciary Committee; 7) getting those forms back from the nominee and reviewing them; 8) somewhere between steps 5 and 7, arriving at a conditional recommendation of a nominee to the President; 9) causing the necessary background checks to be initiated and completed; 10) reviewing the results of the FBI investigation; 11) forwarding the FBI file and forms to the Judiciary Committee; 12) working with the Judiciary Committee to get the nominee a hearing; 13) helping the nominee prepare for the hearing; and 14) doing any additional work required to make sure that the nomination is confirmed. In addition, the Administration should plan on investing significant time early on explaining to Senate Republicans how this process is going to work so as to minimize problems arising out of misunderstandings. It will probably also be necessary to spend some time dealing with Senate Democrats on the question of how they are to be "consulted." This will be a key consideration in moving nominations expeditiously. Acheson noted that the Clinton Administration was increasingly driven to cut "deals" with Republican Senators to get their vacancies filled during the past two years. She gave us two examples involving Sen. Gorton, who helped process several Administration candidates in exchange for one of his own. She said that they had been criticized by Senators in both parties for doing this, but that it became the only way of getting any of these judges confirmed. She predicted that this will be a choice facing the next Administration as well.

One overarching point about this is that obviously this is a lengthy process and hence it is important that it be started as promptly as possible. As of December 4, according to the Administrative Office of the U.S. Courts' web site, there are 27 current or imminent vacancies on the courts of appeals and 49 on the district courts (see attached lists). It is therefore advantageous for the Attorney General, immediately upon confirmation, to sit down with the the White House Counsel and determine how this will work. It may be that they will want two plans, an interim plan while awaiting confirmation of various other DOJ appointees, and a longer term plan once that has happened; but especially in light of the precarious balance in the Senate, action on this should not await the completion of staffing at DOJ.

Beyond this, it seems unnecessary for present purposes to make detailed recommendations about where as between the White House and DOJ each of these tasks should be performed. Each of the three most recent Administrations has allocated them somewhat differently. Under President Reagan, virtually all of them other than the actual forwarding of the recommendation to the President were performed at DOJ, with the White House Counsel's office also reviewing the background investigation file. Under President Bush, developing the list of circuit court candidates, reviewing those individuals' public records, and arriving at a recommendation was done collaboratively between the White House Counsel's Office and DOJ, and all FBI files were reviewed both places, with most of the rest of the tasks done at DOJ. Under President Clinton, the White House Counsel's Office had the lead in dealing with the Senate pre-nomination, with much of the specific vetting done by DOJ. What is clear is that regardless of the specific decisions, DOJ will have plenty of work that it will need to do.

IV. Responsibility for Judicial Selection Responsibilities Within DOJ

A. Reagan Administration

Under President Reagan, within DOJ Attorney Generals Smith and Meese assigned primary responsibility for coordinating the Department of Justice's judicial selection responsibilities to the Assistant Attorney General for the Office of Justice Policy (AAG for OLP) and his staff. The Office of Legislative Affairs was also involved in aspects relating to dealings with the Senate, and political appointees from elsewhere in the Department assisted both in the public record review and in the interviewing of potential candidates, but the AAG for OLP was the lead DOJ official. One other noteworthy feature of the approach taken by DOJ under Reagan was that it relied more significantly than successor Administrations on interviews with potential nominees intended to explore the person's judicial philosophy.

B. Bush Administration

Under President Bush, Attorneys General Thornburgh and Barr did not use OLP in this fashion. Instead they had a special assistant in the AG's office play the OLP coordinating role. They also had a highly talented person at Legislative Affairs who

focused solely on nominations. They eventually decided to have the public record review done at OLC. And they continued to involve political appointees elsewhere in DOJ in whom the AG placed particular confidence. Political considerations likely played a major role in this reorganization. The Reagan judicial selection process had become a lightning rod with Democrats who took over the Senate in 1986. The interviews had become particularly controversial, with disgruntled candidates describing them inaccurately but melodramatically, leading to accusations that candidates were being forced to pass "litmus tests" on abortion and other issues. Disassociating the process from OLP helped defuse the controversy. Placing the coordinating responsibility in the hands of an AG special assistant, after the AG had been confirmed, also minimized opportunities for confrontation with Senators or demands for concessions on process, substance or on the person to be placed in charge in the context of confirming DOJ officials — as would assuredly have occurred had an AAG for OLP had to be confirmed. Similarly, OLC's involvement in the public records review was decided on after the AAG for OLC had already been confirmed and the involvement itself was not treated as a big deal. Thornburgh and Barr also gave less emphasis to the interviews and made them less elaborate, in part for similar reasons and in part because of increasing conviction that what a nominee said in an interview was not a reliable basis for evaluating a candidate anyway and that the candidate's public record and reputation were generally more reliable.

