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WITHDRAWAL SHEET

Ronald Reagan Library

Collection: McGrath, C. Dean: Files

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File Folder: Judicial Nominees: Supreme Court (3 of 5)

Date: 11/7/96

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Judicial profile	Re: J. Clifford Wallace, pg 1 4 , (partial)	n.d.	P2/P5/P6 B6 <i>CB 12/4/00</i>
2. Judicial profile	Re: J. Clifford Wallace, pg. 6, (partial)	n.d.	P2/P5
3. Judicial profile	Re: J. Clifford Wallace, pg 7	n.d.	P2/P5
4. Judicial profile	Re: James L. Buckley, pg. 1, (partial)	n.d. 10/10/87	P2/P5
5. Judicial profile	Re: James L. Buckley, pg. 5, (partial)	n.d. 10/10/87	P2/P5 B6 <i>CB 12/4/00</i>
6. Judicial profile	Re: Douglas H. Ginsburg, pg. 2, (partial)	n.d.	P2/P5
7. Judicial profile	Re: Douglas H. Ginsburg, pg. 3, (partial)	n.d.	P2/P5 <i>CB</i>

RESTRICTION CODES

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

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

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

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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J. CLIFFORD WALLACE

Biographical Information

AGE: 58

BORN: December 11, 1928, San Diego, California

COLLEGE: San Diego State University, B.A., 1952 (age 23)

LAW SCHOOL: University of California at Berkeley, LL.B., 1955
(age 26)

MILITARY: Navy, 1946-49, 2nd Class PO Officer

PARTY: Republican

RELIGION: Mormon

FAMILY: Married since 1957; four children

RESIDENCE: La Mesa, California

Judicial History

TRIAL COURT: S.D. California, appointed by President Nixon,
1970

APPELLATE COURT: Ninth Circuit, appointed by President Nixon,
1972

Professional Experience

Adjunct Professor, San Diego State University, 1975 to present
Gray, Cary, Ames & Frye, San Diego, California, associate and
partner, 1955-1970

Former Vice President, Executive Board, San Diego County
Council, Boy Scouts of America

General Considerations and Confirmability

REDACTED-----

-----REDACTED-----

-----REDACTED-----

----- In the last few days
Judge Wallace has been mentioned repeatedly as a possible

replacement nominee for Judge Bork. Senator Dennis DeConcini was reported on October 5 to have mentioned Judge Wallace as an acceptable appointment, along with others like Paul Laxalt, Howard Baker, Judge Patrick Higginbotham, and Judge John Noonan. Judge Wallace was also among a select few included on a list of Supreme Court nominees compiled by Bruce E. Fein, described in a National Journal article of July 6, 1986. A UPI story in November 1984 also included Judge Wallace on a "short list" of potential Supreme Court nominees. His name has likewise appeared in other articles attempting to divine future Supreme Court nominations. In 1975, when President Ford considered him for the Supreme Court, Wallace was quoted as having said, "I don't think the Constitution was developed to answer all questions or cure all social ills." He described the Burger Court as "more in keeping with my view of judicial philosophy."

Judge Wallace's public statements linking his religious views to constitutional doctrine could present confirmation difficulties. For example, a 1981 profile of Judge Wallace compiled by the Associated Press quoted him as saying that the Bible gives "great scriptural support for the death penalty." "As a religious leader," Wallace said in 1975, "I have no objection to the death penalty. I know mercy is a great principle, but so is justice." In Who's Who in America, Judge Wallace's biography is followed by an unusual italicized personal statement to the effect that the teachings of Jesus Christ provide the basis for his life and work.

Judge Wallace's strong conservative streak shows in virtually all of the opinions he writes. In early 1986, Judge Wallace wrote a panel decision affirming an INS ruling that provisional Irish Republican Army militant Peter McMullen should be denied political asylum, despite his testimony that he was considered a traitor by the IRA and would be killed unless granted asylum in the United States because he became an informer for both the British and U.S. governments. Wallace wrote that McMullen's "active membership and leadership, including his training of terrorists and gun-running, by which he knowingly followed IRA's campaign of terrorists atrocities," required his deportation.

Judge Wallace also wrote the panel decision that refused to free Andrija Artukovic on bail while he challenged his extradition to Yugoslavia, where he faced murder charges as an official of the Nazi puppet state during World War II. (Alex Kozinski was also on the panel.) The panel said bail in such circumstances is reserved for "extraordinary cases" in which the likelihood of a successful challenge is great or unusual factors are involved.

Judge Wallace dissented from a panel decision to leave in place a stay order withholding any further action in the California reapportionment case brought by Republican Congressman Robert Badham and Republican Assemblyman Robert Naylor. The Republicans complained that Willie Brown's reapportionment plan,

which draws district lines for the California legislature and Congressional delegation, favored Democrats, calling it a "partisan political gerrymander" in violation of the constitutional rights of California voters. Judge Wallace argued that the burden of working out a solution to the reapportionment problem in time for the 1986 elections was outweighed by the detrimental impact of the stay on Republicans. He called the stay order "excessive in scope" and suggested as a means of avoiding the time and expense of drawing new districts prior to the 1986 elections would be to "order an at-large election."

In Spaulding v. University of Washington, decided in 1984, Judge Wallace wrote a lengthy opinion criticizing the concept of "comparable worth."

In an exceptionally unusual procedure, six judges of the Ninth Circuit, including Judge Wallace, issued a sharply critical "dissent" to an earlier panel opinion in the case of Students of California School for the Blind v. Honig, decided in 1984. The six judges could not muster a necessary majority of the 24 judges on the Ninth Circuit to reconsider the panel opinion en banc, so they simply filed a "dissent," even though the opinion was no longer pending before the court. The dissent was written by Judge Joseph T. Sneed. It rebuked the panel for its "unnecessary and erroneous" analysis which, Judge Sneed, "reflects an insensitivity to the most recent relevant Supreme Court pronouncements and to the principles of federalism those pronouncements sought to explicate." At the heart of the controversy was the doctrine of judicial restraint and the question of how wide the federal courts should open their doors to interpreting state laws -- an issue that clearly divides conservatives and liberal judges. The issue was whether the California Department of Education had adequately tested a Fremont, California school for seismic safety, as required by the state's Education Code. A group of handicapped students brought suit in federal court claiming that the Department's alleged failure to follow state law violated the Education for All Handicapped Children Act of 1975, and the Rehabilitation Act of 1973. The three-judge panel held that California had waived its immunity to suit in federal court under the 11th Amendment by participating in federally funded and regulated programs.

The panel had decided not to apply Pennhurst State School and Hospital v. Halderman, 104 S.Ct. 900 (1984), which relied on principles of state sovereignty to hold that the 11th Amendment bars federal injunctions ordering state officials to obey state law. The panel distinguished Pennhurst, finding that state officials were being ordered "to abide by federal statutes, which incorporate certain aspects of state law." It was this aspect of the panel's rationale -- described by Education Department lawyers as "back-door pendant jurisdiction" -- that the dissent challenged. According to Judge Sneed, the panel

"disregarded the limits on statutory interpretation which I believe are implied by the doctrine of separation of powers." According to press reports, legal scholars were "puzzled by issuance of the dissent, but agreed it seems to be an invitation to the Supreme Court to take the case."

Judge Wallace did not join the dissent in a related Ninth Circuit case which held that the circuit's judges would no longer defer to federal district judges' decisions on state law, but would instead substitute their own judgment. Previously, Circuit judges did so only with respect to federal law questions, and deferred on state law issues -- reversing only for "clear error." Stanford Professor Gerald Gunther found the ruling "strikingly ironic . . . in light of the long campaign to get rid of diversity jurisdiction and check federal courts' work loads." Most observers agreed that the decision was likely to increase the number of appeals in the Ninth Circuit.

During the 1984 Olympics, Judge Wallace rejected claims by 82 women from 27 countries that their rights were violated by the Olympics' conducting two distance races for men but not for women. Writing for the Ninth Circuit panel, Wallace said the rule used by the International Olympic Committee to decide which event should be included applied equally to men's and women's events, and thus was not discriminatory.

In a noteworthy criminal procedure decision, a panel opinion by Judge Wallace was reversed en banc by the Ninth Circuit. The panel opinion written by Judge Wallace had followed a precedent of the D.C. Circuit in vacating a narcotics conviction after the defendant had admitted guilt and been sentenced to concurrent sentences on four related counts. Under the old concurrent sentence doctrine, if one count was affirmed on appeal, appellate judges had reasoned there was no need to spend time reviewing a related account that would not affect a defendant's prison term. Judge Wallace's panel opinion, however, found that vacating convictions without considering their merits "would impermissibly infringe on the prosecutorial function of the executive branch." But the District of Columbia precedent followed by Judge Wallace calls for vacating, rather than affirming, concurrent convictions. The District of Columbia rule has been rejected by the Fifth and Eleventh Circuits, and the en banc panel of the Ninth Circuit rejected it as well. Instead, the en banc court that overruled Judge Wallace decided on a compromise: each count will now be reviewed on its merit, even if it does not affect sentencing.

In a suit involving a plaintiff who permanently lost the hearing in her left ear because of normal pressurization on a 1985 flight from Paris to Los Angeles, the Ninth Circuit ruled that airlines can be held responsible for the injuries of passengers even if they occur during normal operations. Judge Wallace dissented from this ruling, saying that it makes airlines

"absolutely liable for any happening causing injury to a passenger." Judge Wallace illustrated the problems created by the decision as follows: "assume a cardiac patient, excited by a normal takeoff, has a heart attack and dies. The majority would have the carrier pay. I would not. The heart attack would not arise from an accident; the smooth takeoff would not be an unusual occurrence, it might be an approximate cause of death. . . . Recovery for damages . . . requires more than travel or an occurrence; it requires an accident. Normal cabin depressurization is no accident."

A decision unusual for Judge Wallace held that a man who won back custody of his two children from a federal witness protection program only after agreeing not to sue the United States may seek damages nonetheless. Judge Wallace's panel opinion, reversing the district court, held that the written promise not to sue the government may have been signed under duress. According to Wallace, the government "may not, as a matter of law, avoid any potential liability . . . by denying responsibility for the continued separation of [plaintiff/-appellant] from his children." This case arose only after the plaintiff signed a release absolving the United States from any liability for relocation of the children. The decision permitted plaintiff to proceed against the United States with a damage claim.

Positions on Critical Issues

Criminal Justice. With few exceptions, Judge Wallace has been consistently tough in the areas of criminal procedure and criminal law. As a federal appeals judge, he has said the important thing is to decide if the trial was fair, not whether there were trial errors. "There are no error-free trials. If a mistake didn't prejudice the trial, I see no reason to try the case again."

Federalism. As illustrated by Judge Wallace's joining in the unusual six-judge dissent filed in connection with the Bright case, Judge Wallace believes strongly in the principles of federalism and states' rights. Federalism issues are frequently raised in his opinions, even where the parties themselves have not raised such questions.

Separation of Powers. "The framers of the Constitution never intended to build a wall between the state and religion," Judge Wallace has been quoted as saying, adding "Sometimes, in trying to enforce the principles [of the Constitution], we bend over so far backward that it [the principle] becomes illogical." The framers of the Constitution "had a delicate balance established," Wallace said once. "Once a judge determines he should decide social problems, he is taking the wrong step."

