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THE WHITE HOUSE

WASHINGTON

September 19, 1974

MEMORANDUM TO: PHILIP BUCHEN

FROM: SKIP WILLIAMS *HW*

Subject: Selection of Federal Judges

I am attaching a copy of an article which appeared in the Post on Wednesday that highlights the controversy which has been brewing for some time about the role of the ABA in the selection of Federal Judges. It is my feeling that the issues involved should be examined to determine whether the present procedures and standards for the selection of judges are adequate or whether some modifications should be made.

Would you like me to prepare a written analysis of the current procedures and standards used for the selection of judges?

Enclosure

9/23/74

Yes, please.

J.W.B.



THE WASHINGTON POST

Wednesday, Sept. 18, 1974

A-25



GOV. THOMAS J. MESKILL

... named to U.S. bench

ABA Hits

Naming

Of Meskill

By John P. MacKenzie

Washington Post Staff Writer

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THE WHITE HOUSE
WASHINGTON

11/13/74
L.P. 100

November 11, 1974

MEMORANDUM FOR: PHIL BUCHEN
FROM: SKIP WILLIAMS
SUBJECT: Selection of Federal Judges

Immediately following this cover sheet is a nine-page outline of the Federal Judicial Selection Process (Tab A) which was prepared by John Duffner, Executive Assistant to the Deputy Attorney General. His office is primarily responsible for coordinating the selection of Judges. He has personally been performing this function since the early 1960's. I am told that he has developed an unusually good rapport with Senator Eastland (Chairman of the Senate Judiciary Committee). Furthermore, those with whom I have spoken, both at Justice and at the White House, all seem to agree that Duffner performs his role extremely well. Accordingly, I would recommend that you take some time to discuss this subject with him.

Duffner's outline is followed by my comments relating to several specific aspects of the selection procedure.

Political Considerations

When a Judicial vacancy occurs, the first question to be determined is whose nominee should be given the greatest consideration. Assuming a Republican President is in office and that the vacancy is in a district court in a state in which there is only one Republican Senator, that Senator's nominee will be given priority. If there are two Republican Senators, they arrange a system between themselves, such as alternating with each other, on the submission of candidates.



In the State of Washington, where there is no Republican Senator, there is an arrangement whereby the Democratic Senators can select the candidate for every third vacancy. Governor Reagan gets the option to select for vacancies in California. In Wisconsin the Republican National Committeeman, with the concurrence of the Congressional delegation, makes the selection.

In short, there are few hard and fast rules to use in determining whose candidate for a Judicial vacancy will get preference. The situation within a given state is always subject to change from time to time, depending upon who is in what office and what bargains have been made.

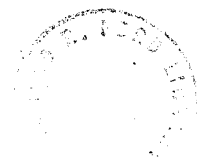
It should be noted at this point that the practice of permitting these Senatorial prerogatives is rooted in custom and tradition. Any attempts to abrogate these prerogatives would be strenuously resisted in the Senate.

The American Bar Association

In the early days of the Nixon Administration an arrangement was made whereby the ABA Standing Committee on Federal Judiciary was given a formal role in the Judicial selection process. At a meeting with the Committee, John Mitchell and Richard Kleindienst agreed to a number of basic principles or standards, which would be applied to prospective Judicial appointees (see Tab B).

When the Committee examines a candidate for nomination it not only applies the standards articulated in its June 5, 1969, letter to the Attorney General (Tab B), but it also interviews many Judges and attorneys with whom the candidate has worked. To assist in this endeavor, the Committee is furnished a copy of the candidates "personal data questionnaire". (Copy at Tab C is for a sitting judge being considered for another Judicial appointment; copy at Tab D is for a candidate who is not already a sitting judge).

After all of the interviews are completed and after the agreed upon standards are applied, the Committee rates the candidate: "Not Qualified," "Qualified," "Well Qualified," or "Exceptionally Well Qualified." As part of the agreement, in any instance when the



Committee formally advises that a candidate is "Not Qualified" and he is nevertheless nominated, the Committee will appear before the Judiciary Committee and articulate the reasons for its objections.

After Justice consummated this agreement with the Committee, the Attorney General provided copies of the letters at Tab B to the Members of the Senate.

There seems to be a consensus that the addition of the ABA Committee to the process has significantly improved the quality of the candidates recommended by Members of the Senate. No Senator wants to suffer the indignity of having the ABA testify that his candidate is "Not Qualified."

The Meskill Nomination

The last Judicial nomination submitted by President Nixon was that of Governor Meskill, who was the only Judicial nominee to go forward under the Nixon Administration who received a "Not Qualified" rating from the ABA. This affair is considered by some to be a mixed blessing. On the one hand, this demonstrates that a President can override the objections of the ABA if he disagrees with their conclusion as to a candidate's fitness. On the other hand, it may be viewed as an abandonment by the Executive Branch of the principles and standards articulated in 1969.

With the advent of a new Administration, it may be advisable to consider reaffirming the role of the ABA in the Judicial selection process. This could be done, as before, by having the Attorney General meet with the ABA for the purpose of agreeing on standards. These standards could then be promulgated and made available to the Members of the Senate.

You may wish to discuss this subject with Duffner, also.

The Supreme Court

John Duffner has a list of about twenty sitting Judges (Republicans) who he believes should be considered in the event of a position becoming available on the Supreme Court. He and I believe that it is prudent to elevate a sitting Judge to the Supreme Court when



there is a vacancy because you are then dealing with an individual whose suitability for the position can be easily assessed by reviewing his record as a Judge. For the same reason, I also believe that this Administration should encourage the nomination of sitting Judges to positions on the U. S. Courts of Appeal.

Conclusion

In closing, I would urge you to take a personal interest in reviewing the process for selecting judges. Because of their lifetime tenure and their great power, every effort should be made to guarantee that the best possible candidates be given Judicial appointments.



NARRATIVE OF THE FEDERAL JUDICIAL SELECTION PROCESS

1. The President ...shall (1) nominate, and by and with the (2) advice and consent of the Senate, shall (3) appoint, judges of the Supreme Court, and all other officers of the United States Article 2, Sec. 2. See also Title 28 USC.

2. The judges, both of the Supreme and inferior courts, shall hold their office during good behavior Article 3, Sec. 1. (lifetime appointment)

3. Judicial vacancies arise by:

(a) death

(b) resignation

(1) Voluntarily any time -- if 70 years of age and ten years service - continues to receive salary he received for remainder of life.
28 USC 371(a)

(c) retirement

(1) If 70 and ten years service or 65 and 15 years service, retains office but retires from active service (senior judge) continues to receive salary of office for remainder of life. 28 USC 371(b)

(2) Retirements may be upon a fixed date or to take effect upon appointment and qualification of successor--latter is preferable, permits continuity. Resignations and retirements are directed to the President. Duffner's office prepares draft reply.

(d) Enactment of laws authorizing additional positions

(1) permanent

(2) temporary (1st vacancy cannot be filled)

(e) Disability

(1) Voluntary - Disabled judge and Chief Judge of the Circuit (or disabled Chief Judge of Circuit or Associate Justice of the Supreme Court and the Chief Justice of the United States, etc.) certifies disability



to President. Ten years service receives salary of office for life, 28 USC 372(a), less than ten years $\frac{1}{2}$ salary of office for life. Duffner's office prepares draft response for President.

(2) Involuntary - Disability certified to President by majority of judicial council of Circuit - President makes finding of disability and additional-judge necessity. Vacancy created by death, resignation or retirement of disabled judge cannot be filled. Disabled judge receives full pay for life. (28USC 372(b)). Duffner's office prepares draft response and draft "Finding" for the President.

(f) Expiration of term

(1) Judges of Canal Zone, Guam and Virgin Islands are appointed for eight year terms. 28 USC 373

(2) Judges of District of Columbia Court of Appeals and of the Superior Court of the District of Columbia are appointed for a term of 15 years, or, a term of years as prescribed by P.L.91-358, eff. 7/29/70.

The Chief Judge of the District of Columbia Court of Appeals is designated by the President for a term of 4 years, and is selected from among the sitting Judges of that Court.

(g) Impeachment - Article 1, Sec. 3.

Senate has sat as a court of impeachment on Federal Judges on nine occasions. Four were removed from office, four were acquitted and one resigned during impeachment proceeding. The last court of impeachment occurred in 1936.

Duffner's office prepares and distributes weekly (to AG, DAG and Chairman of ABA Committee) list of all vacancies--showing specific court, position vacated or added, and date vacancy arose. White House has also, on occasions, requested list be furnished to it.



4. Source of Candidates for Vacancies:

- (a) (1) Municipal, state and federal judges
- (2) Private practice
- (3) Legal academic world
- (4) State and federal officials

Information on candidate initially comes from internal and public information (Martindale-Hubbell, Who's Who, etc.)

NB: No Senator or Congressman can be appointed to a position created during the term for which he was elected or the emoluments increased. Art.1,Sec.6,Clause 2 of the CONSTITUTION

(b) Recommendations come from:

- (1) White House
- (2) Department officials
- (3) Senators (state or circuit involved)
- (4) Representatives (state or circuit involved)
- (5) Governors
- (6) State and local bar associations
- (7) Individuals wanting to be considered
- (8) Individuals recommending others

(c) Spaces are allotted in files in the DAG File Room for candidates for every district and circuit court, for specialty courts, and for District of Columbia Courts. Everyone recommended has a file. Under law and regulations these files are maintained in Department for five years.



-4-

5. Initial Screening:

Files are initially screened by DAG, his designee or Duffner to find two or three best qualified candidates. Recommendations of Senators from state where vacancy exists very important. Senate tradition has given them a virtual right of veto, particularly where control of Senate in party not that of the President.

6. Informal Evaluation:

(a) Personal Data Questionnaire sent to one (or more) who survive initial screening. Candidate sends one completed copy to ABA, one returned to DAG.

(b) PDQ reviewed by DAG, his designee and by Duffner.

(c) Informal evaluation (generally assessment of Chairman of ABA and circuit representative & is a prediction of formal evaluation) received from Chairman of ABA Committee:

Not qualified (lack of experience, age, health)

Qualified

Well qualified

Exceptionally well qualified

7. Formal Evaluation:

(Generally not begun until informal evaluation completed)

(a) Exhaustive FBI investigation initiated. Agents interview federal and state judges, attorneys, associates, government officials, business and civic leaders, religious and civil rights leaders, neighbors and personal physician. National agency, police and credit checks made. IRS report obtained.

