

Ronald Reagan Presidential Library

Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection:

Green, Max: Files, 1985-1988

Folder Title:

New Supreme Court Nominee (2 of 2)

Box: 27

To see more digitized collections visit:

<https://www.reaganlibrary.gov/archives/digitized-textual-material>

To see all Ronald Reagan Presidential Library Inventories, visit:

<https://www.reaganlibrary.gov/archives/white-house-inventories>

Contact a reference archivist at: **reagan.library@nara.gov**

Citation Guidelines: <https://reaganlibrary.gov/archives/research-support/citation-guide>

National Archives Catalogue: <https://catalog.archives.gov/>

JUDGE DOUGLAS H. GINSBURG

THE PRESIDENT'S NOMINEE TO THE SUPREME COURT

Overview

- o Judge Douglas H. Ginsburg is an outstanding nominee to the Supreme Court. His experience in government, academia, and on the bench, together with his judicial temperament, will make him a superb Justice.
 - He was an editor of the University of Chicago Law Review, a clerk to Judge Carl McGowan on the U.S. Court of Appeals for the D.C. Circuit, and a clerk to Supreme Court Justice Thurgood Marshall.
 - From 1975 to 1983, Judge Ginsburg was a professor at the Harvard Law School, specializing in banking law, economic regulation of business, and antitrust.
- o From 1983 until his appointment to the bench in 1986, Judge Ginsburg held important positions in government.
 - He was Deputy Assistant Attorney General in the Antitrust Division of the Justice Department, Administrator for Information and Regulatory Affairs in the Office of Management and Budget, and Assistant Attorney General for Antitrust.
 - As Assistant Attorney General, Judge Ginsburg made criminal enforcement the Justice Department's highest antitrust priority.
 - Judge Ginsburg led the crackdown on price-fixing conspiracies that had defrauded consumers and taxpayers of millions of dollars, and repeatedly called for stiffer sentences for white-collar criminals.
- o In 1986, President Reagan nominated Judge Ginsburg to the U.S. Court of Appeals for the District of Columbia Circuit -- the most important of the federal courts of appeals. He was unanimously confirmed by the Senate.
- o Judge Ginsburg is a judicial conservative, committed to keeping the judiciary out of politics and to strong law enforcement
- o At the same time, Judge Ginsburg has earned a reputation for being fairminded and sensible among his colleagues in academia, on the bench, and in government.

JUDGE DOUGLAS H. GINSBURG

THE PRESIDENT'S NOMINEE TO THE SUPREME COURT

Overview

- o Judge Douglas H. Ginsburg is an outstanding nominee to the Supreme Court. His experience in government, academia, and on the bench, together with his judicial temperament, will make him a superb Justice.
 - He was an editor of the University of Chicago Law Review, a clerk to Judge Carl McGowan on the U.S. Court of Appeals for the D.C. Circuit, and a clerk to Supreme Court Justice Thurgood Marshall.
 - From 1975 to 1983, Judge Ginsburg was a professor at the Harvard Law School, specializing in banking law, economic regulation of business, and antitrust.
- o From 1983 until his appointment to the bench in 1986, Judge Ginsburg held important positions in government.
 - He was Deputy Assistant Attorney General in the Antitrust Division of the Justice Department, Administrator for Information and Regulatory Affairs in the Office of Management and Budget, and Assistant Attorney General for Antitrust.
 - As Assistant Attorney General, Judge Ginsburg made criminal enforcement the Justice Department's highest antitrust priority.
 - Judge Ginsburg led the crackdown on price-fixing conspiracies that had defrauded consumers and taxpayers of millions of dollars, and repeatedly called for stiffer sentences for white-collar criminals.
- o In 1986, President Reagan nominated Judge Ginsburg to the U.S. Court of Appeals for the District of Columbia Circuit -- the most important of the federal courts of appeals. He was unanimously confirmed by the Senate.
- o Judge Ginsburg is a judicial conservative, committed to keeping the judiciary out of politics and to strong law enforcement
- o At the same time, Judge Ginsburg has earned a reputation for being fairminded and sensible among his colleagues in academia, on the bench, and in government.

WHITE HOUSE ISSUE BRIEF

(Overview, continued)

- o At his confirmation hearings last year, Senator Kennedy paid tribute not only to his "insightful mind" but to his "sense of compassion." Senator Kennedy went on to say:

"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. I think we are fortunate to have this nominee for this extremely important position...."