Economic Matters. Judge Wallace is not noted for his decisions in this area, although he is generally pro-individual and derivatively anti-regulation. In a May 1987 decision, he held that overcharges caused by price-fixing cannot be recovered, via treble damages under the antitrust laws, by anyone other than direct purchasers from the manufacturers. San Francisco attorney Charles B. Renfrew, who served with Wallace on the federal court, calls Wallace "a moderate conservative on social and economic issues and very strong on individual rights."

Other Matters

The following lawyers' comments about Judge Wallace are reported in the Almanac of the Federal Judiciary (1985): "Courteous, conservative, an active questioner, smart, informed, prepared, articulate. Additional comments: 'Conscientious, scholarly, asks many questions and good ones, is conservative, works very hard, and writes well.' 'Good, competent, doesn't reveal himself during argument.' 'Very bright, one of the best minds on the court, but is result-oriented and stretches--or misconstrues--precedents. He can pin attorneys to the wall.' 'Asks a lot of questions. Doesn't let go if he wants to make a point. Good writer.' 'Insensitive to government abuse of power.' 'Very smart. Can get impatient and sarcastic with lawyers. Relatively conservative. Strong on antitrust laws. Very well prepared. Writes well.' 'Can be very tough. Follow procedures or expect a tongue lashing.' 'His writing is effective, not colorful.' 'I did not find him aggressive in argument. His opinions are solid, not brilliant.' 'Very sharp. Lots of ideas. Articulate.'"

Judge Wallace has written lengthy articles outlining his philosophy of jurisprudence. In "The Jurisprudence of Judicial Restraint: A Return to Moorings," 50 Geo. Wash. L. Rev. 1 (1981), he discusses the relationship of judicial restraint to liberty and democracy. Judge Wallace also has definite and innovative ideas on reshaping our legal system. In "American Inns of Court: A Way to IMprove Advocacy," 68 A.B.A.J. 282 (1982), he proposes that inns of court be established as the means of training trial lawyers in the United States. In "The Nature and Extent of Intercircuit Conflicts: A Solution Needed for a Mountain or Molehill?," 71 Cal.L.Rev. 913 (1983), he outlined his opposition to the national court of appeals favored by Chief Justice Burger and recommended by the Hruska Commission in 1975. Instead, he calls for a national en banc court. He also proposes a reduction in the number of circuits.

Conclusion

Judge Wallace, by virtue of his tenure on the Ninth Circuit Court of Appeals and his consistent conservatism, has often been mentioned as a Supreme Court candidate. He is known to be friendly with Sen. Orrin Hatch, who in a September 1986 Legal

Times interview listed him after Robert Bork and Rex Lee as one of his favorites for the next Supreme Court vacancy. Judge Wallace's public statements concerning the relationship of his religion and his decisions could, however, if used unfairly against him, present confirmation problems. Nonetheless, he is personally unblemished, a family man and a serious legal scholar who occasionally attains brilliance. He would make a solid appointment.

JUDGES

James R. Browning, Chief Judge P.O. Box 547, U.S. Court of Appeals & Post Office Building, San Francisco, California 94101. (FTS-556-4388). Orig. App't. Dt. 9-18-61.

Born Oct. 1, 1918 in Great Falls, Montana; married Marie Rose Chapell; Democrat; 1943-46 U.S. Army.

Montana State University, LL.B. (with honors) 1941; admitted to Montana bar 1941.

1941-46 special attorney, antitrust division Department of Justice, 1948-49 chief N.W. regional office, 1949-51 assistant chief, general litigation section, antitrust division, 1951-52 1st assistant, Civil division, 1952-53 executive assistant to U.S. Attorney General, 1953 chief executive, Office for U.S. Attorneys; 1953-58 law practice, Washington, D.C.; 1953 lecturer New York University School of Law; 1957-58 lecturer Georgetown University Law Center; 1958-61 Clerk Supreme Court of the United States; 1961-76 Judge U.S. Court of Appeals, 9th Circuit appointed by President Kennedy; 1976-date Chief Judge same court.

Member American Law Institute, American Bar Association, Federal Bar Association, Montana Bar Association, Institute of Judicial Administration, American Judicature Society, American Society of Legal History.

Alfred T. Goodwin Suite 701, Mutual Savings of East Colorado, Pasadena, California 91101. (213-688-7931). Orig. App't. Dt. 11-30-71.

Born June 29, 1923 in Bellingham, Washington; married Ellin Handelin; children Karl, Margaret, Sara, James; Presbyterian; Republican; 1942-46 U.S. Army to captain.

Crook County High School, Prineville, Oregon, 1940; University of Oregon, B.A., 1947, J.D., 1951; admitted to Oregon bar 1951.

1951-55 law practice Darling, Vonderheit & Goodwin; 1955-60 Circuit Judge, State of Oregon, 2nd Judicial District; 1960-69 Justice Oregon Supreme Court; 1969-71 Judge U.S. District Court for Oregon appointed by President Nixon; 1971-date Judge U.S. Court of Appeals, 9th Circuit appointed by President Nixon.

Member American Bar Association, Oregon State Bar Association, American Law Institute, Order of the Coif, World Association of Judges, Phi Delta Phi, Sigma Delta Chi, American Judicature Society, Institute of Judicial Administration, World Peace through Law Center, Alpha Tau Omega.

Board of directors Central Lane YMCA, Eugene, Ore., 1956-60; Salem Art Association, 1960-date; advisory board Eugene Salvation Army, 1956-60.

J. Clifford Wallace U.S. Courthouse, Room 4N25, 940 Front Street, San Diego, California 92189. (714-293-6114). Orig. App't. Dt. 6-28-72.

Born Dec. 11, 1928 in San Diego, California; married Virginia Lee Schlosser; children Paige, Laurie, Teri, John; Mormon; Republican; 1946-49 U.S. Navy.

San Diego State University, B.A., 1952; University of California at Berkeley, LL.B., 1955; admitted to California bar 1955.

J. Clifford Wallace

Circuit Judge
Ninth Circuit
1125 U.S. Courthouse
San Diego, CA 92189
(714) 293-6134
Appointed in 1972
by President Nixon

Education San Diego State Univ., B.A., 1952; Univ. of Cal., Berkeley, LL.B., 1955

Military Service Navy, 1946-49, 2d cl. PO

Private Practice Gray, Cary, Ames & Frye, San Diego, 1955-70; partner, 1962-70

Academic Positions Visiting professor of law and lecturer at Brigham Young Univ. School of Law; adjunct professor of law and lecturer at Univ. of San Diego School of Law and at Calif. Western School of Law; faculty member, Salzburg, Austria, Seminar "American Law and Legal Institutions," 1985

Previous Judicial Positions U.S.D.C., S.D. Cal., 1970-72

Professional Associations A.B.A.; Institute of Judicial Administration; American Board of Trial Advocates; Federal Bar Assn.

Pro Bono Activities Board of Visitors, J. Reuben Clark Law Sch., Brigham Young Univ., 1974-77; Vice Pres., member, Executive Board & Executive Committee, San Diego County Council, Boy Scouts of America; member, Board of Councilors, Univ. of Southern Calif. Law Center; member, Advisory panel, American Enterprise Institute for Public Policy Research's ten-year Project to Study the Constitution

Honors and Awards Cal. Newspaper Publishers Assn., Distinguished Service Award, 1979; Boy Scouts of America, Silver Beaver Award, 1981; Brigham Young Univ. Honorary Alumni Award, 1979; Distinguished Alumnus of the College of Arts & Letters of San Diego State Univ., 1985

Publications *Must We Have the Nunn Bill? The Alternative of Judicial Councils of the Circuits*, 51 IND L. J. 297 (1976); *Our Judicial System Needs Help: A Few Inside Thoughts*, 12 U.S.F.L. REV., 3 (1977); *Judicial Administration in a System of Independents: A Tribe with Only Chiefs*, B.Y.U.L. REV. 39 (1978); *The Nunn Bill:*

An Unneeded Compromise of Judicial Independence, 61 JUDICATURE 476 (1978); *Wanted: Advocates Who Can Argue in Writing*, 67 KY. L.J. 375 (1979); *The Jurisprudence of Judicial Restraint: A Return to the Moorings*, 50 GEO. WASH. L. REV. 1 (1981); *American Inns of Court: A Way to Improve Advocacy*, 68 A.B.A.J. 282 (1982); *American Inns of Court: A Way to Improve Advocacy*, A.B.A.J. 282 (1982); *Working Paper: Future of the Judiciary*, 94 F.R.D. 225 (1982); *The Nature and Extent of Intercircuit Conflicts: A Solution Needed for a Mountain or a Molehill?*, 71 CAL. L. REV. 913 (1983); *A Two Hundred Year Old Constitution in Modern Society* (address delivered at the Vinson and Elkins Lecture, Univ. of Tex. Sch. of Law), 61 TEX. L. REV. 1575 (1983); *The Jurisprudence of Judicial Restraint: A Return to the Moorings*, 50 GEO. WASH. L. REV. 1 (1981), VIEWS FROM THE BENCH, THE JUDICIARY AND CONSTITUTIONAL POLITICS 155-165, Chatham House (1985), SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION (forthcoming); *Before State and Federal Courts Clash*, JUDGES J. 36 (Fall 1985); *Man Does Not Live by Law Alone*, Introduction to CRIME AND PUNISHMENT IN MODERN AMERICA, The Institute for Government and Politics of the Free Congress Research and Education Foundation (1986); *Whose Constitution? An Inquiry into the Limits of Constitutional Interpretation*, STILL THE LAW OF THE LAND? ESSAYS ON CHANGING INTERPRETATIONS OF THE CONSTITUTION 1-13, Hillsdale College Press (1987), Washington Legal Foundation (Working Paper Series—No. 6, 1986)

Judicial Committees and Activities Member and Chairman, Ninth Circuit Committee on Reorganization of the Circuit Conference and Circuit Conference Committees, 1974; Chief Judge's representative to the Judicial Conference of the Circuit Executive Committee; Judicial Conference: Subcommittee on Federal Jurisdiction, 1974-76; Committee to Consider Standards for Admission to Practice in the Federal Courts, 1976-79; Committee on the Judicial Branch, 1980-present

Lawyers' Comments

Courteous, conservative, an active questioner, smart, informed, prepared, articulate.

Additional comments: "Conscientious, scholarly, asks many questions and good ones, is conservative, works very hard, and writes well." "Good, competent, doesn't reveal himself during argument." "Very bright, one of the best minds on the court, but is result-oriented and stretches — or misconstrues — precedents. He can pin attorneys to the wall." "Asks a lot of questions. Doesn't let go if he wants to make a point. Good writer." "Insensitive to government abuse of power." "Very smart. Can get impatient and sarcastic with lawyers. Relatively conservative. Strong on antitrust law. Very well prepared. Writes well." "Can be be very tough."

Senate passed bill over estimates, \$2,578,000.
Amount of comparable appropriations 1972 the Committee bill, \$27,143,880,000.
Amount of comparable appropriations 1972 rate passed bill, \$27,403,058,000.

FOR RECOGNITION OF OR PROXIMITY ON FRIDAY

Mr. ROBERT C. BYRD, Mr. President, ask unanimous consent that on Friday next, immediately following the recognition of the two leaders or their designees, the distinguished Senator from Wisconsin (Mr. PROXIMITY) be recognized for not to exceed 15 minutes. The PRESIDING OFFICER (Mr. UCHES). Without objection, it is so ordered.