(b) Concurrently a formal report of ABA is requested.

8. Recommendation:

Duffner reviews FBI report and forwards to DAG--or upon his request, summarizes report for the DAG.



If DAG believes candidate meets criteria and is best available, and ABA formal (views of entire ABA committee) has been received, he instructs Duffner to prepare papers of recommendation and assemble to go to AG.

AG reviews FBI report, PDQ and other files of candidate. If he approves he signs letter to the President of recommendation and returns to Duffner's office. Duffner forwards AG's letter and all nominations papers to designated individual in the White House.

DJ people never reveal that nomination papers are at the White House. (Generally, several preliminary discussions take place between AG and President, AG and DAG, and DAG and White House staff before papers are finally sent to White House.)

9. If he approves, nomination is signed by the President and sent to Senate.

10. Congressional Action on Nomination:

(a) Referred to Senate Judiciary Committee

(1) Counsel of Committee sends "blue slip" to Senators of same state as nominee. If blue slip is returned with "objection" by either Senator, no action takes place. If position of Senator is maintained throughout session fate of nomination is pretty much in hands of Chairman of full committee. Discharge petition rarely attempted.

(2) If "no objection" blue slips are returned. Counsel, with approval of Chairman, places seven-day notice in Congressional Record scheduling hearing on the nomination. Notice gives date, time, room number, building and make-up of special subcommittee--(generally Eastland, McClellan and Hruska).

3. Counsel advises Duffner of hearing. Nominee then called by Duffner (only notice nominee receives of scheduled hearing) who gives detailed briefing to nominee on what to expect and what he should do. Attendance of nominee required.



(4) Prior to hearing, by agreement with AG, Director of FBI and Sen Eastland, Duffner briefs Senate Judiciary Committee Chairman on FBI investigation of nominee.

(5) Duffner's office sends Commission to engraver. When it is returned, it is then sent to White House.

(6) Duffner's office sends copies of biographical sketch to Senate Judiciary Committee and DJ Office of Public Information immediately upon notice that nomination has gone to Senate.

(b) Hearing--(before the subcommittee)

(1) Senators from home state of nominee traditionally introduce nominee to subcommittee.

(2) Unless controversial, hearings last only a few minutes.

(3) Duffner attends hearing as Department observer.

(4) Subcommittee generally recommends favorable report to full committee.

When nominee is here in Washington for his hearing, he usually spends some time with Administrative Office of the Courts.

(c) Confirmation:

(1) Full Judiciary Committee does not have regularly scheduled executive sessions, thus further progress awaits it's action.

(2) When it occurs and if favorable, an executive report recommending confirmation is filed in the Senate.

(3) Normally a 24 hour lay-over in Senate before taken up by full Senate. (Can be brought up same day by unanimous consent.)

(4) When Senate approves nomination, President immediately advised of Senate confirmation.



Nominations, not acting as a session, die with the session. Motion to carry over is permissible. Must receive majority vote.

Duffner's office prepares weekly list of nominations pending at the time of the Senate.

11. Appointment:

(a) Where Senate has given advice and consent

(1) Date President signs Commission is appointee's date of rank on Court to which appointed.

(2) If two or more are signed for same Court on same day, senior in age is senior in rank.

(3) Signed commissions are returned to Duffner's office for further engraving (date of appointment), counter-signature of AG, placing DJ seal on Commission, and photostating.

(4) By registered air mail letter, DAG transmits commission, oath and xerox copy of confirmation to appointee.

(b) Recess

(1) President can appoint during recess of Senate

a. No salary can be paid appointee, however, if vacancy existed during prior session, until appointee confirmed by Senate.

b. Payment of salary prohibition not applicable if:

(i) vacancy arose within 30 days of end of prior session; or

(ii) nomination was pending before Senate at the time of adjournment (except a nomination of a person who had been appointed during the preceeding recess of Senate); or



(iii) a nomination had been rejected by the Senate within 30 days of the end of the session & a person other than the one who had been rejected is given the recess appointment;

and, if:

(iiii) nomination to fill vacancy under (i) (ii) or (iii) is submitted to Senate not later than 40 days after beginning of next session.

12. Qualification:

Date appointee takes oath he enters on duty as a federal judge.

Executed oath is returned to Duffner's office (a copy is sent to Director of Administrative Office of U.S. Courts where it becomes a part of appointee's personnel file.) Appointment files on all active and senior judges are maintained in DAG's file room. Upon death or resignation these files are sent to Archives.

Index cards, biographical sketches and historical records on all federal judges from John Jay to date are maintained in Duffner's office.



Authorized Judicial Positions:

Supreme Court	9
U. S. Courts of Appeal	97
U. S. District Courts	396*
U. S. Court of Claims	7
U. S. Court of Customs and Patent Appeals	5
U. S. Court of Customs	9
Territorial Courts	4
D. C. Court of Appeals	9
Superior Court of D. C.	44
	<hr/>
	580

* Includes temporary positions in Pennsylvania, Middle, and North Carolina, Eastern, authorized by the President because of disability of two Judges (Title 28, Sec. 372(b)).





Office of the Attorney General
Washington, D. C.

June 18, 1969

Cloyd Laporte, Esq.
Acting Chairman
Standing Committee on Federal Judiciary
American Bar Association
1 Chase Manhattan Plaza
New York, New York 10005

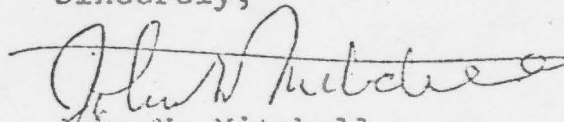
Dear Mr. Laporte:

I have your letter dated June 5, 1969, which you wrote to me on behalf of the American Bar Association Standing Committee on Federal Judiciary, and in which you set forth some of the basic principles which were discussed and agreed upon at the recent meeting with the Standing Committee on Federal Judiciary, the Deputy Attorney General and me.

Your letter accurately and adequately sets forth those basic principles which were discussed and agreed upon. You can rest assured that the Department of Justice will do its part in the implementation of these principles, just as I am sure that the American Bar Association will do its part. I am sure that you will agree with me that by this mutual cooperative effort the standards of judicial selection will be raised to and maintained at a high level and thereby the administration of our laws and justice will be better served.

Might I thank you on behalf of the Deputy Attorney General and myself for your willing cooperation and meaningful contributions to this effort.

Sincerely,


John N. Mitchell
Attorney General



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June 5, 1969

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The Honorable John N. Mitchell
Attorney General
United States Department of Justice
Washington, D. C. 20530

Dear Mr. Mitchell:

On behalf of the American Bar Association Standing Committee on the Federal Judiciary, I would like to thank you and Deputy Attorney General Richard Kleindienst for giving the Committee the opportunity to meet with you last week to discuss the standards for appointments to the Federal Judiciary. All of us believe that the meeting was most profitable and we look forward to working with you in the future to establish and maintain the high caliber of appointments to the Federal Judiciary which President Nixon has stated to be one of the principal objectives of the administration.

In this connection the Committee believes that it would be helpful if we set forth some of the basic principles which were discussed and agreed upon at our meeting.



June 5, 1969

With respect to the age of prospective candidates, the Committee believes that an individual 60 years of age or over should not receive an initial appointment to a lifetime judgeship in a Federal court unless he merits a rating of "Well Qualified" or "Exceptionally Well Qualified" and is in excellent health and, in no event, should he be eligible for such appointment after he has reached his 64th birthday.

In the case of Federal District Judges being considered for appointment to the United States Court of Appeals, the Committee believes that a Judge 60 years of age or over who has not reached his 64th birthday should not receive an appointment to the United States Court of Appeals unless he merits a rating of "Well Qualified" or "Exceptionally Well Qualified" and is in excellent health.

A Federal District Judge 64 years of age or over who has not reached his 68th birthday should not receive an appointment to the United States Court of Appeals unless he merits a rating of "Exceptionally Well Qualified," is in excellent health and will not be eligible for retirement within two years.

A Federal District Judge who has reached his 68th birthday should not receive an appointment to the United States Court of Appeals under any circumstances.

The point at which the age of the candidate is determined for the purpose of applying the foregoing rules is the date of the letter from the Deputy Attorney General to the Chairman of the Committee requesting an Informal Report on that candidate.

The Committee believes that ordinarily a prospective appointee to the Federal bench should have been admitted to the Bar for at least 15 years and that he should have had a substantial amount of trial experience.

The Committee believes that trial experience is important in the case of appointees for the United States Court of Appeals as well as appointees to the District Court. In exceptional cases candidates for the Court of Appeals might be approved without trial



June 5, 1969

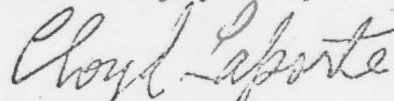
experience. However, we cannot conceive approving a candidate for the District Court who has not had adequate trial experience.

With respect to the question raised as to political activity on the part of a prospective candidate, the Committee is of the view that such activity is not any obstacle to appointment to the Federal Judiciary; on the contrary, the Committee considers such service a point in his favor. The Committee, however, does not regard political activity as a substitute for experience in the practice of law and the other necessary qualifications.

As you know, it is the practice of the Committee as to each person nominated for appointment to the Federal Judiciary to report to the Senate Judiciary Committee whether the Committee in its investigation found the candidate "Not Qualified," "Qualified," "Well Qualified" or "Exceptionally Well Qualified." If in any case in which the Committee has rendered a Formal Report to you that a candidate is "Not Qualified," the candidate is nevertheless nominated, the Committee will appear in person before the Senate Judiciary Committee in opposition to the nomination and will state its conclusions and the reasons therefor.

In closing, let me express again the appreciation of our Committee to you and Deputy Attorney General Kleindienst for the cooperation which you have extended to us over the past several months. We congratulate you and President Nixon on the high caliber of those persons nominated for appointment to the Federal Judiciary during this period and we sincerely hope that our efforts in the future will enable us jointly to maintain the high standard which has been set by President Nixon's appointments to date.