C. Clinton Administration

President Clinton and Attorney General Reno reinstituted the use of OLP as the coordinating office for judicial selection, albeit under its new name "Office of Policy Development" or OPD. They reasoned that given the volume of work, it was useful to have an office not subject to competing pressures in the way an Attorney General Special Assistant is bound to be whose principal task this was. At the time they made this decision, Democrats also controlled the Senate, facilitating the confirmation of Acheson as the AAG for OPD.

The Clinton Administration processed 65 circuit court and 305 Article III district court judgeships. (Several other non-Article III positions were processed: two Article I judges, five positions on the Court on International Trade, and seven on the Court of Federal Claims). The Office was faced with 115 vacancies when they began. Because the Democrats had not controlled the White House for twelve years, judicial appointments were a high priority, and the President-elect made several trips to Capitol Hill to discuss the process with Members of Congress. According to Acheson, the primary vetting (as opposed to selection) function was placed in OPD because it had a staff of sufficient size and would not be distracted by responding to other pressing external events. At the same time, it was determined that the White House Counsel would play a significant role, requiring a close working relationship. Ron Klain was the attorney supervising this process at the Counsel's office.

According to Acheson, the Clinton Administration used the following procedures

for district court appointments. Once the candidate is identified, he or she would be sent a letter with several forms, including:

- White House information form
- AG questionnaire
- FBI background questionnaire
- ABA questionnaire
- Senate Judiciary Committee questionnaire
- AO financial disclosure form

We were advised that Sheila Joy, the key administrative staffer, and the attorney assigned to the case from OPD would inform the candidate of the timeframe and importance of each form. This team would then make 50-75 phone calls to various sources that may have had contact with the candidate to determine suitability -- especially in the areas of temperament and ethics.

The same team plus the AAG would then interview the candidate to discuss cases, judicial philosophy (although purportedly not any kind of "litmus test"). At some early point in the vetting process the candidate's name and resume would be referred to both the ABA and the FBI. The informal arrangement with both organizations was to turn these reports around within 30 days.

Overall, Acheson indicated a good working relationship with the FBI. She noted that Sheila Joy had a very good relationship with Jim Burke, who heads up the background investigations there. Most reports would be provided within 30 days, except when several candidates were referred simultaneously, or around holidays. She indicated that only Sheila Joy, the OPD attorney assigned and the AAG would examine the report. Only if there were significant problems would either the Attorney General or anyone at Counsel review the file. Most of the time the AG and the Counsel would be advised that there were no significant problems. In fact, Acheson noted that she would only provide guidance to the AG when a significant problem developed at *any* stage of the vetting process.

Once these stages were completed satisfactorily, the candidate would be mailed a package of materials containing transcripts of usual questions from Senators likely to attend, and transcripts of exchanges between other candidates and Senators as lessons in what to avoid. The candidate would be invited in to town a few days prior to his consideration before the Judiciary Committee to provide a briefing on how the process works (done by Sheila Joy and Nancy Scott Finin of OLA, who evidently has been working on this process for several Administrations), and to conduct a moot panel. Acheson noted that in the last two years, scheduling of these panels with the Judiciary Committee became very unorganized, on occasion leaving nominees only a day or two to arrange for travel and to prepare. Finally, the office would facilitate the answering of follow-up questions. Acheson was adamant that all communications with the nominee go through OPD to avoid any confusion about what materials had been sent or received.

The process used for selection and vetting of circuit court judges varied somewhat from the procedures described above. First, the selection of the candidates was more ad hoc – sometimes coming from Senators, sometimes from Administration officials, and sometimes acquaintances of the President. Acheson indicated that they often took “heat” from Senators for not consulting enough on the circuit court picks. She explained this as being in the eyes of the beholder – that some Senators recognized the President’s prerogative in selecting circuit court appointments and some didn’t.