QUORUM CALL

Mr. ROBERT C. BYRD, Mr. President, suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.
The second assistant legislative clerk proceeded to call the roll.
Mr. ROBERT C. BYRD, Mr. President, ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO LAY ASIDE S. 3390 TEMPORARILY TOMORROW

Mr. ROBERT C. BYRD, Mr. President, ask unanimous consent that the unfinished business, S. 3390, be temporarily laid aside on tomorrow, and that it remain in a temporarily laid aside status throughout the day until the close of business tomorrow. The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD, Mr. President, the program for tomorrow, in brief, is as follows:

The Senate will convene at 8:30 a.m., following a recess. After the two leaders or their designees have been recognized under the standing order, the distinguished senior Senator from Missouri (Mr. STANINGTON) will be recognized for not to exceed 15 minutes; to be followed by the junior Senator from West Virginia (Mr. ROBERT C. BYRD), for not to exceed 15 minutes; after which—without now restating the package on the agreement previously entered into—the Senate will proceed to the consideration of the bill, S. 3010, and will continue hereon until that bill is disposed of, not later than 3:30 p.m. tomorrow.

There will be rollcall votes on amendments and motions in relation thereto, and only a rollcall vote on final passage of the bill.

Upon disposition of S. 3010, the Senate will proceed to the consideration of the debt limitation bill and will remain on that bill until the close of business tomorrow unless unanimous consents are given to proceed briefly to other matters such as the continuing resolution, conference reports, and so on, from time to time.

RECESS TO 8:30 A.M.

Mr. ROBERT C. BYRD, Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 8:30 a.m. tomorrow. The motion was agreed to; and at 9:05 p.m., the Senate recessed until tomorrow, Thursday, June 29, 1972, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 28, 1972:

DEPARTMENT OF STATE

Walter J. Stoessel, Jr., of California, a Foreign Service Officer of the class of career minister, to be an Assistant Secretary of State.

IN THE NAVY

Rear Adm. William J. Moran, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

IN THE ARMY

The U.S. Army Reserve officers named herein for promotion as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3384:

To be major general

Brig. Gen. Robert Frank Cocklin, SSAN 508-07-7917.
Brig. Gen. Merrill Brown Evans, SSAN 296-16-6368.
Brig. Gen. James Otis Freese, SSAN 310-28-7319.
Brig. Gen. Wilbur Franch Munch, SSAN 073-10-5502.
Brig. Gen. Warren Earl Myers, SSAN 458-46-7275.

To be brigadier general

Col. Ogbourne Duke Butler, Jr., SSAN 461-42-2506, Field Artillery.
Col. Leston Neal Carmichael, SSAN 312-18-3851, Field Artillery.
Col. Mike Pete Cokinos, SSAN 459-03-9553, Field Artillery.
Col. Richard Holcomb Cooper, SSAN 262-28-2298, Corps of Engineers.
Col. Sumner Zalman Kaplan, SSAN 019-14-1132, Corps of Engineers.
Col. Kenneth Allert Kuykendall, SSAN 480-30-0040, Corps of Engineers.
Col. Myron Sidney Lewis, SSAN 054-14-1552, Field Artillery.
Col. John Howard McLain, SSAN 168-07-2171, Field Artillery.
Col. Edwin Delmer Miller, SSAN 144-01-3313, Infantry.
Col. Edmund Warren Montgomery II, SSAN 426-52-5411, Judge Advocate General Corps.

Col. John Henry Neller, SSAN 184-18-2378, Signal Corps.
Col. Alfred Earl Nelson, SSAN 337-07-1982, Field Artillery.
Col. Norris Ewel Sills, SSAN 439-46-5888, Chemical Corps.
Col. Walter Livingston Starks, SSAN 429-14-0700, Infantry.
Col. John Eric Thames, SSAN 477-09-4154, Infantry.

Col. Jon Martin Zumsteg, SSAN 497-01-3705, Dental Corps.

The Army National Guard of the United States officers named herein for promotion as Reserve commissioned officers of the Army under the provisions of title 10, United States Code, sections 593(a) and 3385:

To be brigadier general

Col. Joseph Earle Brown, Jr., SSAN 250-22-3706, Infantry.
Col. John Martin Calhoun, SSAN 415-16-0721, Armor.
Col. Murray Kitt, SSAN 106-16-5591, Armor.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army under the provisions of title 10, United States Code, sections 593(a) and 3392:

To be brigadier general

Col. William Eugene Hall, SSAN 406-12-0814, Armor.
Col. Ansel Martin Stroud, Jr., SSAN 437-12-4785, Infantry.
Col. Emmett Hudson Walker, Jr., SSAN 427-28-9186, Field Artillery.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 28, 1972:

DEPARTMENT OF JUSTICE

Thomas E. Kauper, of Michigan, to be an assistant attorney general.
A. William Olson, Jr., of California, to be an assistant attorney general.
Harlington Wood, Jr., of Illinois, to be an assistant attorney general.
Ralph E. Erickson, of California, to be deputy attorney general.

U.S. Circuit Courts

Levin H. Campbell, of Massachusetts, to be a U.S. circuit judge, first circuit.
J. Clifford Wallace, of California, to be a U.S. circuit judge, ninth circuit.

U.S. District Courts

Hiram H. Ward, of North Carolina, to be a U.S. district judge for the middle district of North Carolina.
Samuel P. King, of Hawaii, to be a U.S. district judge for the district of Hawaii.
William B. Enright, of California, to be a U.S. district judge for the southern district of California.
Thomas P. Griess, of New York, to be a U.S. district judge for the southern district of New York.
Whitman Knapp, of New York, to be a U.S. district judge for the southern district of New York.
Charles E. Stewart, Jr., of New York, to be a U.S. district judge for the southern district of New York.
Eldon B. Mahon, of Texas, to be a U.S. district judge for the northern district of Texas.

U.S. COURT OF CLAIMS

Marion T. Bennett, of Maryland, to be an associate judge of the U.S. Court of Claims.

1977-83, control. articles to prof. Journ. Legal Education. Public international.
Private international. Office: Wald Harkrader et al 1300 19th St NW
Washington DC 20036

WALLACE, HARRY LELAND, lawyer; b. San Francisco, June 26, 1927; a. Leo Harry and Anna Ruth (Haworth) W.; m. Mary Lu Eckels, Apr. 16, 1951; 1 dau., Mary Ann Wallace Frantz. A.B. in Govt. Summa Cum Laude. Ind. U.-Bloomington, 1949, B.S. in Bus. magna cum laude. 1949; J.D. Magna Cum Laude. Harvard U., 1952. Bar Ws. 1953, U.S. Dist. Ct. (ea. dist.) Ws. 1953, U.S. Supreme Ct. 1978. Law clk. U.S. Sup. Ct., 1952-53; assoc. Foley & Lardner, Milw., 1953-61, ptar., 1961-; officer, dir. various corps. Treas. Mequon-Thiensville Sch. Bds., 1966-67, 71-73; pres. 1965-66, 67-71, 73-75; bd. dirs. Milw. County Assn. Mental Health. 1970-76; bd. dir. Citizens for Wd. Life., 1978-; pres., 1978-; chmn. financing policies com. Gov.'s Comm. on Edn., 1969-70; mem. Gov.'s Task Force on Sch. Financing and Property Tax Reform, 1972-73; chmn. Gov.'s Comm. on State-Local Relations and Fin. Policies, 1975-76. Served with U.S. Navy, 1945-46. mem. ABA, Ws. Bar Assn., Milw. Bar Assn., Am. Law Inst., Phi Beta Kappa, Beta Gamma Sigma, Delta Tau Delta, Methodist. Club: Ws., Milw. General corporate, Probate, Corporate taxation. Home: 2104 W Quincy Ct. Mequon WI 53092. Office: 777 E Wisconsin Ave Milwaukee WI 53202.

WALLACE, HENRY H., lawyer; b. Pitts., Sept. 28, 1939; m. Donna Priore. B.A. in English and Actg., U. Pitts., 1963; student Duquesne U., 1963-64; J.D., Cornell U., 1966; Bar: Pa. 1966, U.S. Dist. Ct. (w. dist. Ct.). Pa. 1966, U.S. Ct. Appeals (9th cir.) 1972, U.S. Ct. Appeals (4th cir.) 1976, U.S. Ct. Appeals (3d cir.) 1980, U.S. Supreme Ct. 1972; cert. op. competence in civil trial advocacy. Assoc., Kenny, Stevens, Clark & Sempole, Pitts., 1966-68; ptncr. Wallace & Lipton, Pitts., 1968-73; sr. ptncr. Wallace, Chapas & Assocs., Pitts., 1973--; litigation cons. in multiple products liability lawsuits, 1979--. Mem. ABA, Asso. Trial Lawyers, Am. Melvin M. Belli Soc. (trustee), Acad. Trial Lawyers Allegheny County, Pa. Bar Assn., Allegheny County Bar Assn., Pa. Trial Lawyers Assn. (treas.), Phi Gamma Delta. Federal civil litigation, State civil litigation, Personal injury. Home: 6147 Collie Dr. Bethel Park PA 15102. Office: Wallace Chapas & Assocs 8th Floor Arnett Bldg Wood St at 4th Ave Pittsburgh PA 15222

WALLACE, HENRY JARED, JR., lawyer; b. Pitts., Oct. 26, 1943; a. Henry Jared and Jane (Bowman) W. B.A., Harvard U., 1965, J.D., 1968; Bar: Pa. 1969, U.S. Ct. Appeals (3d cir.) 1972, U.S. Supreme Ct. 1973, U.S. Ct. Appeals (6th cir.) 1976, Assoc. Read Smith Shaw & McClay, Pitts., 1968-75, ptncr. 1975--. Served with U.S. Army, 1968-70. Mem. ABA, Allegheny County Bar Assn. Clubs: Duquesne, Fox Chapel Golf, Harvard-Yale-Princeton (Pitts.). Labor, Federal civil litigation, State civil litigation. Home: 6009 Walnut St Apt 32 Pittsburgh PA 15206 Office: 2 Mellon Bank Ctr Pittsburgh PA 15219

WALLACE, J. CLAUDE, judge, b. San Diego, Dec. 11, 1928; a. John Franklin and Lillie Isabel (Overing) W.; m. Virginia Lee Schlosser, Apr. 8, 1957; children—Paige, Laurie, Teri. John, B.A. San Diego State U., Calif. 1957; L.L.B., U. Calif.—Berkeley, 1955; Bar. Calif. 1955, U.S. Dist. Ct. (so. dist.) Calif. 1955, U.S. Ct. Appeals (9th cir.) 1957. Pttmr., Gray, Cary, Ames & Frye, San Diego, 1955-70; judge U.S. Dist. Ct. (so. dist.) Calif., 1970-72, U.S. Ct. Appeals (9th cir.), San Diego, 1972—; educator, lectr. Vice pres., exec. bd., exec. com. San Diego County council Boy Scouts Am. Served with USN, 1946-49. Recipient Silver Beaver award Boy Scouts Am., 1981; Significant Sig award Sigma Chi, 1979; Hon. Alumni award Brigham Young U., 1979; Disting. Service Award Calif. Newspaper Pub. Assn., 1979; Disting. Alumnus award San Diego State U. Coll. Arts and Letters, 1985. Mem. ABA, Mormon, Contrib. articles to prof. journ. Jurisprudence. Office: US Court Appeals 940 From St San Diego CA 92189