Sincerely yours,



-Cloyd Laporte
Acting Chairman



DATE COMPLETED:

JUDGE

PERSONAL DATA QUESTIONNAIRE

In answering these questions, please use letter size paper.

Repeat each question and place your answer immediately beneath it.

To expedite matters, send in your completed Questionnaire as soon as possible, since it is a prerequisite for the usual process of investigation.

1. Full name and Social Security Number.
2. Office and home addresses, zip codes and telephone numbers.
3. Date and place of birth.
4. Are you a naturalized citizen? If so, give date and place of naturalization.
5. Family status:
 - a) Are you married? If so, state the date of marriage and your wife's maiden name.
 - b) Have you been divorced? If so, give particulars, including the date, the name of the moving party, the court and the grounds.
 - c) Names of your children, with age, address and present occupation of each.
6. Have you had any military service? If so, give dates, branch of service, rank or rate, serial number and present status.
7. List each college and law school you attended, including dates of attendance, the degrees awarded and, if you left any institution without receiving a degree, the reason for leaving.
8. List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.



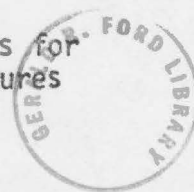
9. Please describe chronologically your law practice and experience after your graduation from law school and until you became a judge, including:
 - a) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.
 - b) whether you practiced alone, and if so, the addresses and the dates.
 - c) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.
 - d) any other relevant particulars.
10. What was the general character of your practice before you became a judge, dividing it into periods with dates if its character changed over the years.
 - a) describe your typical former clients, and mention the areas, if any, in which you specialized.
11. Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, please describe each such variance, giving dates.
 - a) What percentage of these appearances was in
 - 1) Federal courts.
 - 2) State courts of record.
 - 3) Other courts.
 - b) What percentage of your litigation was
 - 1) Civil.
 - 2) Criminal.
 - c) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 - d) What percentage of these trials was
 - 1) Jury.
 - 2) Non-jury.



- e) Describe ~~ten~~ ten of the more significant litigated matters which you handled and give the citations, if the cases were reported. Please give a capsule summary of the substance of each case, and a succinct statement of what you believe to be the particular significance of the case. Please identify the party or parties whom you represented, describe in detail the nature of your participation in the litigation and the final disposition of the case. Please also state as to each case a) the dates of the trial period or periods, b) the name of the court and the name of the judge before whom the case was tried, c) the names and addresses of counsel for the other parties.
12. Please state the judicial office you now hold, and the judicial offices you have previously held, giving dates and the details, including the courts involved, whether elected or appointed, periods of service and a description of the jurisdiction of each of such courts with any limitations upon the jurisdiction of each court.
13. Please describe ten of the more significant opinions you have written, or attach copies of them to your answers, and give the citations if the opinions were reported, as well as citations to any appellate review of such opinions.
14. Have you ever held public office other than a judicial office? If so, give the details, including the offices involved, whether elected or appointed and the length of your service, giving dates.
15. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? If so, give details, including dates.
16. Have you ever been engaged in any occupation, business, or profession other than the practice of law or holding judicial or other public office? If so, please give details, including dates.
17. Are you now an officer or director or otherwise engaged in the management of any business enterprise?
- a) If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.
- b) Is it your intention to resign such positions and withdraw from any participation in the management of any of such enterprises if you are nominated and confirmed. If not, please give reasons.



18. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of \$25.00 or less was imposed.
19. Have you, to your knowledge, ever been under federal, state or local investigation for possible violation of a criminal statute? If so, give particulars.
20. Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? If so, give particulars.
21. Have you ever been sued by a client or a party? If so, please give particulars.
22. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured a subject, or in which you appeared as a witness.
23. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.
24. With respect to your judicial service,
 - a) have you participated in any proceeding in which you had a stock or other financial interest in one of the parties or in the matter in controversy? If so, please give particulars.
 - b) is there a rule or custom in your court as to judges sitting on such cases? If so, please state the rule or custom and whether or not you have complied with it.
 - c) have you to the best of your knowledge and belief complied with applicable statutes and Canons of the American Bar Association relative to such matters as were in force and applicable at the time? If not, please give particulars.
 - d) have you ever received compensation from outside sources for services rendered (other than fees or expenses for lectures or teaching)? If so, please give particulars.



25. What is the present state of your health?
- a) Have you ever been hospitalized or prevented from working due to injury or illness or otherwise incapacitated for a period in excess of ten days? If so, please give the particulars, including the causes, the dates, the places of confinement, and the present status of the conditions which caused the confinement or incapacitation.
 - b) Do you suffer from any impairment of eyesight or hearing or any other physical handicap? If so, please give details.
26. Have you published any legal books or articles? If so, please list them, giving the citations and dates.
27. List all bar associations and professional societies of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.
- a) List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance (e.g., judicial selection committee, committee of censors, grievance committee).
 - b) Describe also your participation, if any, on judicial committees, in judicial conferences, and in sitting, by designation, as a temporary member of the court which reviews decisions of your court.
28. List all organizations other than bar associations or professional associations or professional societies of which you are or have been a member, including civic, charitable, religious, educational, social and fraternal organizations, giving dates of membership and offices, if any, you have held.
29. List any honors, prizes, awards or other forms of recognition which you have received other than those mentioned in answers to the foregoing questions.
30. State any other information you regard as pertinent.



LAWYER,

PERSONAL DATA QUESTIONNAIRE

In answering these questions, please use letter size paper. Repeat each question and place your answer immediately beneath it. To expedite matters, send in your completed Questionnaire as soon as possible, since it is a prerequisite for the usual process of investigation.

1. Full name and Social Security Number.
2. Office and home addresses, zip codes and telephone numbers.
3. Date and place of birth.
4. Are you a naturalized citizen? If so, give date and place of naturalization.
5. Family status:
 - a) Are you married? If so, state the date of marriage and your wife's maiden name.
 - b) Have you been divorced? If so, give particulars, including the date, the name of the moving party, the court and the grounds.
 - c) Names of your children, with age, address and present occupation of each.
6. Have you had any military service? If so, give dates, branch of service, rank or rate, serial number and present status.
7. List each college and law school you attended, including dates of attendance, the degrees awarded and, if you left any institution without receiving a degree, the reason for leaving.

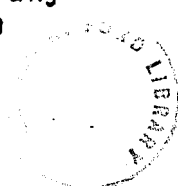


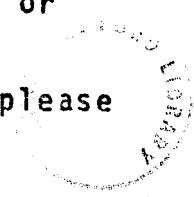
8. List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.
9. Please describe chronologically your law practice and experience after your graduation from law school, including:
 - a) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.
 - b) whether you practiced alone, and if so, the addresses and the dates.
 - c) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.
 - d) any other relevant particulars.
10.
 - a) What has been the general character of your practice, dividing it into periods with dates, if its character has changed over the years?
 - b) Describe your typical clients, and mention the areas, if any, in which you have specialized.
11. With respect to the last five years:
 - a) Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court has varied during this period, please describe each such variance, giving the dates thereof.
 - b) What percentage of these appearances was in
 - 1) Federal courts.
 - 2) State courts of record.
 - 3) Other courts.
 - c) What percentage of your litigation was
 - 1) Civil.
 - 2) Criminal.
 - d) State the number of cases in courts of record you tried to verdict or judgement (rather than



settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

- e) What percentage of these trials was
- 1) Jury.
 - 2) Non-jury.
12. Summarize your experience in court prior to the last five years, indicating as to that period,
- a) whether your appearances in court were more or less frequent,
 - b) any significant changes in the percentages stated in your answers to Question ~~a~~ b), c), and e), //
 - c) any significant changes in the number of cases per year in courts of record you tried to verdict or judgement (rather than settled), as sole counsel, chief counsel, or associate counsel.
13. Describe not more than ten of the more significant litigated matters which you handled and give the citations, if the cases were reported. Please give a capsule summary of the substance of each case, and a succinct statement of what you believe to be the particular significance of the case. Please identify the party or parties whom you represented, describe in detail the nature of your participation in the litigation and the final disposition of the case. Please also state as to each case, a) the dates of the trial period or periods, b) the name of the court and the name of the judge before whom the case was tried, c) the names and addresses of counsel for the other parties.
14. a) Have you ever held judicial office? If so, please give dates and details including the courts involved, whether elected or appointed, periods of service and a description of the jurisdiction of each of such courts with any limitations upon the jurisdiction of each court.



- b) Have you ever held public office other than a judicial office? If so, give details, including the office involved, whether elected or appointed, and the length of your service, giving dates.
15. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? If so, give details, including dates.
16. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office? If so, give details, including dates.
17. Are you now an officer or director or otherwise engaged in the management of any business enterprise?
- a) If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.
- b) Is it your intention to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and confirmed? If not, please give reasons.
18. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of \$25.00 or less was imposed.
19. Have you, to your knowledge, ever been under federal, state or local investigation for possible violation of a criminal statute? If so, give particulars.
20. Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? If so, give particulars.
21. Have you ever been sued by a client? If so, please give particulars.
- 

22. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, a material witness, were named as co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.
23. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency bar association, disciplinary committee, or other professional group? If so, please give the particulars.
24.
 - a) What is the present state of your health?
 - b) Have you ever been hospitalized or prevented from working due to injury or illness or otherwise incapacitated for a period in excess of ten days? If so, please give the particulars, including the causes, the dates, the places of confinement, and the present status of the conditions which caused the confinement or incapacitation.
 - c) Do you suffer from any impairment of eyesight or hearing or any other physical handicap? If so, please give details.
25. Have you published any legal books or articles? If so, please list them, giving the citations and dates.
26. List all bar associations and professional societies of which you are a member and give the titles and dates of any offices which you have held in such groups. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance (e.g., judicial selection committee, committee of censors, grievance committee).
27. List all organizations other than bar associations or professional associations or professional societies of which you are or have been a member,

including civic, charitable, religious, educational, social and fraternal organizations, giving dates of membership and offices, if any, you have held.

28. List any honors, prizes, awards or other forms of recognition which you have received other than those mentioned in answers to the foregoing questions.
29. State any other information you regard as pertinent.