WHITE HOUSE ISSUE BRIEF

CRIMINAL LAW

- o Criminal cases make up the largest single category of cases heard by the Supreme Court.
- o These cases also have the most immediate impact on our citizens.
 - Supreme Court decisions will determine whether convicted murderers may receive the death penalty.
 - Supreme Court decisions will determine whether the rights of victims will be considered, as well as the rights of accused and convicted criminals.
 - Supreme Court decisions will have a vital impact on the success of the Nation's war on drugs.
 - Supreme Court decisions will determine whether court-created rules will help -- or hinder -- the search for truth in the courtroom.
- o The Supreme Court's criminal law cases are particularly vital to the poor, women, the aged, and minority groups, who are disproportionately victimized by crime and who have the greatest interest in fair and effective law enforcement. When our criminal justice system fails -- when hardened criminals are set free to prey on the public again -- these Americans are the first to suffer.

Criminal Justice in the Balance

- o This nomination will determine whether we continue the 15-year trend away from Warren Court activism on behalf of accused and convicted criminals and toward a balanced approach rooted in the text of the Constitution.
 - Last term the constitutionality of the death penalty was sustained by a single vote -- that of Lewis Powell, whose seat Judge Ginsburg has been nominated to fill.
 - Last term, the Court struck down by one vote a state statute allowing juries in murder cases to hear statements about the impact of the crime on the victim, his or her family, and the community.
 - Within the next year it is likely that challenges to key components of the legislative and executive branch initiatives in the war on drugs will come before the Supreme Court.

WHITE HOUSE ISSUE BRIEF

(Criminal Law, continued)

- It is imperative that those challenges be heard by Justices committed to the plain mandate of the Constitution -- "to establish Justice, and to ensure domestic Tranquility."

Judge Ginsburg's Record on Criminal Law Enforcement

- o As a federal prosecutor and appellate judge, Judge Ginsburg has shown that he believes in a criminal justice system that protects not just the rights of the accused, but also those of the victims and of society as a whole.
- o Summarizing Assistant Attorney General Ginsburg's tenure at the Justice Department, the Wall Street Journal wrote in August 1986: "When it comes to pursuing price-fixing and bid-rigging and other blatantly criminal activities, the scholarly former law professor acts more like an aggressive, hard-nosed presecutor. Since taking office a year ago... Ginsburg has suprised many critics by significantly stepping up criminal enforcement efforts."
- As head of the Antitrust Division, Judge Ginsburg made criminal enforcement the Justice Department's highest priority. Under his leadership, the Antitrust Division filed criminal charges against 87 corporations and 80 individuals. Judge Ginsburg opened more than 50 grand jury investigations. By the time he was elevated to the Court of Appeals, the Division was conducting a record number of grand jury investigations.
- He led the crackdown on whitecollar criminal conspiracies that had cost taxpayers and consumers millions of dollars.
- Judge Ginsgurg began the Department's crackdown on bid-rigging in federal procurement, with particular emphasis on Defense Department procurement. That initiative continued after Judge Ginsburg's elevation to the bench and today there are 35 grand juries looking into possible bid-rigging and price-fixing on government contracts at military installations across the nation, as well as civilian government contracts. That effort will in time save taxpayers millions, if not billions, of dollars.