WALLACE, JAMES D. See H4-2; H4-3 in American 42nd edition

WALLACE, LEON ARRY, b. Terre Haute, Ind., Jan. 24, 1904. Student U. Ill., 1921-23; A.B., Ind. U., 1925; J.D., 1933. Bar, Ind. 1933. U.S. Supreme Ct. 1950. Pmr. firm Wallace, Randsel & Wallace, Terre Haute, 1933-45; assoc. prof. Ind. U., Bloomington, 1945-47, prof., 1947-74, denn. Sch. Law, 1951-66. Charles McGuffey Heppburn prof. law, 1966-74. Heppburn prof. emeritus, 1974—, spl. hearing officer, Depts. of Justice, 1964-69; Gov.'s rep. Ind. Constal. Revision Commn., 1966-68; dir. treat. Ind. Continuing Legal Edn. Forum, 1960-67, treat. emeritus, 1976—; sec.-treat. Ind. Bar Foundn., 1951-76, sec.-treat. emeritus, 1976—. Mem. Am. Law Inst., Inst. Jd. Administrn., ABA, Ind. Bar Assn., Am. Acad. Pol. Sci., Order of Coif, Phi Beta Kappa. Contrib. articles legal journals. Legal education. Home: 939 S High St Bloomington IN 47401 Office: 221 Law Bldg Indiana U Sch Law Bloomington IN 47401

WALLACE, MILTON JAY, lawyer, b. Passaic, N.J., Dec. 17, 1935; s. Mark and Regina (Tenny) W.; m. Patricia Radem, July 3, 1963; children—Mark D., Hardy S. B.B.A., U. Miami, 1956, J.D., 1959, Bar: Fla. 1959, U.S. Dist. Ct. (so. dist.) Fla. 1963, U.S. Supreme Ct. 1969. Practice, Miami, 1959—; judge City of Miami, 1961-63; asst. atty. gen. State of Fla., 1963-70; ptrn. Wallace, Engels & Partnow 1970—; chmn. exec. com. Biscayne Bank; dir. Internat. Assn. Nat. Group. Nat. Assn. Nat. Corp. Bd. of Dir. Nat. Pacific Coast Ctr.; chmn. Housing Fin. Authority of Dade County (Fla.), 1961— Served with USAR, 1961-65. Mem. ABA, Fla. Bar, Dade County Bar Assn., Fla. Inst. C.P.A.s. Clubs: Bankers, Biscayne, Palm Bx. Real property, General corporate. Banking. Office: 330 Biscayne Blvd Miami FL 33132

WALLACE, RICHARD POWELL, lawyer, b. Troy, N.Y., Apr. 28, 1941; s. Donald Foote and Jane Elizabeth (Powell) W.; m. Elizabeth Lee Allen, June 20, 1964; children—Stephen Allen, Lee Elizabeth, Scott Powell, A.B., Brown U., 1963; J.D. cum laude, Union U., 1967; Bar: N.Y., 1967; U.S. Dist. Ct. (as. dist.) N.Y. 1967. Confidential law asst. 3d dept., Appellate div. N.Y. Supreme Ct., 1967-68; asst. dist. atty., Rensselaer County, N.Y., 1970-71; pntsr. Marston, C. Shoup & Co., Charpt. Albany, N.Y., 1968-71; partner, 1971-72; partner, capital regional bd. Marine Midland Bank, 1977-81; sec. Albany, N.Y. Indus. Supplies, Inc., Troy; trustee Holland Charitable Trust; trustee Albany Acad., 1974-; mem. faculty Emma Willard Sch., Troy. Vice pres. Gov. Clinton council Boy Scouts Am., 1974-78, pres. 1979-81; trustee, sec. Troy Cemetery Assn., 1974-; mem. excc. com. sec. Vis. Nurse Assn. of Troy, Inc., 1955-81, pres. 1982-; bd. dir. United Way of Mohawk-Hudson Area, Inc., 1974-; allocations div. 1976; trustee Troy Pub. Library, 1974-, v.p., 1982-; bd. dir. Troy Y.M.C.A. Hackney Assoc., 1978-; pres. 1978-79; Rensselaer County Bar Assn., pres. Albany La Sch., 1967. Mem. A.B.A., N.Y. State Bar Assn. (continuing legal edn. com., Trusts and Estates Sect.), Rensselaer County Bar Assn., Albany County Bar Assn., Albany Acad. Alumni Assn. (bd. dir. 1972-; sec. 1974-75, pres. 1977-78), Brunswick Hills Assn., Inc. (pres. 1981-83). Clubs: Univ. (Albany); Troy County, Rotary of Troy (pres. 1974-76). Author: Computer Print-Outs of Business and their Admissibility in New York, 1967. General corporate, Estate planning, Probate Office: 146 Washington Ave.

WALLACE, THOMAS ANDREW, lawyer; b. Sapulpa, Okla., Oct. 12, 1923; s. Thomas Hiram and Lucy Romig (Mauldin) W. m. Geraldine Jones, July 22, 1946 (div. Jan. 1965); children—Pamela. Thomas Andrew, James Creekmore, William Stuart; m. Nelda Sharp, July 21, 1965. B.S., Columbia U., 1951; J.D., 1953. Bar: Okla. 1952. Sole practice. Oklahoma City. Served with USMC. 1942-46. Mem. Okla. Bar Assn. (Golden Gavel award 1984, subcom. Okla. evidence code, supreme ct. com., uniform jury instrns. com. 1979-81, cvl. procedure com. 1981-84, chm. legis. com. 1984-85). Okla. Trial Lawyers Assn. (pres. 1976). Honorary Sec. award 1976. Asst. Trial Lawyer, Civ. Com. Trial Lawyers Assn. Democrat. Personal injury, Condemnation, Federal, civil litigation. Home: 12808 Deerfield Circle Oklahoma City OK 73149 Office: 3030 Northwest Expressway Suite 525 Oklahoma City OK 73112.

WALLACE, WILLIAM FARRIER, JR., lawyer, banker; b. Dallas, Apr. 2, 1918; s. William Farrer and Mary Ethel (Pope) W.; m. Ruth Saunders, Aug. 2, 1956. Student U. Tex. 1935-41; Bar, Tex. 1938. Solicitor, Corpus Christi, Tex., 1941-44,--; chmn., bd. Hoodo Nat. Bank (Tex.), 1949--; First State Bank, Bishop, Tex., 1964--; pres. WONDOB Corp., Corpus Christi, 1965--; Founder, chmn., bd. chrs. Exec. Admstr. Rehab. Soc., Corpus Christi, 1966--; Served to 2d lt. AUS, 1941-44. Named Handicapped Texan of Yr., 1961; recipient Pres.'s Citation for Aid to Handicapped, 1961. Mem. Tex. Bar Assn., Corpus Christi C. of C., Tex. Bankers Assn., Independent Bankers Assn., Tex. Tex. Assn. Bank Council (charter mem.), S. Southwest Legal Found., Oil and Gas

JUDGES

James R. Browning, Chief Judge P.O. Box 547, U.S. Court of Appeals & Post Office Building, San Francisco, California 94101. (FTS-556-4388). Orig. App't. Dt. 9-18-61.

Born Oct. 1, 1918 in Great Falls, Montana; married Marie Rose Chapell; Democrat; 1943-46 U.S. Army.

Montana State University, LL.B. (with honors) 1941; admitted to Montana bar 1941.

1941-46 special attorney, antitrust division Department of Justice, 1948-49 chief N.W. regional office, 1949-51 assistant chief, general litigation section, antitrust division, 1951-52 1st assistant, Civil division, 1952-53 executive assistant to U.S. Attorney General, 1953 chief executive, Office for U.S. Attorneys; 1953-58 law practice, Washington, D.C.; 1953 lecturer New York University School of Law; 1957-58 lecturer Georgetown University Law Center; 1958-61 Clerk Supreme Court of the United States; 1961-76 Judge U.S. Court of Appeals, 9th Circuit appointed by President Kennedy; 1976-date Chief Judge same court.

Member American Law Institute, American Bar Association, Federal Bar Association, Montana Bar Association, Institute of Judicial Administration, American Judicature Society, American Society of Legal History.

Alfred T. Goodwin Suite 701, Mutual Savings of East Colorado, Pasadena, California 91101. (213-688-7931). Orig. App't. Dt. 11-30-71.

Born June 29, 1923 in Bellingham, Washington; married Ellin Handelin; children Karl, Margaret, Sara, James; Presbyterian; Republican; 1942-46 U.S. Army to captain.

Crook County High School, Prineville, Oregon, 1940; University of Oregon, B.A., 1947, J.D., 1951; admitted to Oregon bar 1951.

1951-55 law practice Darling, Vonderheit & Goodwin; 1955-60 Circuit Judge, State of Oregon, 2nd Judicial District; 1960-69 Justice Oregon Supreme Court; 1969-71 Judge U.S. District Court for Oregon appointed by President Nixon; 1971-date Judge U.S. Court of Appeals, 9th Circuit appointed by President Nixon.

Member American Bar Association, Oregon State Bar Association, American Law Institute, Order of the Coif, World Association of Judges, Phi Delta Phi, Sigma Delta Chi, American Judicature Society, Institute of Judicial Administration, World Peace through Law Center, Alpha Tau Omega.

Board of directors Central Lane YMCA, Eugene, Ore., 1956-60; Salem Art Association, 1960-date; advisory board Eugene Salvation Army, 1956-60.

J. Clifford Wallace U.S. Courthouse, Room 4N25, 940 Front Street, San Diego, California 92189. (714-293-6114). Orig. App't. Dt. 6-28-72.

Born Dec. 11, 1928 in San Diego, California; married Virginia Lee Schlosser; children Paige, Laurie, Teri, John; Mormon; Republican; 1946-49 U.S. Navy.

San Diego State University, B.A., 1952; University of California at Berkeley, LL.B., 1955; admitted to California bar 1955.

J. Clifford Wallace

Circuit Judge
Ninth Circuit
4N25 U.S. Courthouse
San Diego, CA 92189
(714) 293-6114
Appointed in 1972
by President Nixon

Education San Diego State Univ., B.A., 1952; Univ. of Cal., Berkeley, LL.B., 1955

Military Service Navy, 1946-49, 2d cl. PO

Private Practice Gray, Cary, Ames & Frye, San Diego, 1955-70; partner, 1962-70

Academic Positions Visiting professor of law and lecturer at Brigham Young Univ. School of Law; adjunct professor of law and lecturer at Univ. of San Diego School of Law and at Calif. Western School of Law; faculty member, Salzburg, Austria, Seminar "American Law and Legal Institutions," 1985

Previous Judicial Positions U.S.D.C., S.D. Cal., 1970-72

Professional Associations A.B.A.; Institute of Judicial Administration; American Board of Trial Advocates; Federal Bar Assn.