THE WHITE HOUSE

WASHINGTON

November 25, 1974

MEMORANDUM FOR:

JACK MARSH

FROM:

WILLIAM N. WALKER *W. N. Walker*

Alan Woods of my staff had an occasion to talk recently with some people from the Justice Department concerning judicial appointments. In the course of their conversation, the subject of the bill to create an increased number of Federal judges came up. It was indicated that the people on the Hill are ready to negotiate on that legislation, however, they will wish the President to agree to make some set percentage of those judges Democratic appointments. It was their view that in lieu of such an agreement the legislation would not be considered until after the 1976 elections when an attempt would again be made to elicit similar consideration.

I do not know whether or not you were previously aware of this information, but if you were not, I thought it might prove helpful.

cc: Donald Rumsfeld
Philip Buchen ✓

November 26, 1974

To: Nancy

From: Eva

The attached memos concerning selection of judges -- Ellsworth Graafeiland and Henry Bramwell -- were in Mr. Buchen's action folder.

Would you check with Mr. Areeda and see if they have been taken care of. (If so, please return this package to Mr. Buchen's desk.)

(((The November 11 memo from Skip Williams re selection of Federal judges is my copy for my file -- Mr. Areeda has the original, I believe -- so please preserve it for me or for Mr. Buchen's desk.)))

Thanks.



THE WHITE HOUSE
WASHINGTON

Date 8/1/75

TO: PHIL BUCHEN

FROM: KEN LAZARUS

ACTION:

_____ Approval/Signature

_____ Comments/Recommendations

_____ Prepare Response

_____ Please Handle

 x _____ For Your Information

_____ File

REMARKS:



THE WHITE HOUSE

WASHINGTON

MEMORANDUM

FEDERAL JUDICIAL APPOINTMENTS

This is to set forth both formal and informal aspects of the Federal judicial selection and appointment process with a view toward a review and possible improvement of the process and thus of the quality of the Federal bench.

I. Organization of Courts

The President is authorized by law to fill 596 judgeships in 10 Federal court systems across the country. The organization and composition of these courts may be summarized as follows:

A. Article III Courts. The following are Article III courts involving lifetime judicial appointments.

1. Supreme Court: Chief Justice and 8 Associate Justices (28 U.S.C. Sec. 1).
2. United States Courts of Appeals: 97 judgeships in the 11 judicial circuits of the United States (28 U.S.C. Sec. 41, et. seq.). Note that Congress is currently considering the creation of two new circuits to be accomplished by a division of both the Fifth and Ninth Circuits, and the addition of 11 new circuit court judgeships. There is currently only one vacancy in the circuit courts (Fifth Circuit).
3. United States District Courts: 396 judgeships in 95 judicial districts of the United States (28 U.S.C. Sec. 81, et. seq.). This number includes two temporary judgeships which cannot be filled should vacancies arise (28 U.S.C. Sec. 372(b)). Note that Congress is currently considering the recommendation of the Judicial



Conference to create 51 new district court judgeships across the country (next quadrennial survey and recommendation of the Judicial Conference regarding judgeships is due in 1976). There are currently a total of 15 vacancies in the various district courts.

4. United States Court of Claims: A chief judge and six associate judges (28 U.S.C. Sec. 174 et. seq.).
5. United States Court of Customs and Patent Appeals: a chief judge and four associate judges (28 U.S.C. Sec. 215, et. seq.).
6. United States Customs Court: a chief judge and eight associate judges (28 U.S.C. Sec. 251, et. seq.).

B. Other Courts. The following courts are solely creatures of statute and do not involve lifetime judicial appointments.

1. United States Tax Court: a chief judge and 15 judges (26 U.S.C. Sec. 7441, et. seq.). Pub. L. 91-172 (1969) established the Tax Court as a Constitutional court under Article I (independent "legislative" court within the Executive Branch). Term of office is 15 years (28 U.S.C. Sec. 7443(e)).
2. Territorial Courts: a total of 4 judges are appointed for terms of eight years each to the District Courts of Guam (48 U.S.C. Sec. 1424(b)), the Virgin Islands (48 U.S.C. Sec. 1614) and the Canal Zone (48 U.S.C. Sec. 1301(y)).
3. District of Columbia Court of Appeals: nine judges appointed for a term of 15 years (with automatic reappointment if found to be well-qualified or extremely well-qualified after first term) upon the recommendation of D. C. Judicial Nomination Commission (Pub. L. 93-198, Sec. 433).



4. Superior Court of the District of Columbia:
44 judges appointed for a term of 15 years
(with provision for automatic reappointment
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D. C. Judicial Nomination Commission
(Pub. L. 93-198, Sec. 433).

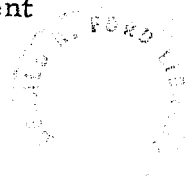
United States Magistrates are appointed by the judges of the various district courts (28 U.S.C. Sec. 631).

II. Judicial Vacancies

Apart from the creation of new judgeships, judicial vacancies arise as the result of:

- A. Death.
- B. Resignation: voluntarily any time -- if 70 years of age and ten years service, continues to receive salary he received for remainder of life. (28 U.S.C. 371(a))
- C. Retirement: if 70 and ten years service or 65 and 15 years service, retains office but retires from active service (senior judge) continues to receive salary of office for remainder of life. (28 U.S.C. 371(b)) Retirements may be upon a fixed date or to take effect upon appointment and qualification of successor.
- D. Disability: (1) Voluntary - Disabled judge and Chief Judge of the Circuit (or disabled Chief Judge of Circuit or Associate Justice of the Supreme Court and the Chief Justice of the United States) certify disability to President. Ten years service receives salary of office for life; less than ten years one-half salary of office for life (28 U.S.C. 372(a)).

(2) Involuntary - Disability certified to President by majority of judicial council of Circuit. President makes finding of disability and additional judge necessity. Vacancy created



by death, resignation or retirement of disabled judge cannot be filled. Disabled judge receives full pay for life. (28 U.S.C. 372(b))

- E. Expiration of term: as noted above.
- F. Impeachment: (Article I, Sec. 3) Senate has sat as a court of impeachment on Federal judges on none occasions. Four were removed from office, four were acquitted and one resigned during impeachment proceeding. The last court of impeachment occurred in 1936.

The Office of the Deputy Attorney General compiles lists of vacancies and distributes them on a weekly basis to the Attorney General and the Chairman of the ABA Judicial Qualification Committee. On occasion, the White House also receives these compilations.

III. Candidate Selection

To my knowledge, there are no general ground rules for the selection of nominees to the Supreme Court, the various specialty courts or the territorial courts. However, basic operating principles have developed over the years with respect to the selection of candidates for appointment to the circuit and district courts (494 of total 596 judgeships). These procedures are summarized below.

- A. Theory -vs- Practice. In theory, the Department of Justice receives and evaluates the recommendations of relevant segments of society prior to recommending a judicial candidate to the President for nomination. In practice, however, a very limited number of people are involved in any meaningful way.
- B. Patronage. The traditional patronage rules governing the selection of district and circuit court judges are fairly well settled.

1. State Jurisdiction. District court appointments fall within the patronage of the Republican or Democratic leadership of the relevant state (district and circuit court judges must reside, within the territorial jurisdiction of their courts 28 U.S.C. Secs. 44 and 134). As to circuit court appointments, the patronage ground rules become more complex. In recent years, there has evolved a rough formula which allows for the allocation of a portion of a circuit court's seats to each of the various states within its jurisdiction. The formula gives consideration to three factors: (a) the percentage of seats on the court which are currently held by residents of each state; (b) the percentage of the circuit's total population accounted for by each state; and (c) the percentage of total appeals arising from each state.
 2. Senatorial Courtesy. Assuming only one Senator from the relevant state is of the same political party as the Administration in power, the choice of a candidate rests almost solely with that Senator. In the event that both Senators from a relevant state are members of the same political party as the Administration, they share the power of selecting judicial candidates -- typically they will alternate the selection power. This "courtesy" is jealously guarded and supported in principle by Senators of both parties as an institutional prerogative.
- C. Power Vacuums. In instances where no Senator has a clear claim to the selection of a judicial candidate, a variety of secondary political forces are brought to bear on the appointment. Thus, a Governor, Congressman or State Chairman of the same party as the Administration may become dominant. Frequently, powerful members of the opposition party will use the occasion to assert their interests. As a corollary to this diffusion of political power, the role of the Department of Justice (traditionally the Office of the Deputy Attorney General) in the selection process is expanded greatly.

- D. Note: No Senator or Congressman can be appointed to a position created during the term for which he was elected or the emoluments increased. (Art. I, Sec. 6, cl. 2)

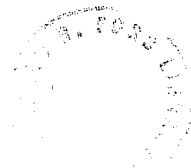
IV. Clearance Process

Before a judicial nomination is forwarded to the Senate, a series of clearances are conducted by the Department of Justice and by the White House.

A. Justice Department. As noted above, the Deputy Attorney General traditionally has taken the lead within the Department on judicial appointments. Spaces are allotted in files in the Deputy's File Room for candidates for every district and circuit court, for specialty courts, and for District of Columbia courts. Everyone recommended has a file. Under law and regulations, these files are maintained by the Department for five years.

1. Initial Screening. The Deputy Attorney General or his Executive Assistant generally reviews available internal and public information (Martindale-Hubbell, Who's Who, etc.) on recommended candidates.
2. Informal Evaluation. At such time as the selection process has centered on one candidate, the Department conducts an informal evaluation of his credentials.
 - (a) A personal data questionnaire is sent to the candidate and reviewed by the Deputy or his Executive Assistant.
 - (b) The Department receives the informal comments of the Chairman and appropriate circuit representative of the ABA Standing Committee on the Federal Judiciary.