WHITE HOUSE ISSUE BRIEF

- In his first major speech as Assistant Attorney General, Judge Ginsburg expressed great concern that "with discouraging frequency, the price-fixers and bid-riggers we do bring to justice slip off with token punishment... [I]nstead of sending antitrust felons to jail, judges are increasingly inclined to fashion 'creative' alternative sentences involving 'community service'" In testimony before the U.S. Sentencing Commission, he called for substantial increases in sentences and fines for white-collar criminals -- suggestions largely embodied in the Commissions' final guidelines. And he introduced legislation to enable the U.S. Government, for the first time, to collect treble damages against price-fixers who had defrauded the taxpayers.
- o During his tenure on the District of Columbia Circuit, Judge Ginsburg has shown that he firmly understands the truthfinding function of criminal justice, but that he will nevertheless protect the legitimate constitutional rights of defendants.
- Judge Ginsburg joined in the opinion in United States v. Jackson, which affirmed a conviction for the illegal possession of weapons. The court held that the Armed Career Criminal Act did properly allow the district judge to consider the defendant's prior convictions in enhancing his sentence. The court also held that a search of firearm registration records that used an incorrect address for the defendant did not suggest that using the correct address would have turned up any exculpatory evidence.
- Judge Ginsburg joined in the per curiam opinion in United States v. Scarborough, which affirmed a conviction on eight counts relating to fraudulent dealings with two banks.
- Where a defendant's rights are truly in question, however, Judge Ginsburg has shown his willingness to uphold the rights of criminal defendants. Thus, he joined in the opinion of Judge Mikva in United States v. Brown, reversing the convictions of 9 defendants after 13 weeks of trial and 8 weeks of jury deliberations. The court concluded that the trial judge's dismissal of a juror in the midst of deliberations had deprived the defendants of their constitutional right to a unanimous jury.
- o In short, Judge Ginsburg has demonstrated that he shares Lewis Powell's commitment to protect the rights of victims, as well as the rights of accused or convicted criminals.

WHITE HOUSE ISSUE BRIEF

THE CONFIRMATION PROCESS

- o The Supreme Court seat of retired Justice Lewis Powell has now been vacant for over four months -- one of the longest vacancies in American history.
- o Ironically, Justice Powell made it clear that he was retiring because he believed it would be unfair both to the parties with cases pending before the Supreme Court, and to the other members of the Court, to be operating without nine full-time Justices. By stepping down late in June, Justice Powell graciously allowed sufficient time for his replacement to be confirmed before the October term began.
- o The United States Senate has the solemn responsibility of giving careful scrutiny to the qualifications of every nominee for the Supreme Court, and of determining, through the confirmation process, whether that nominee shall be approved.
- o It is critical that the Supreme Court, with its increasingly burdensome caseload, operate with a full complement of nine Justices. Since the current term began in October, the Justices have already been unable to resolve one highly significant case by virtue of a tied vote.
- o A prompt, bipartisan confirmation process is needed to fill the current Supreme Court vacancy and to ensure public confidence in the Senate confirmation process and the independence of the Judiciary.
- o There is no more urgent business before Congress than filling Justice Powell's vacant seat on the Court. The Senate must exercise its constitutional responsibility to vote on this nominee before it adjourns for the year.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

October 29, 1987

BIOGRAPHICAL INFORMATION ON
JUDGE DOUGLAS H. GINSBURG

Judge Ginsburg has had an outstanding career as a judge, as a government official with important law enforcement responsibilities, and as a distinguished professor of law at the Harvard Law School. His record makes him eminently qualified to sit on our highest court.

In 1986, President Reagan nominated Judge Ginsburg to sit on the United States Court of Appeals for the D.C. Circuit. He was unanimously confirmed by the Senate.

From 1985 to 1986, Judge Ginsburg was Assistant Attorney General for Antitrust at the Department of Justice. From 1984 to 1985, he was Administrator for Information and Regulatory Affairs in the Office of Management and Budget, one of the most senior positions in that agency. From 1983 to 1984, Judge Ginsburg was a Deputy Assistant Attorney General in the Antitrust Division of the Department of Justice.

From 1975 to 1983, Judge Ginsburg was a professor at the Harvard Law School, where he taught economic regulation of business, antitrust law, and corporate law.

Judge Ginsburg clerked for Judge Carl McGowan of the United States Court of Appeals for the D.C. Circuit. He then served as law clerk for Supreme Court Justice Thurgood Marshall. He received his undergraduate degree in 1970 at Cornell University and his law degree in 1973 at the University of Chicago, where he was Articles Editor of the Law Review.

During his tenure as head of the Antitrust Division, Judge Ginsburg made criminal enforcement the Justice Department's highest antitrust priority. He led the crackdown on price-fixing conspiracies that had defrauded consumers and taxpayers of millions of dollars. Judge Ginsburg began the Department's wide-ranging initiative against price-fixing in defense procurement. He has repeatedly called for substantial increases in sentences and fines for white collar criminals.

Judge Ginsburg was born in 1946 in Chicago, Illinois. He is married and has two children. His wife, Hallee, is a doctor who worked at the Department of Health and Human Services prior to the birth of their daughter.