Pro Bono Activities Board of Visitors, J. Reuben Clark Law Sch., Brigham Young Univ., 1974-77; Vice Pres., member, Executive Board & Executive Committee, San Diego County Council, Boy Scouts of America; member, Board of Councilors, Univ. of Southern Calif. Law Center; member, Advisory panel, American Enterprise Institute for Public Policy Research's ten-year Project to Study the Constitution

Honors and Awards Cal. Newspaper Publishers Assn., Distinguished Service Award, 1979; Boy Scouts of America, Silver Beaver Award, 1981; Brigham Young Univ. Honorary Alumni Award, 1979; Distinguished Alumnus of the College of Arts & Letters of San Diego State Univ., 1985

Publications *Must We Have the Nunn Bill? The Alternative of Judicial Councils of the Circuits*, 51 IND L. J. 297 (1976); *Our Judicial System Needs Help: A Few Inside Thoughts*, 12 U.S.F.L. REV., 3 (1977); *Judicial Administration in a System of Independents: A Tribe with Only Chiefs*, B.Y.U.L. REV. 39 (1978); *The Nunn Bill:*

An Unneeded Compromise of Judicial Independence, 61 JUDICATURE 476 (1978); *Wanted: Advocates Who Can Argue in Writing*, 67 KY. L.J. 375 (1979); *The Jurisprudence of Judicial Restraint: A Return to the Moorings*, 50 GEO. WASH. L. REV. 1 (1981); *American Inns of Court: A Way to Improve Advocacy*, 68 A.B.A.J. 282 (1982); *American Inns of Court: A Way to Improve Advocacy*, A.B.A.J. 282 (1982); *Working Paper: Future of the Judiciary*, 94 F.R.D. 225 (1982); *The Nature and Extent of Intercircuit Conflicts: A Solution Needed for a Mountain or a Molehill?*, 71 CAL. L. REV. 913 (1983); *A Two Hundred Year Old Constitution in Modern Society* (address delivered at the Vinson and Elkins Lecture, Univ. of Tex. Sch. of Law), 61 TEX. L. REV. 1575 (1983); *The Jurisprudence of Judicial Restraint: A Return to the Moorings*, 50 GEO. WASH. L. REV. 1 (1981), VIEWS FROM THE BENCH, THE JUDICIARY AND CONSTITUTIONAL POLITICS 155-165, Chatham House (1985), SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION (forthcoming); *Before State and Federal Courts Clash*, JUDGES J. 36 (Fall 1985); *Man Does Not Live by Law Alone*, Introduction to CRIME AND PUNISHMENT IN MODERN AMERICA, The Institute for Government and Politics of the Free Congress Research and Education Foundation (1986); *Whose Constitution? An Inquiry into the Limits of Constitutional Interpretation*, STILL THE LAW OF THE LAND? ESSAYS ON CHANGING INTERPRETATIONS OF THE CONSTITUTION 1-13, Hillsdale College Press (1987), Washington Legal Foundation (Working Paper Series—No. 6, 1986)

Judicial Committees and Activities Member and Chairman, Ninth Circuit Committee on Reorganization of the Circuit Conference and Circuit Conference Committees, 1974; Chief Judge's representative to the Judicial Conference of the Circuit Executive Committee; Judicial Conference: Subcommittee on Federal Jurisdiction, 1974-76; Committee to Consider Standards for Admission to Practice in the Federal Courts, 1976-79; Committee on the Judicial Branch, 1980-present

Lawyers' Comments

Courteous, conservative, an active questioner, smart, informed, prepared, articulate.

Additional comments: "Conscientious, scholarly, asks many questions and good ones, is conservative, works very hard, and writes well." "Good, competent, doesn't reveal himself during argument." "Very bright, one of the best minds on the court, but is result-oriented and stretches — or misconstrues — precedents. He can pin attorneys to the wall." "Asks a lot of questions. Doesn't let go if he wants to make a point. Good writer." "Insensitive to government abuse of power." "Very smart. Can get impatient and sarcastic with lawyers. Relatively conservative. Strong on antitrust law. Very well prepared. Writes well." "Can be be very tough."

Senate passed bill over estimates, \$2,578,977,000.

Amount of comparable appropriations 1972 to the Committee bill, \$27,143,860,000.

Amount of comparable appropriations 1972 to Senate passed bill, \$27,403,058,000.

ORDER FOR RECOGNITION OF SENATOR PROXMIRE ON FRIDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Friday next, immediately following the recognition of the two leaders or their designees, the distinguished Senator from Wisconsin (Mr. PROXMIRE) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER (Mr. HUGHES). Without objection, it is so ordered.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO LAY ASIDE S. 3390 TEMPORARILY TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the unfinished business, S. 3390, be temporarily laid aside on tomorrow, and that it remain in a temporarily laid aside status throughout the day until the close of business tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow, in brief, is as follows:

The Senate will convene at 8:30 a.m., following a recess. After the two leaders or their designees have been recognized under the standing order, the distinguished senior Senator from Missouri (Mr. SYMINGTON) will be recognized for not to exceed 15 minutes; to be followed by the junior Senator from West Virginia (Mr. ROBERT C. BYRD), for not to exceed 15 minutes; after which—without now restating the package on the agreement previously entered into—the Senate will proceed to the consideration of the bill, S. 3010, and will continue thereon until that bill is disposed of, not later than 3:30 p.m. tomorrow.

There will be rollcall votes on amendments and motions in relation thereto, and finally a rollcall vote on final passage of the bill.

Upon disposition of S. 3010, the Senate will proceed to the consideration of the debt limitation bill and will remain on that bill until the close of business tomorrow unless unanimous consents are given to proceed briefly to other matters such as the continuing resolution, conference reports, and so on, from time to time.

RECESS TO 8:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 8:30 a.m. tomorrow.

The motion was agreed to; and at 9:05 p.m., the Senate recessed until tomorrow, Thursday, June 29, 1972, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 28, 1972:

DEPARTMENT OF STATE

Walter J. Stoessel, Jr., of California, a Foreign Service Officer of the class of career minister, to be an Assistant Secretary of State.

IN THE NAVY

Rear Adm. William J. Moran, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

IN THE ARMY

The U.S. Army Reserve officers named herein for promotion as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3384:

To be major general

Brig. Gen. Robert Frank Cocklin, SSAN 508-07-7917.

Brig. Gen. Merrill Brown Evans, SSAN 296-16-6368.

Brig. Gen. James Otis Freese, SSAN 310-28-7319.

Brig. Gen. Wilbur Franch Munch, SSAN 073-10-5502.

Brig. Gen. Warren Earl Myers, SSAN 458-46-7275.

To be brigadier general

Col. Ogbourne Duke Butler, Jr., SSAN 461-42-2508, Field Artillery.

Col. Leston Neal Carmichael, SSAN 312-18-3851, Field Artillery.

Col. Mike Pete Cokinos, SSAN 459-03-9553, Field Artillery.

Col. Richard Holcomb Cooper, SSAN 262-28-2298, Corps of Engineers.

Col. Sumner Zalman Kaplan, SSAN 019-14-1132, Corps of Engineers.

Col. Kenneth Allert Kuykendall, SSAN 460-30-0040, Corps of Engineers.

Col. Myron Sidney Lewis, SSAN 054-14-1552, Field Artillery.

Col. John Howard McLain, SSAN 168-07-2171, Field Artillery.

Col. Edwin Delmer Miller, SSAN 144-01-3313, Infantry.

Col. Edmund Warren Montgomery II, SSAN 426-52-5411, Judge Advocate General Corps.

Col. John Henry Neller, SSAN 184-18-2278, Signal Corps.

Col. Alfred Karl Nelson, SSAN 337-07-1982, Field Artillery.

Col. Norris Ewel Sills, SSAN 439-46-5958, Chemical Corps.

Col. Walter Livingston Starks, SSAN 429-14-0700, Infantry.

Col. John Erle Thames, SSAN 477-09-4154, Infantry.

Col. Jon Martin Zumsteg, SSAN 497-01-3705, Dental Corps.

The Army National Guard of the United States officers named herein for promotion as Reserve commissioned officers of the Army under the provisions of title 10, United States Code, sections 593(a) and 3385:

To be brigadier general

Col. Joseph Earle Brown, Jr., SSAN 250-22-3706, Infantry.

Col. John Martin Calhoun, SSAN 415-16-0721, Armor.

Col. Murray Klitt, SSAN 106-16-5591, Armor.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army under the provisions of title 10, United States Code, sections 593(a) and 3392:

To be brigadier general

Col. William Eugene Hall, SSAN 406-12-0814, Armor.

Col. Ansel Martin Stroud, Jr., SSAN 437-12-4785, Infantry.

Col. Emmett Hudson Walker, Jr., SSAN 427-28-9186, Field Artillery.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 28, 1972:

DEPARTMENT OF JUSTICE

Thomas E. Kauper, of Michigan, to be an assistant attorney general.

A. William Olson, Jr., of California, to be an assistant attorney general.

Harlington Wood, Jr., of Illinois, to be an assistant attorney general.

Ralph E. Erickson, of California, to be deputy attorney general.

U.S. CIRCUIT COURTS

Levin H. Campbell, of Massachusetts, to be a U.S. circuit judge, first circuit.

J. Clifford Wallace, of California, to be a U.S. circuit judge, ninth circuit.

U.S. DISTRICT COURTS

Hiram H. Ward, of North Carolina, to be a U.S. district judge for the middle district of North Carolina.

Samuel P. King, of Hawaii, to be a U.S. district judge for the district of Hawaii.

William B. Enright, of California, to be a U.S. district judge for the southern district of California.

Thomas P. Griesa, of New York, to be a U.S. district judge for the southern district of New York.

Whitman Knapp, of New York, to be a U.S. district judge for the southern district of New York.

Charles E. Stewart, Jr., of New York, to be a U.S. district judge for the southern district of New York.

Eldon B. Mahon, of Texas, to be a U.S. district judge for the northern district of Texas.

U.S. COURT OF CLAIMS

Marion T. Bennett, of Maryland, to be an associate judge of the U.S. Court of Claims.

10/10/87

JAMES L. BUCKLEY

Biographical Information

AGE: 64

BORN: March 9, 1923; New York City

COLLEGE: Yale College, B.A., 1943

LAW SCHOOL: Columbia Law School, 1946
Yale Law School, LL.B., 1949

PARTY: Republican

MILITARY SERVICE: U.S. Naval Reserve, 1943-1946

FAMILY: Married Anne Frances Cooley; six children

RESIDENCE:

Judicial History

APPELLATE COURT: D.C. Circuit, Appointed by President Reagan,
1985

Professional Experience

President, Radio Free Europe/Radio Liberty, 1982-85
Counselor, U.S. Department of State, 1982
Undersecretary for Security Assistance, U.S. Department of
State, 1981-82
Consultant, The Catawba Corporation, 1978-80
Director and Member, Executive Committee Donaldson, Lufkin &
Jenrette, Inc., 1977-78
U.S. Senator, 1971-77
Officer & Director, The Catawba Corporation, 1958-70
Associate, Reasoner & Davis, 1953-58
Associate, Wiggin & Dana, 1949-53

Confirmability

The greatest disadvantage to nominating Judge Buckley to the Supreme Court is the confirmation difficulty he will most likely experience, despite any courtesy that might be extended to him as a former Senator. (His career as a Senator ended ten years ago; many of his former colleagues are no longer in the Senate.) Some of the problems he is likely to experience will be a repeat of some of those he experienced during his D.C. Circuit confirmation.

D.C. Circuit Confirmation

Senate Vote: Buckley was confirmed by the Senate 84 to 11. Senators voting against him were Weicker, Dodd, Inouye, Matsunaga, Levin, Riegle, Baucus, Lautenberg, Metzenbaum, Byrd and Proxmire.