- (c) The preliminary conclusion of the Department is communicated to the Senator or other supporter(s) of the candidate.
 - 3. Formal Evaluation. Assuming the informal evaluation is satisfactory, the Department requests:
 - (a) a full-field investigation of the candidate by the FBI; and
 - (b) a formal report of the ABA Committee.
 - 4. Recommendation. Provided the ABA Committee finds the candidate qualified and the FBI investigation does not uncover any substantial problems, the Attorney General forwards a letter of recommendation and nomination papers to the White House.
- B. White House. Judicial nominations are processed by the White House Personnel Office under the immediate control of Peter McPherson. The security investigations and conflicts clearances are conducted by the Department of Justice and are not reviewed by the Counsel's office.
- 1. Preliminary clearances. Checks are made at the RNC, the opinions of the members of the appropriate state delegation are solicited and a draft memo to the President presenting the nomination is generally reviewed by Counsel's office and other interested members of the White House staff.
 - 2. Presentation to the President. The candidate's name is presented to the President along with the views expressed by supporters and opponents of the nomination. I might note that I am not aware of any situation in which the recommendation of the Department of Justice has been reversed.



3. Nomination. Prior to transmittal of the formal nomination documents to the Senate, advance notice is given to the Senator or other supporter(s) of the candidate and to key members of the Senate Judiciary Committee.
- C. Time Frame. The clearance process at the Department of Justice normally involves a few months. White House clearances can take another 1-2 months. Despite attempts by many to hold in confidence the development of a candidate's nomination, key supporters normally have little difficulty in ascertaining the status of a nomination in order to nudge it along the treadmill.

V. Confirmation and Appointment

Upon receipt of a judicial nomination by the Senate, it is referred to the Committee on the Judiciary.

- A. Blue Slips. Chief Counsel of Committee sends "blue slip" to Senators of same state as nominee. If blue slip is returned with "objection" by either Senator, no action takes place. If position of Senator is maintained throughout session, fate of nomination is in hands of Chairman of full committee (Senator Eastland) and for all practical purposes is dead. Discharge petition rarely attempted.
- B. Notice of Hearing. If "no objection" blue slips are returned, Chief Counsel, after consultation with Minority Counsel and with approval of Chairman, places notice in Congressional Record scheduling hearing on the nomination. Seven days must be allowed between the date of notice and date of hearing.
- C. Subcommittee Hearing. Chairman Eastland routinely appoints a special subcommittee (Eastland, McClellan and Hruska) to hear district and circuit court nominations (only Supreme Court nominations or particularly controversial matters, e.g. Meskill nomination, are heard by full committee). Hruska

is normally the only member of the special sub-committee to attend and conducts a pro forma proceeding. (Justice official briefs Eastland and Hruska before hearing.) Upon conclusion of hearing, nomination is referred by Hruska to full committee.

- D. Full Committee Action. Nominations are considered en bloc by full committee in closed session (not regularly scheduled). Normally, no discussion of district or circuit court appointments. In recent years practice has developed of approving nominations in advance of hearing subject to right of any member to assert objection for period of 24 hours after hearing. "Hold rule" allows any member to postpone consideration of any nomination for seven days without discussion and as a matter of right.
- E. Floor Action. After full committee approval, favorable report on nomination is filed on same day at the desk of the Senate. Absent unanimous consent request, nomination must lay at desk for 24 hours. Thereafter, it is called up for Senate confirmation upon request to proceed to Executive Calendar.
- F. Appointment. President's signature on commission is act of appointment.
- G. Effect of Adjournments. Nominations, not acted on by the Senate during a session, die with the adjournment of the session. Motion to carry over nominations to next session permissible. Must receive unanimous consent -- rarely used. Additionally, at any time the Senate stands in recess for more than thirty days, pending nominations are returned to the President.
- H. Recess Appointments. President can appoint during recess of Senate.
 - 1. No salary can be paid appointee, however, if vacancy existed during prior session, until appointee confirmed by Senate.

2. Payment of salary prohibition not applicable if:

- (a) vacancy arose within 30 days of end of prior session; or
- (b) nomination was pending before Senate at the time of adjournment (except a nomination of a person who had been appointed during the preceeding recess of Senate); or
- (c) a nomination had been rejected by the Senate within 30 days of the end of the session and a person other than the one who had been rejected is given the recess appointment; and, if
- (d) nomination to fill vacancy under (a), (b) or (c) is submitted to Senate not later than 40 days after beginning of next session.

VI. Quality Controls

Senators and others involved in the process of selecting candidates for appointment to the Federal bench generally take great pride in their efforts and tend to promote individuals whom they perceive to possess superior legal skills. On an institutional level, however, there are at best only two sources of practical pressure for quality appointments.

- A. Local Committees. Some Senators (e.g. Percy, Buckley) have formed local committees, formal and informal, within their states to select a slate of candidates from which the Senator selects his choice.
- B. ABA Committee. The so-called "veto right" of the ABA Standing Committee on the Federal Judiciary was established through an exchange of letters with then-Attorney General Mitchell in 1969. Prior to that time, they only presented their evaluation and recommendation upon request. In 1972, this "veto right" was withdrawn as to Supreme Court nominees.

1. Organization. The Committee has a chairman and 11 members, each of whom assumes primary responsibility for appointments in one of the 11 Federal judicial circuits.
2. Standards. The ABA standards for appointment to the Federal bench may be summarized as follows:
 - (a) fifteen years as a member of the bar;
 - (b) substantial litigation experience for district court appointments;
 - (c) less than sixty years of age (64 if found to be well qualified or extremely well qualified);
 - (d) political activity or office is neither an obstacle to appointment nor a substitute for experience in the actual practice of law;
 - (e) adequate ability, judiciousness and reputation.
3. Ratings. Candidates are rated as (a) extremely well qualified; (b) well qualified; (c) qualified; or (d) not qualified.

The ABA ratings of the judicial appointments of recent Administrations may be summarized as follows:

A. Kennedy. Appointed a total of 128 Federal judges.

21	--	extremely well qualified
58	--	well qualified
38	--	qualified
7	--	not qualified
4	--	not requested

B. Johnson. Appointed a total of 181 Federal judges.

17	--	extremely well qualified
82	--	well qualified
76	--	qualified
4	--	not qualified
2	--	not requested

C. Nixon. Appointed a total of 238 Federal judges.

15 -- extremely well qualified
106 -- well qualified
117 -- qualified
0 -- not qualified
0 -- not requested

Thus, it would appear that the principal contribution of the ABA Committee has been to weed out clearly unacceptable candidates. However, there would appear to be absolutely no utility in their categorization of various degrees of qualified candidates.

VII. Recommendations

There are, of course, many options open to this Administration which hold some potential for improving the quality of the Federal bench and the Federal judicial system. Consider the following:

- A. Options. ~~The Federal bench is currently composed of approximately 1,000 judges. The role of the ABA Committee could be modified perhaps to reflect their principal purpose, i.e. weeding out incompetents, and their standards could be reconsidered. Additional Administration criteria for appointment could be formulated. Clearly, our processing of judicial candidates could be improved.~~
- B. Meeting. It would be helpful to arrange a meeting with interested representatives of the Administration in order to begin to develop a program of review in this area.
- C. Presidential Speech. The President might take the opportunity of the upcoming dinner with members of the Federal judiciary to set the tone for future developments.

THE WHITE HOUSE
WASHINGTON

August 13, 1975

MEMORANDUM FOR: PHIL BUCHEN
ROD HILLS

FROM: KEN LAZARUS *KL*

SUBJECT: Federal Judicial Appointments

Attached are the following:

Tab A -- My previous memo captioned "Federal Judicial Appointments" with certain editorial changes to meet a concern expressed by Doug Bennett. This memo is in the nature of a road map to the current process for selecting Federal judges.

Tab B -- A new memo captioned "Federal Judicial Appointments: Available Options" which logically builds upon the previous memo.

Tab C -- Copies of the letters incorporating the current role of the ABA in the judicial selection process.

The second memo concludes that there is a pressing need for a reevaluation of the current system. I would recommend a distribution of the memos to appropriate Administration officials and an early meeting on the subject.

May I have your guidance?

I am currently putting together some material relative to the larger question of the comprehensive needs of the Federal courts.

Attachments

[Faint circular stamp: THE WHITE HOUSE, AUG 13 1975]

TAB
A



THE WHITE HOUSE

WASHINGTON

MEMORANDUM

FEDERAL JUDICIAL APPOINTMENTS

This is to set forth both formal and informal aspects of the Federal judicial selection and appointment process with a view toward a review and possible improvement of the process and thus of the quality of the Federal bench.

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The President is authorized by law to fill 596 judgeships in 10 Federal court systems across the country. The organization and composition of these courts may be summarized as follows:

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2. United States Courts of Appeals: 97 judgeships in the 11 judicial circuits of the United States (28 U.S.C. Sec. 41, et. seq.). Note that Congress is currently considering the creation of two new circuits to be accomplished by a division of both the Fifth and Ninth Circuits, and the addition of 11 new circuit court judgeships. There is currently only one vacancy in the circuit courts (Fifth Circuit).
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Conference to create 51 new district court judgeships across the country (next quadrennial survey and recommendation of the Judicial Conference regarding judgeships is due in 1976). There are currently a total of 15 vacancies in the various district courts.

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B. Other Courts. The following courts are solely creatures of statute and do not involve lifetime judicial appointments.

1. United States Tax Court: a chief judge and 15 judges (26 U.S.C. Sec. 7441, et. seq.). Pub. L. 91-172 (1969) established the Tax Court as a Constitutional court under Article I (independent "legislative" court within the Executive Branch). Term of office is 15 years (28 U.S.C. Sec. 7443(e)).
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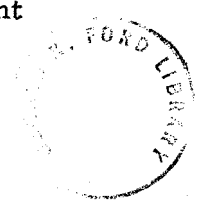
United States Magistrates are appointed by the judges of the various district courts (28 U.S.C. Sec. 631). The United States Court of Military Appeals (10 U.S.C. 867) is not treated here.

II. Judicial Vacancies

Apart from the creation of new judgeships, judicial vacancies arise as the result of:

- A. Death.
- B. Resignation: voluntarily any time -- if 70 years of age and ten years service, continues to receive salary he received for remainder of life. (28 U.S.C. 371(a))
- C. Retirement: if 70 and ten years service or 65 and 15 years service, retains office but retires from active service (senior judge) continues to receive salary of office for remainder of life. (28 U.S.C. 371(b)) Retirements may be upon a fixed date or to take effect upon appointment and qualification of successor.
- D. Disability: (1) Voluntary - Disabled judge and Chief Judge of the Circuit (or disabled Chief Judge of Circuit or Associate Justice of the Supreme Court and the Chief Justice of the United States) certify disability to President. Ten years service receives salary of office for life; less than ten years one-half salary of office for life (28 U.S.C. 372(a)).