Most often, in circuit court vacancies the Counsel and DOJ would send a memo to the President setting forth a summary of the current judges, the history of the circuit, historically significant issues (whether one state held a grudge about “losing” a seat), and, depending on whether there was a clear candidate in mind, a short description of his or her qualifications. If there were multiple candidates in play, the memo would review all candidates, perhaps making a recommendation. Acheson indicated the President often asked for more information or suggested new candidates. This memo would be based on a preliminary public records check, an abbreviated FBI check (with candidate’s consent), and discrete calls to sources in the region or state.

V. The American Bar Association

From 1947 until 1997, the American Bar Association’s Committee on the Judiciary provided ratings of judicial nominees to the Senate Judiciary Committee at the invitation of the Chairman. In 1997, Senator Hatch wrote a letter to the Members of the Committee advising them that he had decided to withdraw this invitation on the ground that it was originally issued at a time when the ABA could be said to be an objective representative of the legal profession, but that since the 1980s it had become another political interest group. He cited the ABA’s positions on abortion, affirmative action, flag desecration, religious liberty, habeas corpus reform, funding for the arts, welfare reform, deportation of criminal aliens, and medical liability reform, issues as to which he argued the bar had no special expertise. He argued that it was unreasonable to assume that a group as politically active as the ABA would be neutral and apolitical in evaluating judges, and that in any event, the perception that a political interest group was being given a specially sanctioned role in the confirmation process was detrimental to the process itself and ultimately to the moral authority of the courts themselves. This letter was greeted with a yawn by the other Committee members, none of whom showed any great interest in rising to the ABA’s defense. The press likewise was not very interested.

The ABA has also had a role advising the executive branch about judicial nominees’ qualifications since 1952. Its Standing Committee on the Judiciary receives the names of individuals selected for nomination at the same time as the FBI, and generally speaking nominations are not sent forward until the ABA’s rating (“well qualified”, “qualified”, or “not qualified”) has been provided to the executive branch.

Serious doubt about the group’s objectivity was raised by its 1987 performance

evaluating Judge Bork's nomination to the Supreme Court, in the course of which four members of the ABA's Standing Committee found him "not qualified." (The majority found him "extremely well qualified," as the Committee had unanimously concluded 5 years earlier with regard to his qualifications for the D.C. Circuit.) As a result, President Bush's judicial selection advisory committee seriously considered no longer requesting the group's views. However, after a series of discussions between the ABA President, then ABA Standing Committee Chairman Ralph Lancaster, and Attorney General Thornburgh, the Committee was allowed to retain its role. Notably, however, in 1992, after Lancaster's term as Chairman expired, the ABA voted to abandon its prior neutrality on abortion, and Lancaster resigned from the Committee and from the ABA. Thornburgh, along with former Attorneys General William Barr, Edwin Meese, and Griffin Bell subsequently testified at the Senate Judiciary Committee hearing that preceded Senator Hatch's letter that in their view the time had come to remove the ABA from its screening role in the nominations process.

The Clinton Administration has retained the ABA's pre-nomination advisory role. Notably, however, in 1994, in three instances President Clinton nominated individuals whom the ABA had rated "not qualified" for judgeships. One of them was Alex Williams, a black local judge in Maryland, and the ABA's action caused outrage among a number of Democratic Senators, including Carol Moseley-Braun, Howard Metzenbaum, and Dennis DeConcini, all of whom expressed an interest in ending the ABA's special role.

Acheson was supportive of the ABA function, believing that it was helpful in getting nominees through the process. However, this should be discounted by the fact that the ABA would tilt toward the same types of judges the Clinton Administration would send up. She indicated that her Office spent a great deal of time with the chairman of the ABA committee on judicial selection. Specifically, they worked to set ground rules, to provide information about potential problems – all aimed at gaining some leverage in "jawboning" the committee on the rating. Occasionally, she felt that the committee did not adequately appreciate non-traditional legal experiences (sole practitioners, non-litigating attorneys, etc.), but that they were open to discussing these factors. Generally, the Office would not quibble between a well qualified and qualified rating, but would often disagree with a not qualified rating and proceed with the nomination. She gave us three examples where they disagreed: 1) the Alex Williams case – where they felt he did not have sufficient experience as a sole practitioner, 2) David Hamilton, Rep. Lee Hamilton's nephew and former counsel to then-Governor Evan Bayh who was deemed to be lacking sufficient litigating experience, and 3) a candidate who they thought was too removed from his earlier litigating experience.