Committee Hearing: The Judiciary Committee unanimously approved Buckley's nomination. The only Senators to question Buckley were Thurmond, Biden and Simon. Questioning was brief and not confrontational.

Witness Testimony: Both Senators D'Amato and Moynihan endorsed Buckley's nomination.

The Washington Council of Lawyers (President, Richard L. Jacobson) asked that Buckley's nomination be deferred because no one in the District of Columbia had had the opportunity to evaluate Buckley. Marna S. Tucker, past President of the D.C. Bar, raised the same objection. She testified that Buckley's name had originally surfaced as a nominee for the Second Circuit and, in that context, the Association of the Bar of the City of New York had rated him not qualified. (Pursuant to Senator Biden's questioning, it became clear that the City Bar Association's recommendation was based on the fact that Senator Buckley had not consented to be interviewed by them.)

The American Bar Association had informed the Judiciary Committee, by letter, that a majority of the ABA Committee thought Buckley was qualified but a minority found him not qualified.

Media Coverage: On September 17, 1985, the New York Times reported that Buckley had refused to submit to an interview with the City of New York Bar Association on the recommendation of the Justice Department. Justice told Buckley that he should work only with the American Bar Association screening committee. The New York Times reported that an Administration official said that the Administration doubted Buckley would get a fair review before the New York Bar group. On October 4, 1985, the New York Times reported that Buckley was being considered for the Second Circuit and that the Administration had pledged that the Federal bench would include judges who shared his views particularly on abortion and family matters.

On December 18, 1985, the New York Times reported that both Senators Weicker and Dodd opposed Buckley. Senator Weicker because: "I have serious reservations about Mr. Buckley's legal experience, which is far from adequate for a lifetime appointment. His resume of legal activity is empty." Senator Dodd because: "I'm convinced this nomination is being advanced almost exclusively for reasons of Mr. Buckley's ideological views. During

his service in this body, Mr. Buckley established a consistent opposition to civil rights legislation. He is not a legal scholar who happens to hold strong conservative views. Rather, this is a very ideologically conservative person who happens to be a lawyer."

General Considerations

Judge Buckley's limited tenure (two years) and limited number of opinions (38 opinions, including seven concurrences and four dissents) make it difficult to ascertain Judge Buckley's judicial philosophy. Some insight can be garnered, however, from Buckley's previous writings. Specifically, in his book, If Men Were Angels: A View From the Senate (1975), quoted in the Almanac of the Federal Judiciary, Volume 2 (1987), Buckley wrote:

[The Warren] Supreme Court emerged as a principal instrument in making major rearrangements in the way citizens have gone about their daily lives. As a result of totally novel constructions made by non-elected officials holding lifetime tenures, any form of tax relief is denied parents wishing to exercise the right to religious schools. State legislatures have been required to upset systems of representation that antedate the Constitution and to adopt a "one-man, one vote" concept not even required by the Constitution of the Federal Government. Americans are told by the court that pornographers are protected by the same First Amendment that forbids their children to join in classroom prayer in the public schools -- schools which, to add insult to injury, their children may not be attending next month because a Federal judge finds their racial mix less than ideal. State and municipal courts find it increasingly difficult to bring those accused of crime to a speedy trial because of roadblocks made possible by a series of five-to-four decisions that have reversed long-standing rules affecting the admissibility of evidence and the rights of the accused. The litany could go on. What is more, the Supreme Court's lapse from judicial restraint has encouraged lower courts to mind-boggling extremes. (Emphasis added).

Judge Buckley has participated in several decisions during his two years on the D.C. Circuit that are worth noting. In Doe v. Casey, Judge Buckley dissented from the court's opinion that the Director of Central Intelligence did not have absolute discretion to discharge an employee after the employee had acknowledged that he was a homosexual. The court determined that the Director's decision was reviewable under the APA's arbitrary, capricious, or abuse of discretion standard. Judge Buckley dissented -- concluding that the National Security Act committed absolutely to the Director's discretion the decision to terminate agency employees.

With respect to the issue of discrimination against individuals because of their sexual orientation, Judge Buckley opined "As one who shares the belief that the Constitution is not a suicide pact, I cannot agree that an intelligence agency is even arguably precluded from adopting a policy banning the employment of members of any class which the Director might deem to be more susceptible to blackmail than the average."

In Kurtz v. Baker, Judge Buckley found that Dr. Paul Kurtz, a secular humanist, lacked standing to challenge the decision of the chaplains of the United States Senate and House of Representatives not to allow him to deliver secular remarks in place of the daily prayer. Judge Buckley stated: "To believe that the two chaplains could have authorized [Kurtz] to address a non-religious statement to the Senate and House of Representatives during periods explicitly reserved for prayer requires a suspension of ordinary common sense that this court need not indulge."

Positions on Critical Issues

Abortion: Buckley has long been associated with the pro-life movement and efforts to end abortion. The Almanac of the Federal Judiciary reported that "According to the August 9, 1984 New York Times, Buckley led the U.S. Delegation to the U.N. Conference on Population in Mexico City. Buckley stressed the U.S. opposition to abortion as an aspect of family planning and stated that economic development, which is best achieved in free-market economies, is the natural mechanism for slowing population growth."

Criminal Justice: In U.S. v. Simpkins, Judge Buckley wrote the majority opinion upholding against a substantive due process challenge a pretrial detention for an individual with a record of conviction for predatory crimes.

Economic Matters: In U.S. v. Western Electric, Judge Buckley addressed several anti-trust issues related to the breakup of AT&T. Specifically, Judge Buckley found that the consent decree entered into by AT&T applied to the "spun-off" regional holding companies. Buckley concluded that application of the consent decree did not violate the companys' due process rights even though they had not been parties to the original decree.

Separation of Powers: Judge Buckley's opinions in a number of FOIA cases and FCC cases indicate that he generally pays substantial deference to agency decisions. For example, in Miller v. Lehman, Judge Buckley held that the Secretary of the Navy had the discretion to reject the Board for Correction of

Naval Records' finding that the procedures used to censure a marine colonel, for conduct while he was a POW in Vietnam, violated Naval tradition.

Civil Rights: In Washington v. The District of Columbia, Judge Buckley found that a prison guard could not bring a Section 1983 action against state officials for failure to provide a safe working environment at a prison facility. Specifically, Judge Buckley found that the failure to provide a safe work environment did not violate any constitutional right.

Conclusion

~~REDACTED~~

~~REDACTED~~

DRAFT

OCT 16 1987

GERALD BARD TJOFLAT

Biographical Information

AGE: 58

BORN: 1929

COLLEGE: University of Virginia, 1947-50
University of Cincinnati, 1950-52

LAW SCHOOL: University of Cincinnati Law School, 1952-53
Duke University, LL.B., 1957

PARTY:

MILITARY SERVICE: Army, 1953-55

FAMILY: Married Sarah Marie Pfohl; two children

RESIDENCE: Jacksonville, Florida

Judicial History

APPELLATE COURT: Eleventh Circuit, 1981 - Present;
Fifth Circuit, 1975-81, appointed by President Ford

TRIAL COURT: U.S.D.C., Middle District of Florida, appointed by President Nixon, 1970-75

STATE COURT: Circuit Court, Fourth Judicial Circuit, Jacksonville, Florida, 1968-70

Professional Experience

Botts, Mahoney, Whitehead, Ramsaur & Hadlow (and successors), Jacksonville, Florida, partner 1960-68

Adams & Tjoflat, Jacksonville, Florida, 1958-60

Howell & Kirby, Jacksonville, Florida, 1957-58

DRAFT

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ConfirmabilityFifth Circuit Confirmation:Florida District Court Confirmation:General Issues

Judge Tjoflat has 420 opinions, including 48 concurrences and 52 dissents as a circuit judge and 39 reported opinions as a federal district judge. In addition, Judge Tjoflat has six reported opinions as a Florida circuit court judge.

In the Almanac of the Federal Judiciary (1987), Judge Tjoflat was characterized as "often not courteous; pro-prosecution; very bright; very knowledgeable; well prepared; a good writer." He was also described as "smart, middle-road, very well prepared, demanding, good writer, meticulous, sometimes rough on lawyers."

Position On Critical Issues

Criminal Justice: In Franklin v. Francis (1983) Judge Tjoflat reversed a decision denying habeas corpus relief to a person convicted of murder and kidnapping because the state court's instruction to the jury -- "that the acts of a person of sound mind and discretion are presumed to be the product of the person's will, but the presumption may be rebutted" and "a person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts but the presumption may be rebutted" -- impermissibly shifted the burden of proof and, therefore, violated the requirement that the state prove every element of an offense "beyond a reasonable doubt." The Supreme Court, per Justice Brennan, affirmed. Justices Powell, Rehnquist, Burger and O'Connor dissented.

In 1982, in the wake of the Hinkley trial, Judge Tjoflat testified before the Senate (Senator Specter, Chairman) that the government "should automatically hold defendants who are legally insane, even if a jury finds them innocent." (Associated Press, July 19, 1982).

Civil Rights: Judge Tjoflat dissented from the panel's decision in Hishon v. King & Spalding that the sex discrimination laws did not apply to the selection of partners at a law firm. Tjoflat's position was adopted by the Supreme Court.

Separation of Powers:

Judicial Administration: Judge Tjoflat participated in the 11th Circuit committee that investigated Judge Alcee Hastings (acquitted of bribery charges). Hastings attorney accused the committee of a "cavalier disregard for the rules" because the committee recommended that some records from Hastings trial, as well as the grand jury proceedings, be made public.

Judge Tjoflat also serves on the Advisory Correction Council of U.S. (1976 - present); and as chairman of the Judicial Conference, Committee on Administration of the Probation System (1978 - present).

Commercial Matters: Judge Tjoflat participated in the 11th Circuit's decision that non-bank banks were not authorized by federal law.

Gerald Bard Tjoflat

Circuit Judge
Eleventh Circuit
P.O. Box 960
Jacksonville, FL 32201
(904) 791-3416
Appointed in 1975
by President Ford

Born: 1929
Spouse: Sarah Marie Pfohl
Children: Gerald Bard, Jr.,
Marie Elizabeth McElligott

Education Univ. of Va., 1947-50; Univ. of Cincinnati, 1950-52; Univ. of Cincinnati Law Sch., 1952-53; Duke Univ. J.L.B., 1957

Military Service Army, 1953-55

Private Practice Associate, Howell & Kirby, Jacksonville, 1957-58; Adams & Tjoflat, Jacksonville, 1958-60; partner, Botts, Mahoney, Whitehead, Ramsaur & Hadlow (and successors), Jacksonville, 1960-68

Previous Judicial Positions Circuit Court, Fourth Judicial Circuit, Jacksonville, 1968-70; U.S.D.C., M.D. Fla., 1970-75

Professional Associations A.B.A.: 1958-present; Vice Chairman, Committee on Implementation of Standards of Criminal Justice, 1975-present; Vice Chairman, Committee on Discovery, Section of Criminal Justice, 1975-present; American Judicature Society, 1968-present; American Law Institute, 1972-present; Federal Bar Assn.; Fla. Bar, 1957-present; Jacksonville Bar Assn., 1957-present

Pro Bono Activities Member, Board of Visitors, Duke Univ. School of Law, 1973-82; Honorary Life Member, Board of Visitors, Duke Univ. School of Law, 1983-present; member, Board of Trustees, 1983-present; Chairman of the Executive Committee, Episcopal High School of Jacksonville, 1985-present; member, Board of Trustees, Jacksonville Marine Institute, 1976-present; president, North Florida Council, Boy Scouts of America, 1976-present; member, Advisory Board, Greater Jacksonville Families in Action

Other Activities Advisory Corrections Council of U.S., 1976-present; Task Force of the Nat'l. Center for Innovations in Corrections; U.S. Delegate, Sixth & Seventh United Nations Congresses for Prevention of Crime and Treatment of Offenders; Advisory Board, Nat'l. Alliance for Safe Schools

Honors and Awards Jacksonville Univ., D.L.C., 1978; Boy Scouts of America, Silver Beaver Award,

1981; Nat'l Conference of Christians and Jews, Brotherhood Award, 1982; Fla. Congressional Delegation, Distinguished Service Award for the Third Congressional District, 1983; St. George Award for "outstanding service to the Episcopal Church and to the Scouting Movement."