(2) Involuntary - Disability certified to President by majority of judicial council of Circuit. President makes finding of disability and additional judge necessity. Vacancy created



by death, resignation or retirement of disabled judge cannot be filled. Disabled judge receives full pay for life. (28 U.S.C. 372(b))

- E. Expiration of term: as noted above.
- F. Impeachment: (Article I, Sec. 3) Senate has sat as a court of impeachment on Federal judges on none occasions. Four were removed from office, four were acquitted and one resigned during impeachment proceeding. The last court of impeachment occurred in 1936.

The Office of the Deputy Attorney General compiles lists of vacancies and distributes them on a weekly basis to the Attorney General and the Chairman of the ABA Judicial Qualification Committee. On occasion, the White House also receives these compilations.

III. Candidate Selection

To my knowledge, there are no general ground rules for the selection of nominees to the Supreme Court, the various specialty courts or the territorial courts. However, basic operating principles have developed over the years with respect to the selection of candidates for appointment to the circuit and district courts (494 of total 596 judgeships). These procedures are summarized below.

- A. Theory -vs- Practice. In theory, the Department of Justice receives and evaluates the recommendations of relevant segments of society prior to recommending a judicial candidate to the President for nomination. In practice, however, a very limited number of people are involved in any meaningful way.
- B. Patronage. The traditional patronage rules governing the selection of district and circuit court judges are fairly well settled.



1. State Jurisdiction. District court appointments fall within the patronage of the Republican or Democratic leadership of the relevant state (district and circuit court judges must reside, within the territorial jurisdiction of their courts 28 U.S.C. Secs. 44 and 134). As to circuit court appointments, the patronage ground rules become more complex. In recent years, there has evolved a rough formula which allows for the allocation of a portion of a circuit court's seats to each of the various states within its jurisdiction. The formula gives consideration to three factors: (a) the percentage of seats on the court which are currently held by residents of each state; (b) the percentage of the circuit's total population accounted for by each state; and (c) the percentage of total appeals arising from each state.
 2. Senatorial Courtesy. Assuming only one Senator from the relevant state is of the same political party as the Administration in power, the choice of a candidate rests almost solely with that Senator. In the event that both Senators from a relevant state are members of the same political party as the Administration, they share the power of selecting judicial candidates -- typically they will alternate the selection power. This "courtesy" is jealously guarded and supported in principle by Senators of both parties as an institutional prerogative.
- C. Power Vacuums. In instances where no Senator has a clear claim to the selection of a judicial candidate, a variety of secondary political forces are brought to bear on the appointment. Thus, a Governor, Congressman or State Chairman of the same party as the Administration may become dominant. Frequently, powerful members of the opposition party will use the occasion to assert their interests. As a corollary to this diffusion of political power, the role of the Department of Justice (traditionally the Office of the Deputy Attorney General) in the selection process is expanded greatly.

- D. Note: No Senator or Congressman can be appointed to a position created during the term for which he was elected or the emoluments increased. (Art. I, Sec. 6, cl. 2)

IV. Clearance Process

Before a judicial nomination is forwarded to the Senate, a series of clearances are conducted by the Department of Justice and by the White House.

- A. Justice Department. As noted above, the Deputy Attorney General traditionally has taken the lead within the Department on judicial appointments. Spaces are allotted in files in the Deputy's File Room for candidates for every district and circuit court, for specialty courts, and for District of Columbia courts. Everyone recommended has a file. Under law and regulations, these files are maintained by the Department for five years.
1. Initial Screening. The Deputy Attorney General or his Executive Assistant generally reviews available internal and public information (Martindale-Hubbell, Who's Who, etc.) on recommended candidates.
 2. Informal Evaluation. At such time as the selection process has centered on one candidate, the Department conducts an informal evaluation of his credentials.
 - (a) A personal data questionnaire is sent to the candidate and reviewed by the Deputy or his Executive Assistant.
 - (b) The Department receives the informal comments of the Chairman and appropriate circuit representative of the ABA Standing Committee on the Federal Judiciary.

(c) The preliminary conclusion of the Department is communicated to the Senator or other supporter(s) of the candidate.

3. Formal Evaluation. Assuming the informal evaluation is satisfactory, the Department requests:

(a) a full-field investigation of the candidate by the FBI; and

(b) a formal report of the ABA Committee.

4. Recommendation. Provided the ABA Committee finds the candidate qualified and the FBI investigation does not uncover any substantial problems, the Attorney General forwards a letter of recommendation and nomination papers to the White House.

B. White House. Judicial nominations are processed by the White House Personnel Office under the immediate control of Peter McPherson. The security investigations and conflicts clearances are conducted by the Department of Justice and are not reviewed by the Counsel's office.

1. Preliminary clearances. Checks are made at the RNC, the opinions of the members of the appropriate state delegation are solicited and a draft memo to the President presenting the nomination is generally reviewed by Counsel's office and other interested members of the White House staff.

2. Presentation to the President. The candidate's name is presented to the President along with the views expressed by supporters and opponents of the nomination. I might note that I am not aware of any situation in which the recommendation of the Department of Justice has been reversed.

3. Nomination. Prior to transmittal of the formal nomination documents to the Senate, advance notice is given to the Senator or other supporter(s) of the candidate and to key members of the Senate Judiciary Committee.

- C. Time Frame. The clearance process at the Department of Justice normally involves a few months. White House clearances can take another 1-2 months. Despite attempts by many to hold in confidence the development of a candidate's nomination, key supporters normally have little difficulty in ascertaining the status of a nomination in order to nudge it along the treadmill.

V. Confirmation and Appointment

Upon receipt of a judicial nomination by the Senate, it is referred to the Committee on the Judiciary.

- A. Blue Slips. Chief Counsel of Committee sends "blue slip" to Senators of same state as nominee. If blue slip is returned with "objection" by either Senator, no action takes place. If position of Senator is maintained throughout session, fate of nomination is in hands of Chairman of full committee (Senator Eastland) and for all practical purposes is dead. Discharge petition rarely attempted.
- B. Notice of Hearing. If "no objection" blue slips are returned, Chief Counsel, after consultation with Minority Counsel and with approval of Chairman, places notice in Congressional Record scheduling hearing on the nomination. Seven days must be allowed between the date of notice and date of hearing.
- C. Subcommittee Hearing. Chairman Eastland routinely appoints a special subcommittee (Eastland, McClellan and Hruska) to hear district and circuit court nominations (only Supreme Court nominations or particularly controversial matters, e.g. Meskill nomination, are heard by full committee). Hruska

is normally the only member of the special sub-committee to attend and conducts a pro forma proceeding. (Justice official briefs Eastland and Hruska before hearing.) Upon conclusion of hearing, nomination is referred by Hruska to full committee.

- D. Full Committee Action. Nominations are considered en bloc by full committee in closed session (not regularly scheduled). Normally, no discussion of district or circuit court appointments. In recent years practice has developed of approving nominations in advance of hearing subject to right of any member to assert objection for period of 24 hours after hearing. "Hold rule" allows any member to postpone consideration of any nomination for seven days without discussion and as a matter of right.
- E. Floor Action. After full committee approval, favorable report on nomination is filed on same day at the desk of the Senate. Absent unanimous consent request, nomination must lay at desk for 24 hours. Thereafter, it is called up for Senate confirmation upon request to proceed to Executive Calendar.
- F. Appointment. President's signature on commission is act of appointment.
- G. Effect of Adjournments. Nominations, not acted on by the Senate during a session, die with the adjournment of the session. Motion to carry over nominations to next session permissible. Must receive unanimous consent -- rarely used. Additionally, at any time the Senate stands in recess for more than thirty days, pending nominations are returned to the President.
- H. Recess Appointments. President can appoint during recess of Senate.
 - 1. No salary can be paid appointee, however, if vacancy existed during prior session, until appointee confirmed by Senate.



2. Payment of salary prohibition not applicable if:

- (a) vacancy arose within 30 days of end of prior session; or
- (b) nomination was pending before Senate at the time of adjournment (except a nomination of a person who had been appointed during the preceeding recess of Senate); or
- (c) a nomination had been rejected by the Senate within 30 days of the end of the session and a person other than the one who had been rejected is given the recess appointment; and, if
- (d) nomination to fill vacancy under (a), (b) or (c) is submitted to Senate not later than 40 days after beginning of next session.

VI. Quality Controls

Senators and others involved in the process of selecting candidates for appointment to the Federal bench generally take great pride in their efforts and tend to promote individuals whom they perceive to possess superior legal skills. On an institutional level, however, there are at best only two sources of practical pressure for quality appointments.

- A. Local Committees. Some Senators (e.g. Percy, Buckley) have formed local committees, formal and informal, within their states to select a slate of candidates from which the Senator selects his choice.
- B. ABA Committee. The so-called "veto right" of the ABA Standing Committee on the Federal Judiciary was established through an exchange of letters with then-Attorney General Mitchell in 1969. Prior to that time, they only presented their evaluation and recommendation upon request. In 1972, this "veto right" was withdrawn as to Supreme Court nominees.

1. Organization. The Committee has a chairman and 11 members, each of whom assumes primary responsibility for appointments in one of the 11 Federal judicial circuits.
2. Standards. The ABA standards for appointment to the Federal bench may be summarized as follows:
 - (a) fifteen years as a member of the bar;
 - (b) substantial litigation experience for district court appointments;
 - (c) less than sixty years of age (64 if found to be well qualified or extremely well qualified);
 - (d) political activity or office is neither an obstacle to appointment nor a substitute for experience in the actual practice of law;
 - (e) adequate ability, judiciousness and reputation.
3. Ratings. Candidates are rated as (a) extremely well qualified; (b) well qualified; (c) qualified; or (d) not qualified.