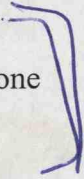
A decision about whether to continue consulting the ABA will be necessary very quickly once the judicial selection machinery is in place. One way to resolve this would be simply to proceed with nominations without seeking their views, but do so without treating the matter as much of an issue.

MEMORANDUM

To: Justice Gonzales
From: Kyle Sampson
Date: January 23, 2001
Re: Selection of federal judges, U.S. Attorneys and U.S. Marshals

This memorandum summarizes the inquiries I have received from Senators and others regarding the selection of federal judges, U.S. Attorneys and U.S. Marshals. Those inquiring are anxious to begin discussions with the White House over the selection of candidates for these posts. The inquiries are summarized as follows:

Kentucky

Sen. McConnell's staff has inquired as to whether the U.S. Attorney in the Western District of Kentucky, Steven Reed, can be permitted to remain in his post for approximately one year. Mr. Reed is an African-American prosecutor whose relatively recent confirmation was supported by Sen. McConnell. Reed apparently is in the midst of conducting some methamphetamine prosecutions that are important to the Senator. 

In addition, Sen. McConnell's staff inquired as to whether the Bush Administration would propound minimum qualifications for judges, U.S. Attorneys and U.S. Marshals. Some thought should be given to whether propounding such qualifications would help or hurt the President's position in negotiating with Senators over nominations.

North Carolina

Sen. Helms' staff has inquired as to when we would be ready to receive Sen. Helms' recommendations for candidates for federal judgeships. Currently there are three vacancies on the 4th Circuit that arguably "belong" to North Carolina – one of which is the seat now occupied by Roger Gregory of Virginia. Sen. Helms is anxious to begin discussions with the White House over how to address the Gregory issue. His staff informs me that they are "close" to having a minority candidate ready to replace Gregory. In addition, Sen. Helms in all likelihood will recommend Terry Boyle, currently a U.S. District Judge, for one of the other seats.

California

Former Gov. Pete Wilson is anxious to help set up a "merit selection" system in California for recommending Republican candidates to the White House. Gov. Wilson recommends Dan Kolkey, a California Court of Appeals judge, for one of the 9th Circuit vacancies. He also recommends Michael Bradbury, the district attorney of Ventura County, for a district court judgeship on the U.S. District Court for the Central District of California. Finally, he recommends Ben Davidian or Paul Richardson for the U.S. Attorney post in the Eastern

District of California.

Maryland

Rep. Roscoe Bartlett sent a letter recommending Scott Rolle for the U.S. Attorney post in the District of Maryland.

Missouri

Sen. Bond's staff has inquired as to when we would be ready to receive Sen. Bond's recommendations for candidates for federal judgeships and U.S. Attorneys. They apparently have candidates ready to go. Also, they are hopeful that the U.S. Attorney in the Western District of Missouri will be asked to leave immediately.

Illinois

Sen. Fitzgerald sent some newspaper clippings to Karl Rove (who delivered them to Clay Johnson who delivered them to me) that discuss the intramural conflict brewing between Speaker Hastert and Sen. Fitzgerald over who will make U.S. Attorney recommendations to the President. Sen. Fitzgerald has made clear that he is the only Illinois Republican who can weigh in because, as Senator, it is his right to "advise and consent." It is reported that Sen. Fitzgerald does not want anyone appointed who would be less than vigorous in pursuing the ongoing federal corruption investigation that some think is leading to Gov. George Ryan. The implication is that Hastert and the Illinois "establishment" Republicans will persuade President Bush to nominate someone who will shut down the corruption investigation, while Fitzgerald will persuade President Bush to nominate someone who will keep the investigation going. I will have the newspaper clippings copied and delivered to your office.

New York

Gov. Pataki already has submitted names for the U.S. Attorney posts in the Northern, Eastern and Southern Districts of New York. His staff informs me that their recommendation for the U.S. Attorney for the Western District of New York will be forthcoming. Thought should be given to establishing a "merit selection" system for recommending Republican candidates in order to smooth the way around Sens. Schumer and Clinton.

Florida

Gov. Bush's staff is in the process of establishing a "merit selection" system for recommending Republican candidates in Florida. They have inquired about our readiness to receive recommendations and our process for doing so.

Utah

I know that Sen. Hatch has recommendations for the 10th Circuit vacancy and the District Court vacancies in Utah. In addition, he has recommendations for a U.S. District Court for the District of Columbia judgeship and a U.S. Court of Federal Claims judgeship.