Publications *A Practical Look at the Sentencing Provisions of § 1722*, 72 J. CRIM. L. & CRIMINOLOGY, 555 (1981) 146

Judicial Committees & Activities Judicial Conference, Committee on Administration of the Probation System, member, 1973-77; chairman, 1978-present

Noteworthy Rulings

Franklin v. Francis, 720 F.2d 1206 (1983); The Eleventh Circuit reversed the district court and held that the trial judge's instructions at a murder trial violated the constitutional requirement that the prosecution prove every element of the offense. The court found an impermissible shifting of the burden of proof with respect to the issue of intent where the judge had instructed the jury that the acts of a person of sound mind raised a rebuttable presumption that the person intended the natural consequences of his acts. The Supreme Court affirmed. *Francis v. Franklin*, No. 83-1590, 53 U.S.L.W. 4495 (4-29-85).

Lawyers' Comments

Often not courteous; ~~pro-prosecution~~, otherwise generally evenhanded; very bright; very knowledgeable; well prepared; a good writer.

Additional comments: "Very bright, opinionated, stubborn, presses his issues, cannot be moved." "Very good legal mind, but can be rough on unprepared lawyers." "Government-oriented, especially on narcotics." "The most pro-prosecution judge of the circuit." "You say, 'Judge, I know you disagree, but I'd like to try to convince the other two judges, if you'll let me,' but it doesn't always work." "Pro-prosecution, but if he thinks the government is wrong he will lash out." "Sometimes toys with lawyers, seems to enjoy it. Insists on pursuing a line of discussion, even if you want to move on. Then, when he's heard enough, he cuts you off, even when you want to continue for the benefit of another judge." "Caustic if you don't have your record down cold." "He's evenhanded in dispensing his ire." "Volcanic." "Smart, middle-road, very well prepared, demanding, good writer, meticulous, sometimes rough on lawyers." "I don't think the criticisms are fair. He is not as easy-going as some judges, is quite demanding, but if you are on your toes you shouldn't have much trouble with him."

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
ROUTE SLIP

TO Dean McGrath

- Take necessary action ☐
Approval or signature ☐
Comment ☐
Prepare reply ☐
Discuss with me ☐
For your information ☐
See remarks below ☐

FROM Mary H. DATE 10/16/87

REMARKS

- re Gerald Tjoflit -
 ⊗ Confirmation hearings
 1970 - Dist Ct
 1975 - Cir Ct
 ⊗ Floor vote 1970 or 1975
- found only reference to initial
 Confirmation by Senate 10/13/70 (p. 36539
 CR)
- 1975 Confirmation was on 12/12/75 but
 no CR verification!

OA FORM 09
APRIL 78

They did not give lump-sum awards but they would say, "You are entitled to 5 weeks total disability and 50 weeks 20 percent disability."

Even though Ohio has one of the better systems, it is not a satisfactory way to handle it because in many instances the man would come in and say, "I want a lump sum settlement," and he would walk out with a thousand dollars or \$1,500, but would have a permanent disability and have no recourse to go back in there. Or a man would have a back injury and a 50-percent disability and he would get a lump sum payment for that disability, with no recourse to the fund again.

I am hoping that within the bill, when it becomes law, the study that is proposed will bring about a uniform system of workmen's compensation that will be as uniform as it can be. I do not doubt that we will have to weight it, because a wage earner in New York perhaps earns more money than one in Alabama and necessarily, his benefit schedule would have to be greater. But I think that there should be uniformity as to weighing. I think, although it is not directly related here, minimum compensation benefits should be uniform, with weighing for regional differences.

It is a sad thing to see some of our State prerogatives drifting away. Sometimes we begrudge them and declare that our State prerogatives are very dear to us, but when it comes to health and safety, workmen's compensation, and minimum compensation, we hate to see them used as trading stock in competition over location of businesses. To say to an employer in Ohio, "Come to Oklahoma where workmen's compensation is only 50 percent," or, "You do not have to have as much on safety," that is not the kind of thing we want. This bill would bring uniformity on that score.

I think that it has a great many good things in it and I hope that we pass it. I certainly will use my good offices to collect as many pledges of votes as I can for its passage.

As I have said many times during this afternoon, I suggest that we should give Senators an opportunity to approach this matter objectively, and that we should not do it under a time restriction, especially when we have so much legislation that is of such great importance.

I cannot help remarking on the attitude of the membership here, that it would make consideration most unpleasant. That is to be deplored, as all of us here recognize the value of harmony in a legislative body.

Mr. MILLER. Mr. President, will the Senator from Ohio yield so that I may make a parliamentary inquiry?

Mr. SAXBE. Mr. President, I yield—

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order.

The ACTING PRESIDENT pro tempore. The regular order is called for.

Mr. SAXBE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk called the roll and the following Senators answered to their names:

[No. 378 Leg.]

Allen	Dole	Miller
Bellmon	Dominick	Proxmire
Byrd, W. Va.	Griffin	Saxbe
Curtis	Mansfield	Williams, N.J.

The ACTING PRESIDENT pro tempore. A quorum is not present.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in adjournment under the previous order.

The motion was agreed to; and (at 7 o'clock and 13 minutes p.m.) the Senate adjourned until tomorrow, Wednesday, October 14, 1970, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 13, 1970:

U.S. ATTORNEY

Lester Engler, of Arizona, to be U.S. attorney for the district of the Canal Zone for the term of 8 years, vice Rowland K. Hazard, resigned.

U.S. NAVY

Rear Adm. George E. Moore, II, Supply Corps, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

DIPLOMATIC AND FOREIGN SERVICE

Melvin L. Manfull, of Utah, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Republic.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Ethel Bent Walsh, of the District of Columbia, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1975, vice Elizabeth Jane Kuck, term expired.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 13, 1970:

BUREAU OF MINES

Elburt Franklin Osborn, of Pennsylvania, to be Director of the Bureau of Mines.

FEDERAL TRADE COMMISSION

David S. Dennison, Jr., of Ohio, to be a Federal Trade Commissioner for the term of 7 years from September 26, 1970.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

David Ogden Maxwell, of Pennsylvania, to be General Counsel of the Department of Housing and Urban Development.

U.S. CIRCUIT COURTS

Paul H. Roney, of Florida, to be a U.S. circuit judge, fifth circuit.

U.S. DISTRICT COURTS

Samuel Contl, of California, to be a U.S. district judge for the northern district of California.

Robert H. Schnacke, of California, to be a U.S. district judge for the northern district of California.

Gordon Thompson, Jr., of California, to be a U.S. district judge for the southern district of California.

J. Clifford Wallace, of California, to be a U.S. district judge for the southern district of California.

Peter T. Fay, of Florida, to be a U.S. district judge for the southern district of Florida.

James L. King, of Florida, to be a U.S. district judge for the southern district of Florida.

Frank B. Tjoflat, of Florida, to be a U.S. district judge for the middle district of Florida.

Charles A. Moye, Jr., of Georgia, to be U.S. district judge for the northern district of Georgia.

William C. O'Kelley, of Georgia, to be a U.S. district judge for the northern district of Georgia.

C. Rhodes Bratcher, of Kentucky, to be a U.S. district judge for the western district of Kentucky.

Nauman S. Scott, of Louisiana, to be a U.S. district judge for the western district of Louisiana.

James R. Miller, Jr., of Maryland, to be U.S. district judge for the district of Maryland.

Clarkson S. Fisher, of New Jersey, to be a U.S. district judge for the district of New Jersey.

John J. Kitchen, of New Jersey, to be a U.S. district judge for the district of New Jersey.

Frederick B. Lacey, of New Jersey, to be a U.S. district judge for the district of New Jersey.

Robert B. Krupansky, of Ohio, to be a U.S. district judge for the northern district of Ohio.

Nicholas J. Walinski, Jr., of Ohio, to be U.S. district judge for the northern district of Ohio.

Carl O. Bue, Jr., of Texas, to be a U.S. district judge for the southern district of Texas.

DEPARTMENT OF JUSTICE

George J. Long, Jr., of Kentucky, to be U.S. attorney for the western district of Kentucky for the term of 4 years.

Lester Engler, of Arizona, to be U.S. attorney for the district of the Canal Zone for the term of 4 years.

Benjamin F. Butler, of New York, to be U.S. marshal for the eastern district of New York for the term of 4 years.

SUBVERSIVE ACTIVITIES CONTROL BOARD

John William Mahan, of Montana, to be a member of the Subversive Activities Control Board for the term expiring March 4, 1975.

HOUSE OF REPRESENTATIVES—Tuesday, October 13, 1970

The House met at 12 o'clock noon.
The Reverend Father Thomas G. Fahy, president, Seton Hall University, South Orange, N.J., offered the following prayer:

Let us pray.

Almighty and most merciful Father, the rights of Your people and the power to govern them came from Your hand. Shed Your grace and Your light abundantly on those who rule us in Your name, our President, our Congress—especially this distinguished House—and our courts. Grant them length of days, health of body, inspiration of mind, and



DOUGLAS H. GINSBURG

Biographical Information

AGE: 41

BORN: May 25, 1946; Chicago, Illinois

COLLEGE: Cornell University, B.S., 1970

LAW SCHOOL: University of Chicago, J.D., 1973, articles editor
of the law review

PARTY: Republican

FAMILY: Married; two children

RESIDENCE: Washington, D.C.

Judicial History

APPELLATE COURT: D.C. Circuit, Appointed by President Reagan,
1986

Professional Experience

Assistant Attorney General, Antitrust Division, U.S. Department
of Justice, 1986

Administrator for Information and Regulatory Affairs, OMB,
1985-86

Deputy Assistant Attorney General, Antitrust Division, U.S.
Department of Justice, 1984-85

Private Practice, _____, 1983-84

Professor (Assistant/full), Harvard Law School 1975-1983

Supreme Court Clerk, Honorable Thurgood Marshall, U.S. Supreme
Court, 1974-75

General Considerations and Confirmability

Judge Ginsburg is a young, extremely intelligent and able man with outstanding academic and professional qualifications. Most probably because of his academic (versus "practitioner") background, the ABA Standing Committee on Federal Judiciary rated him only "qualified" for the D.C. Circuit position.