The ABA ratings of the judicial appointments of recent Administrations may be summarized as follows:

A. Kennedy. Appointed a total of 128 Federal judges.

21	--	extremely well qualified
58	--	well qualified
38	--	qualified
7	--	not qualified
4	--	not requested

B. Johnson. Appointed a total of 181 Federal judges.

17	--	extremely well qualified
82	--	well qualified
76	--	qualified
4	--	not qualified
2	--	not requested

C. Nixon. Appointed a total of 238 Federal judges.

15	--	extremely well qualified
106	--	well qualified
117	--	qualified
0	--	not qualified
0	--	not requested

Thus, it would appear that the principal contribution of the ABA Committee has been to weed out clearly unacceptable candidates. However, there would appear to be absolutely no utility in their categorization of various degrees of qualified candidates.

VII. Conclusion

There are, of course, many options open to this Administration which hold some potential for improving the quality of the Federal bench and the Federal judicial system. It would be helpful to arrange a meeting with interested representatives of the Administration in order to begin to develop a program of review in this area.

TAB
B

THE WHITE HOUSE

WASHINGTON

M E M O R A N D U M

FEDERAL JUDICIAL APPOINTMENTS:
AVAILABLE OPTIONS

This is to explore a series of preliminary options to be considered in the course of any reevaluation of the current Federal judicial selection and appointment process as outlined in a previous memorandum. This discussion is confined to the selection of candidates for appointment to the various circuit and district courts (494 of total 596 Federal judgeships) and disregards the processes for the selection of nominees to the Supreme Court, the several specialty courts and the territorial courts.

I. Prologue

Although there is no accepted definition of what is a good or a bad judge, few would deny that there are inadequate judges on the Federal bench at both the circuit and district court levels. It is, of course, impossible to predict the extent to which this situation is the result of the current judicial selection process.

It might be noted that the ABA opposed the nomination of Louis D. Brandeis to the Supreme Court in a statement signed by ex-President Taft and six former presidents of the ABA. "[T]he statement emphasized that Brandeis's 'reputation, character, and professional career' made him 'not a fit person to be a member of the Supreme Court' . . ." ^{1/} On the other hand, one of President Kennedy's appointees to the Federal District Court for

^{1/} J. Grossman, Lawyers and Judges (1965), note 13, at 55
quoting A. T. Mason, Brandeis: A Free Man's Life 489 (1946).



the Southern District of Mississippi, Judge Cox, has been the subject of stinging rebukes for his dilatory tactics and failure to abide by the rulings of the Fifth Circuit Court of Appeals in the civil rights cases which were heard by him. ^{2/} Judge Cox received an "Exceptionally well qualified" rating from the ABA (its highest) less than two years before his judicial performance was subjected to extremely severe criticism. ^{3/}

The Brandeis and Cox examples illustrate that the ABA's judgment and thus the current selection process is far from infallible. They also point to the fact that no process of judicial selection can completely ensure good judges under a Constitutional scheme which provides for life-time appointments (subject only to a "good behavior" proviso). However, despite the fact that there are no wonder formulae in the area of judicial selection, one commentator has aptly stated:

* * *

"It is certainly fair to ask, as to any method of selection that already exists or is proposed: Will it achieve, or at least will it move in the direction of achieving, the designation of judges solely from among those of our number who will really make good judges." ^{4/}

* * *

Three issues are central to the analysis of available systems of judicial selection and appointment:

First, what standards can be utilized in the selection of candidates for judicial appointment.

^{2/} Comment, Judicial Performance in the Fifth Circuit, 73 Yale L. J. 90, 107 n. 87 (1963).

^{3/} Id. at 101-102 and 107.

^{4/} Leflor, The Quality of Judges, 35 Ind. L. J. 289, 300-1 (1960).

Second, what are the proper roles of the various individuals and institutions concerned with the selection of judicial candidates.

Third, given an optimum model of the judicial selection process, what political forces would be brought to bear.

II. Formulation of Standards

The basic quality controls which currently govern the selection of judicial candidates are set forth in an exchange of letters between the Attorney General and the ABA in 1969. As implemented, the ABA standards may be summarized as follows:

- (a) fifteen years as a member of the bar;
- (b) substantial litigation experience for district court appointments;
- (c) less than sixty years of age (64 if found to be well qualified or extremely well qualified);
- (d) political activity or office is neither an obstacle to appointment nor a substitute for experience in the actual practice of law;
- (e) adequate ability, judiciousness and reputation.

Although it is, of course, impossible to create empirical criteria for the selection of judicial candidates, the standards set forth above should be reevaluated with a view toward a broad range of issues including:

(a) Age. By virtue of the fifteen-year practice requirement and the general prohibition on the selection of candidates over a given age, the current standards allow for the consideration of only those lawyers between the ages of forty and sixty. Perhaps this range should be widened, e.g., to cover lawyers between the ages of thirty-five and sixty-five.

(b) Litigation experience. The current standards require litigation experience in the case of appointees to either the Circuit or District Courts. In "exceptional" cases, candidates for the Circuit Courts may be approved without trial experience. Candidates for the District Courts are required to have "substantial" litigation experience. First, I question the need for litigation experience on the part of Circuit Court candidates -- if law schools provide any practical experience, it is certainly most relevant to the work of an appellate judge. Secondly, I would prefer a focus on the qualitative, rather than quantitative, aspects of trial experience -- routine trial matters, e.g., automobile insurance cases, provide little judicial perspective while many pro bono cases provide experience that is truly relevant.

(c) Academic requirements. The current standards make no reference to the academic background of candidates. Shouldn't law school performance and scholarly pursuits be relevant to the selection process?

(d) Elected officials/academicians. The current standards provide that ". . . political activity or office is neither an obstacle to appointment nor a substitute for experience in the actual practice of law". Thus, the term of a Congressman or a Governor is deemed totally inapposite to his qualifications for judicial appointment. What distorted logic compels this result? Given the nature of Federal litigation, such service can often be especially relevant. Similarly, the standards make no reference to the desirability of legal teaching experience and the partial utilization of such experience in lieu of the more traditional practice of law.

(e) Political affiliation. Appointments to the Federal courts have traditionally been partisan in nature. Recent history may be summarized as follows: 5/

5/ These figures do not include appointments to Federal courts in the District of Columbia. It should also be noted that to date President Ford has appointed only 24 Federal judges.



Roosevelt	97%	Democratic
Truman	92%	Democratic
Eisenhower	95%	Republican
Kennedy	89%	Democratic
Johnson	95%	Democratic
Nixon	92%	Republican
Ford	75%	Republican

It should be noted that when political affiliation is an important factor in appointments to the Federal judiciary, state judges who have withdrawn from political activities during their judicial tenure are rarely considered for such appointments. More importantly, many qualified persons are precluded from serving on the Federal judiciary simply because their own party was not in control of the Presidency during their promising years.

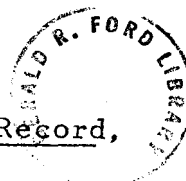
Another criticism which flows from the partisan method of appointment was cited by former Judge J. Earl Major of the Seventh Circuit Court of Appeals:

* * *

" . . . While most judges completely divorce themselves from political activity, there appears to remain in some instances a sense of loyalty to the political party responsible for their appointment, which has been responsible for situations which not only cast serious reflection upon the judiciary, but constitute an impediment to the work of the courts. Because of this loyalty a number of judges -- some of whom were wholly incapacitated, others partially -- refused to retire even though eligible to do so, because of the hope that at the next election, their own party would come into power " 6/

* * *

6/ "Federal Judges as Political Patronage", Chicago Bar Record, October 1959, Vol. 38, No. 1 at p. 9.



The partisan nature of judicial appointments also fosters the notion of "Senatorial courtesy" and thus reduces Executive control over the selection process. Finally, the current system oftentimes is contrary to the ongoing needs of the Federal courts relative to the creation of necessary additional judgeships.

(f) Minority representation. Currently there are only 20 blacks and 10 women serving in a total of 494 circuit and district court judgeships around the country. The question arises whether an effort should be made to increase the percentage of minority representation on the Federal bench.

(g) Rating system. What purpose is served by the use of the four-level rating system? Perhaps it would be preferable to implement a simple "qualified" or "not qualified" rating scheme.

III. The Exercise of Judgement

Apart from any standards which may be adopted relative to the judicial selection process, the more basic question involves the appropriate roles of Members of Congress, the Department of Justice, the White House and other institutions in the application of such standards and the ultimate selection of candidates for judicial appointment.

Judges, of course, are de jure Presidential appointees. However, as discussed in a previous memorandum on this subject, generally they are de facto the appointees of Senators, other political officials or the Department of Justice. The ABA, by virtue of its veto rights, is also a party to the selection process. For all practical purposes, the Presidency serves only a ministerial function in judicial selections.

If the President's appointment power in this area is to be revitalized, the roles of Senators and other political officials, the Department of Justice and the ABA will have to be brought within proper perspective.

(a) Senatorial courtesy. The roles of Senators and other political officials could be limited to a substantial extent by requiring the establishment of formal Federal judicial selection panels in every state.



It should be noted that some Senators (e.g. Percy and Buckley) have already formed local committees, formal and informal, within their states to select a slate of candidates from which the Senator selects his choice. However, the quality of existing judicial selection panels has been very uneven. These existing infirmities could be cured by and large by requiring: (1) only one panel per state; (2) bipartisan appointments to the panels; and (3) consultation with the Department of Justice.

(b) Justice's role. The Department of Justice should maintain the lead responsibility within the Administration on judicial appointments. However, such responsibility should not contemplate a usurpation of Presidential power.

Despite the seemingly perverse blend of politics and professionalism inherent in the judicial selection process, the exercise of ultimate judgment in this area is conferred by the Constitution upon the President. Moreover, contrary to fact, the public no doubt perceives that this is currently a viable Presidential power. Ideally, the relationship between the Department and the White House in this area should be characterized by a healthy spirit of joint effort.

(c) The ABA veto. Three alternatives are presented in considering the proper role of the ABA in the selection of judicial candidates. First, with necessary changes to current standards and perhaps some changes in the composition of the review committee, the ABA veto could be continued in force. Secondly, its role could be diminished by the substitution of an "advisory" authority and/or the power diffused by also allowing other organized bars, e.g. the National Bar Association, Federal Bar Association, to comment on prospective candidates. Finally, the President could choose to create an advisory board or commission to evaluate potential judicial candidates in place of the ABA.