While his short tenure on the bench (only approximately one year) makes it somewhat difficult to ascertain his general judicial philosophy with much certainty, he is generally perceived as a judge in the mold of Justice Scalia and Judge Bork. When it became public that he was being considered for the D.C. Circuit, Georgetown University's Robert Pitofsky stated that his

nomination would be a "continuation of the program by Attorney General Meese and President Reagan to fill the courts of appeals with very conservative judges who have developed their ideological positions and who will not vary much from them." At the same time, Pitofsky described him as a "very capable and thoughtful person" who "does not take himself too seriously."

Unlike Judge Bork, however, Judge Ginsburg does not have a pool of writings on the issues that proved to be controversial during Judge Bork's confirmation (e.g., right to privacy, equal protection, congressional standing). Nor are any of the opinions he has authored to date likely to generate significant opposition. This lack of public statements, while likely to make him more confirmable, may generate concern among conservatives as well as liberals as to what his views are. In fact, much of his support within the Administration likely comes from people who have worked with him and are reassured by his private statements on the appropriate role of judges etc., as much (if not more) than his performance on the D.C. Circuit.

Ginsburg's writing (off the bench), like most of his professional life, has been devoted to antitrust and economic regulation issues. He was considered one of the Administration's leading proponents of industry deregulation and was its point man for a package of antitrust reforms, which included significant reform of Clayton Act section 7 and treble damage remedies. As OMB's administrator for information and regulatory affairs, Ginsburg was responsible for implementing the Executive Order directing federal agencies to ensure that regulations are as cost-effective as possible and otherwise consistent with Administration policies.

Unlike that of some of his predecessors, Ginsburg's tenure as Assistant Attorney General was not terribly contentious. His antitrust reform package generated opposition as did the continued antitrust enforcement priorities of the Administration, but his press coverage during that period does not appear hostile or particularly negative. His perhaps most noteworthy action was his reorganization of the Antitrust Division, which included elevating an economist to the position of Deputy Assistant Attorney General in "recognition of the fact that economists properly have a role equal to that of lawyers in the development of antitrust policy."

One matter that could surface in confirmation hearings is the alleged destruction by Justice Department attorneys of working papers and notes on the proposed Conrail sale. In a letter dated December 9, 1985, Congressman Dingell charged that the Antitrust Division might be trying to conceal working papers and draft reports in the sale proposal from congressional committees. According to press reports, Ginsburg insisted the directive to destroy documents, which was issued from a senior career employee, was short-lived and the result of a misunderstanding concerning the Department's document retention policies. Ginsburg argued that only two "innocuous" notes and no substantive documents were

destroyed. The controversy appeared to be short-lived. Moreover, it is unclear whether the destruction occurred during Ginsburg's tenure as Assistant Attorney General.

While his deregulatory and other free market policy preferences are likely to generate some opposition (e.g., perhaps from labor unions, which would prefer more protectionist policies), that opposition alone would unlikely be substantial enough to defeat him. Instead of being based on his own statements or writings, opposition to Judge Ginsburg is likely to be generated in large part because of his past employment with the Justice Department. In fact, there is reason for some concern that his hearings could degenerate into a wide reaching examination of the Justice Department's operations and policies. Whether or not the civil rights and other interest groups could mobilize their membership largely on the basis of his ties to the Justice Department is unclear.

What is more certain, however, is that because his views in a number of crucial areas (e.g., civil rights, right to privacy) are unknown, he will likely be subject to extensive questioning by the Judiciary Committee. His confirmation may prove difficult simply because he may not be able to reassure them as to what his views are and, unlike other candidates, cannot simply rely on his past judicial opinions.

For what it is worth, in introducing him at his D.C. Circuit confirmation hearings, Senator Kennedy stated "I believe that, even though Mr. Ginsburg, in serving in the Justice Department has differed with some of those in the Congress on some of the complexities of antitrust laws, I have found him and I know that other members of the Judiciary Committee and the Congress have found him to be open-minded, to be willing to listen, and to be willing to consider views which he has not himself held." Senator Kerry also praised Ginsburg for possessing "the highest possible degree of qualifications." He specifically noted Ginsburg's clerkship for Justice Marshall, stating "so he clearly cannot be accused of having a bias against the 'liberal' viewpoint on the court." Senator Kerry also noted that Ginsburg commanded great respect from his Harvard colleagues, specifically mentioning Alan Dershowitz and Larry Tribe. He stated "Alan has indicated to me that he regards Doug Ginsburg as a legal scholar of the highest order -- non-ideological, non-polemical, and the best possible nomination that the President could make for the federal judiciary."

During his tenure on the appeals court, he has authored 13 opinions, a number of which have involved extremely difficult and complex issues. These opinions are thoughtful, well reasoned, and well written; he has the earmarks of making an exceptionally fine judge.

Several of his opinions have involved separation of powers issues. Judge Ginsburg was the author of the majority opinion in

the recent case upholding the authority of the independent counsel investigating Oliver North to conduct a grand jury proceeding and issue subpoenas under the Attorney General's delegation of investigative and prosecutorial authority. See, In re: Sealed Case. Because upholding the authority under the regulations made it unnecessary to the case, Judge Ginsburg refused to consider the constitutionality of the appointment of an independent counsel under the Ethics in Government Act. Finally, he ruled that North's challenge to the subpoena did not make his constitutional challenge to the removal provisions of the Ethics Act ripe. There is some reason to believe that Judge Williams, who dissented from Ginsburg's last ruling, had the better of the arguments. Nonetheless, it is a close call and Ginsburg has resolved it accordingly to principles of judicial restraint. Judge Ginsburg was also a member of the panel that lifted an emergency injunction in the Deaver case on the ground that Deaver's attempt to block his indictment was an "impermissible preemptive civil challenge to a criminal proceeding."

Another case involving separation of powers claims (as well as others), Hastings v. Judicial Conference of the U.S., involved an injunctive action filed by Judge Hastings challenging the constitutionality of the law under which the U.S. Judicial Conference recommended that his conduct be investigated by Congress. Judge Ginsburg held that where the investigatory tasks at issue, including the subpoena power, have the sole purpose of exploring complaints against federal judges and magistrates, they do not fall outside the ambit of duties assignable to members of the judicial branch rather than of another branch. Judge Ginsburg also refused to strike the Act down on the vagueness grounds, but did remand to the district court to consider certain due process claims.

In Church of Jesus Christ of the Latter-Day Saints v. Hodel, Judge Ginsburg upheld the district court's dismissal, for lack of a cause of action, of a lawsuit brought by the Mormon Church challenging the constitutionality of the Secretary of Interior's refusal to overturn an adverse decision of the High Court of American Samoa. In part, the Church challenged the constitutionality (under the due process clause) of the High Court of American Samoa on the ground that, by being subservient to the Secretary of Interior, it lacks judicial independence. Relying on Supreme Court precedents, Judge Ginsburg ruled that the Church was not denied due process simply because Congress, which had plenary power over the government, put that court system under the authority of the Executive Branch. He also ruled against an equal protection challenge mounted on the ground that in none of the other territories are litigants denied both trial and direct review in an independent Article I or Article III court. He rejected the Church's claim that access to an independent court is a "fundamental" right, noting that the Supreme Court long ago determined that in the unincorporated territories, such as American Samoa, the guarantees of the Constitution apply only insofar as its "fundamental limitations in favor of personal

rights" expresses "principles which are the basis of all free government which cannot be with impunity transcended" -- a test not met given the general exception for territorial courts which "dates from the earliest days of the Republic." In addition, Judge Ginsburg held that errors alleged in the Samoan court proceedings did not constitute gross error or arbitrary action in violation of the Fifth Amendment. The case also presented the question of whether courts, as opposed to legislative bodies, can "take" property in violation of the Fifth Amendment. Because the court found no "gross" or "arbitrary" judicial action, which the church itself acknowledged would be necessary to make out such a takings claim, Judge Ginsburg found it unnecessary to decide that question.

In a case that was publicized as "extending the reach of self-regulation in the securities industry," Judge Ginsburg ruled that, under the terms of his employment contract, a branch manager's claim against the Hutton Group on the ground that he had been defamed by statements contained in Griffin Bell's report on E.F. Hutton mail and wire fraud activities was subject to arbitration by the New York Stock Exchange. See, Pearce v. E.F. Hutton.

Positions on Critical Issues

Criminal Justice. During his tenure on the D.C. Circuit, Judge Ginsburg has not written an opinion in a criminal law case. He did, however, participate in the panel decision in U.S. v. Brown, overturning the convictions of members of the "Black Hebrews" sect, on the ground that the trial court, by erroneously dismissing a certain juror who had questioned the sufficiency of the government's evidence, had violated the defendants' constitutional right to a unanimous jury.

Ginsburg is perceived as being extremely tough-minded on white collar crime. As Assistant Attorney General for the Antitrust Division, Ginsburg was quite vocal on the need for stiffer sentences for individuals convicted of criminal antitrust violations.

Separation of Powers. As the above discussion indicates, Judge Ginsburg is strong on separation of powers issues. Moreover, to date, he has not had to take a position squarely on the controversial issue of the constitutionality of the independent counsel law.

In addition, his opinions generally evince a healthy respect for decisions made by the political branches of government. In Sierra Club. v. Thomas, for example, Judge Ginsburg found that the EPA had not engaged in unreasonable delay in its rulemaking to determine whether to include strip mines as the source of fugitive emissions. The rulemaking had been ongoing for three years. He denied the Sierra Club's request that the court enjoin EPA to reach a final decision within 90 days.

Civil Rights. Because his academic writings have concentrated primarily on economic and regulatory matters, his views on civil rights issues are not well known. Moreover, Judge Ginsburg has had very little exposure to civil rights issues on the court. He did join the per curiam opinion in Emory v. Secretary of the Navy, reversing a district court's decision to dismiss a claim of racial discrimination against the United States Navy. The District Court had held that the Navy's decisions on promotion were immune from judicial review. In rejecting the district court's theory, Judge Ginsburg held "where it is alleged, as it is here, that the armed forces have trenched upon constitutionally guaranteed rights through the promotion and selection process, the courts are not powerless to act. The military has not been exempted from constitutional provisions that protect the rights of individuals. It is precisely the role of the courts to determine whether those rights have been violated."

Labor: In UMW of America Local Union B29 v. NLRB, Judge Ginsburg found in favor of the union challenging a decision that the purchaser of two coal mines was not a "successor" to the mines' previous owner for purposes recognizing and bargaining with the UMWA and remanded to the NLRB for a determination of how changes in the ownership necessarily would affect employee attitudes. In Brock on Behalf of Williams v. Peabody Coal Co., Judge Ginsburg held unreasonable the Secretary of Labor's interpretation of a provision so as to make the policy of mine operators to recall only laid-off individuals who had obtained the requisite safety training to work in the mines unlawful as a prohibited discrimination. In Williston Basin Interstate Pipeline Co. v. FERC, Judge Ginsburg held that the federal courts lacked jurisdiction because of a statutory ban to hear an appeal from a grant of a "high-cost natural gas" designation, where FERC had merely affirmed the state jurisdictional agency's recommendation.

Economic Matters. Judge Ginsburg has written extensively on the benefits of free market economics. During his tenure in the Antitrust Division he proved an effective spokesman for the Administration's antitrust policies, stressing, for example, the importance of considering foreign competition and economic efficiency in evaluating proposed mergers of large corporations.

Federalism. Judge Ginsburg has not had occasion to deal at any length with issues implicating issues of federalism.