IV. Political Considerations

A number of political considerations should be brought to bear upon this matter including:

(a) Public perception. In the context of a "Special Message on Courts", any serious attempt to reform the current process of judicial selection and appointment should meet with favorable public reaction. Obviously, care must be taken to avoid allegations by the ABA, Members of Congress, or other dissatisfied participants in the current process, to the effect that the Administration is attempting to further "politicize" the selection of judges.

(b) Senate Judiciary Committee. The committee serves as the principal guardian of "Senatorial courtesy". It might be possible to make certain inroads on Senate prerogatives with the current membership if, at the same time, the role of the ABA is diminished and the standards for selection are modified to recognize the relevancy of certain types of elective office to judicial qualifications.

With the announced or anticipated retirements of many senior members, it is anticipated that Senator Kennedy will be chairman and Senator Mathias will be the ranking Republican after the '78 elections. As the committee assumes a very liberal bent, possibilities for reform in this area will increase greatly.

(c) ABA/Timing. Former Judge Lawrence Walsh has long been the most prominent figure in the ABA's program of review and approval of candidates for judicial appointment. With his election as President of the ABA, we can expect a concerted effort to reaffirm the Association's role in this process. In reevaluating current procedures, it will be difficult but necessary to convince officials of the ABA that our motives are salutary. This problem will be compounded by the strained feelings which arose over the Meskill nomination.



Judge Walsh in a recent TV interview indicated that he would soon meet with Deputy Attorney General Tyler in order to establish the role of the ABA in the selection of Federal judges.

V. Conclusion

Due to the press of events, it is essential for interested Administration officials to move quickly to develop a comprehensive program of review in this area and thereafter to present to the President a series of available options.



TAB
C





Office of the Attorney General
Washington, D.C.

June 18, 1969

Cloyd Laporte, Esq.
Acting Chairman
Standing Committee on Federal Judiciary
American Bar Association
1 Chase Manhattan Plaza
New York, New York 10005

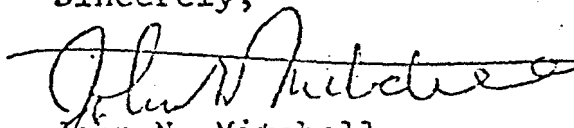
Dear Mr. Laporte:

I have your letter dated June 5, 1969, which you wrote to me on behalf of the American Bar Association Standing Committee on Federal Judiciary, and in which you set forth some of the basic principles which were discussed and agreed upon at the recent meeting with the Standing Committee on Federal Judiciary, the Deputy Attorney General and me.

Your letter accurately and adequately sets forth those basic principles which were discussed and agreed upon. You can rest assured that the Department of Justice will do its part in the implementation of these principles, just as I am sure that the American Bar Association will do its part. I am sure that you will agree with me that by this mutual cooperative effort the standards of judicial selection will be raised to and maintained at a high level and thereby the administration of our laws and justice will be better served.

Might I thank you on behalf of the Deputy Attorney General and myself for your willing cooperation and meaningful contributions to this effort.

Sincerely,


John N. Mitchell
Attorney General



AMERICAN BAR ASSOCIATION

1155 East 60th, Chicago, Illinois 60637

Telephone (312) 493-0533

One Chase Manhattan Plaza
New York, New York 10005

June 5, 1969

CONFIDENTIAL

The Honorable John N. Mitchell
Attorney General
United States Department of Justice
Washington, D. C. 20530

Dear Mr. Mitchell:

On behalf of the American Bar Association Standing Committee on the Federal Judiciary, I would like to thank you and Deputy Attorney General Richard Kleindienst for giving the Committee the opportunity to meet with you last week to discuss the standards for appointments to the Federal Judiciary. All of us believe that the meeting was most profitable and we look forward to working with you in the future to establish and maintain the high caliber of appointments to the Federal Judiciary which President Nixon has stated to be one of the principal objectives of the administration.

In this connection the Committee believes that it would be helpful if we set forth some of the basic principles which were discussed and agreed upon at our meeting.



June 5, 1969

With respect to the age of prospective candidates, the Committee believes that an individual 60 years of age or over should not receive an initial appointment to a lifetime judgeship in a Federal court unless he merits a rating of "Well Qualified" or "Exceptionally Well Qualified" and is in excellent health and, in no event, should he be eligible for such appointment after he has reached his 64th birthday.

In the case of Federal District Judges being considered for appointment to the United States Court of Appeals, the Committee believes that a Judge 60 years of age or over who has not reached his 64th birthday should not receive an appointment to the United States Court of Appeals unless he merits a rating of "Well Qualified" or "Exceptionally Well Qualified" and is in excellent health.

A Federal District Judge 64 years of age or over who has not reached his 68th birthday should not receive an appointment to the United States Court of Appeals unless he merits a rating of "Exceptionally Well Qualified," is in excellent health and will not be eligible for retirement within two years.

A Federal District Judge who has reached his 68th birthday should not receive an appointment to the United States Court of Appeals under any circumstances.

The point at which the age of the candidate is determined for the purpose of applying the foregoing rules is the date of the letter from the Deputy Attorney General to the Chairman of the Committee requesting an Informal Report on that candidate.

The Committee believes that ordinarily a prospective appointee to the Federal bench should have been admitted to the Bar for at least 15 years and that he should have had a substantial amount of trial experience.

The Committee believes that trial experience is important in the case of appointees for the United States Court of Appeals as well as appointees to the District Court. In exceptional cases candidates for the Court of Appeals might be approved without trial



The Honorable John N. Mitchell

-3-

June 5, 1969

experience. However, we cannot conceive approving a candidate for the District Court who has not had adequate trial experience.

With respect to the question raised as to political activity on the part of a prospective candidate, the Committee is of the view that such activity is not any obstacle to appointment to the Federal Judiciary; on the contrary, the Committee considers such service a point in his favor. The Committee, however, does not regard political activity as a substitute for experience in the practice of law and the other necessary qualifications.

As you know, it is the practice of the Committee as to each person nominated for appointment to the Federal Judiciary to report to the Senate Judiciary Committee whether the Committee in its investigation found the candidate "Not Qualified," "Qualified," "Well Qualified" or "Exceptionally Well Qualified." If in any case in which the Committee has rendered a Formal Report to you that a candidate is "Not Qualified," the candidate is nevertheless nominated, the Committee will appear in person before the Senate Judiciary Committee in opposition to the nomination and will state its conclusions and the reasons therefor.

In closing, let me express again the appreciation of our Committee to you and Deputy Attorney General Kleindienst for the cooperation which you have extended to us over the past several months. We congratulate you and President Nixon on the high caliber of those persons nominated for appointment to the Federal Judiciary during this period and we sincerely hope that our efforts in the future will enable us jointly to maintain the high standard which has been set by President Nixon's appointments to date.

Sincerely yours,

Cloyd Laporte

-Cloyd Laporte
Acting Chairman



Justice

THE WHITE HOUSE

WASHINGTON

September 2, 1975

MEMORANDUM FOR:

The Honorable Harold Tyler
Deputy Attorney General
Department of Justice

For your information, I am enclosing a copy of a letter received from Congressman William Ketchum concerning Judge Arvin H. Brown, Jr., whom he recommends for appointment as Chief Justice in American Samoa.

P.W.B.

Philip W. Buchen
Counsel to the President

Attachment



August 28, 1975

Dear Bill:

The President has asked me to thank you for your August 25 letter to him concerning the qualifications of Judge Arvin H. Brown, Jr. for appointment as Chief Justice in American Samoa.

He appreciated your detailed assessment of Judge Brown's qualifications for this position and the Director of the Presidential Personnel Office has been requested to fully evaluate your recommendation.

With kindest regards,

Sincerely,

Vernon C. Loen
Deputy Assistant
to the President

The Honorable William M. Ketchum
House of Representatives
Washington, D. C. 20515

bcc: w/incoming to Douglas Bennett for further action.
~~bcc:~~ w/incoming to Philip Buchen for your information

VCL:VO:vo



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18TH DISTRICT, CALIFORNIA

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ADMINISTRATIVE ASSISTANT
CHRISTOPHER C. SEEGER

DISTRICT REPRESENTATIVE
DALE J. SILVA

William M.

Congress of the United States
House of Representatives
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Ketchum,
William M

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192 B E. LINE STREET
BISHOP, CALIFORNIA 93314
(714) 373-7171

August 25, 1975

The President
The White House
Washington, D.C.

Dear Mr. President:

MP

I am writing to most respectfully request your endorsement of my old and very good friend, Judge Arvin H. Brown, Jr., for appointment as Chief Justice in American Samoa.

Arvin Brown is currently serving as Associate Justice in Yap, W.C.I. He is most interested in transferring to Samoa, and has a great desire to obtain the position of Chief Justice there. I have every confidence that one would have to go far to find a better man for the position than Arvin Brown.

Graduating from Stanford University in 1939, Judge Brown then received a law degree from the University of Southern California. He served in World War II, primarily as an infantry company commander in the Pacific. At the end of the war, he was appointed Governor of a Korean Province.

Following his admission to the Bar, Arvin Brown was associated with several law firms, and has been highly endorsed for his abilities as a trial attorney. His legal practice was interrupted by additional military service during the Korean conflict. At the end of that service, he returned to private practice, attaining the position of senior partner and head of the trial department in the firm of Luce, Forward, Kunzel & Scripps in San Diego. Unfortunately, a coronary suffered in 1966 necessitated Judge Brown to seek a quieter form of practice; at that time, he was a founding partner of the firm of Brown, Schall & Stennett. Such is his nature that the practice was not quiet for very long! Shortly thereafter, he was appointed to serve in his present capacity. He is also designated as a United States District Judge, District of Guam.



The President
August 25, 1975
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At the time of that appointment, and before, Arvin Brown was a member of the State Bar of California, the American Bar Association, the Los Angeles County Bar Association, the San Diego County Bar Association, the Association of Southern California Defense Counsel, American Judiciary Society, International Association of Insurance Counsel, and the American Board of Trial Advocates. Additionally, he has taught trial techniques at the University of San Diego Law School, and was appointed Judge pro-tem on the San Diego County Superior Court.

I firmly believe that his outstanding record and qualifications mark him a most able man for this position, and thank you very much in advance for your favorable consideration.

Sincerely,



WILLIAM M. KETCHUM
Member of Congress

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