#

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 29, 1987

FACT SHEET

- o Judge Douglas H. Ginsburg is an outstanding nominee to the Supreme Court. His experience in government, academia, and on the bench, together with his judicial temperament, will make him a superb Justice.
 - He was an editor of the University of Chicago Law Review, a clerk to Judge Carl McGowan on the U.S. Court of Appeals for the D.C. Circuit, and a clerk to Supreme Court Justice Thurgood Marshall.
 - From 1975 to 1983, Judge Ginsburg was a professor at the Harvard Law School, specializing in corporate law, economics, and antitrust.
- o From 1983 until his appointment to the bench in 1986, Judge Ginsburg held important positions in government.
 - He was Deputy Assistant Attorney General in the Anti-trust Division of the Justice Department, Administrator for Information and Regulatory Affairs in the Office of Management and Budget, and Assistant Attorney General for Antitrust.
 - As Assistant Attorney General, Judge Ginsburg made criminal enforcement the Justice Department's highest antitrust priority.
 - Judge Ginsburg led the crackdown on price-fixing conspiracies that had defrauded consumers and taxpayers of millions of dollars, and repeatedly called for stiffer sentences for white-collar criminals.
- o In 1986, President Reagan nominated Judge Ginsburg to the U.S. Court of Appeals for the District of Columbia Circuit--the most prestigious and important of the federal courts of appeals. He was unanimously confirmed by the Senate.
- o Judge Ginsburg is a strong judicial conservative, committed to keeping the judiciary out of politics and to strong law enforcement.
- o At the same time, Judge Ginsburg has earned a reputation for being fairminded and sensible among his colleagues in academia, on the bench, and in government.
- o At his confirmation hearings last year, Senator Kennedy paid tribute not only to his "insightful mind" but to his "sense of compassion."
 - Senator Kennedy went on to say, "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. I think we are fortunate to have this nominee for this extremely important position...."

more

CRIMINAL LAW

- o Criminal cases make up the largest single category of cases heard by the Supreme Court.
- o These cases also have the most immediate impact on our citizens.
 - Supreme Court decisions will determine whether convicted murderers may receive the death penalty.
 - Supreme Court decisions will determine whether the rights of victims will be considered, as well as the rights of criminals.
 - Supreme Court decisions will have a vital impact on the success of the Nation's war on drugs.
 - Supreme Court decisions will determine whether court created rules will help-or hinder-the search for truth in the courtroom.
- o The Supreme Court's criminal law cases are particularly vital to the poor, women, the aged, and minority groups, who are disproportionately victimized by crime, and who have the greatest interest in fair and effective law enforcement. When our criminal justice system fails--when hardened criminals are set free to prey on the public again--these Americans are the first to suffer.

Criminal Justice in the Balance

- o This nomination will determine whether we continue the 15-year trend away from Warren Court activism on behalf of accused and convicted criminals and toward a balanced approach rooted in the text of the Constitution.
 - Last term the constitutionality of the death penalty was sustained by a single vote--that of Lewis Powell, whose seat Judge Ginsburg has been nominated to fill.
 - Last term, the Court struck down by one vote a state statute allowing juries in murder cases to hear statements about the impact of the crime on the victim, his or her family, and the community.
 - Within the next year it is likely that challenges to key components of the legislative and executive branch initiatives in the war on drugs will come before the Supreme Court. It is imperative that those challenges be heard by Justices committed to the plain mandate of the Constitution--"to establish Justice, and to ensure domestic Tranquillity."

The President's Nominee

- o Both in government and on the bench, Judge Ginsburg has shown that he is committed to law enforcement.
 - As head of the Antitrust Division of the Justice Department, Judge Ginsburg made criminal enforcement the Department's highest priority.
 - He led the crackdown on whitecollar criminal conspiracies that had cost taxpayers and consumers millions of dollars.

- Judge Ginsburg began the Department's wide-ranging initiative against price-fixing in defense procurement.
- In testimony before the U.S. Sentencing Commission, he called for substantial increases in sentences and fines for white-collar criminals -- suggestions largely embodied in the Commission's final guidelines. And he introduced legislation to enable the U.S. Government, for the first time, to collect treble damages against price-fixers who had defrauded the taxpayers.
- o On the bench, Judge Ginsburg has also shown his commitment to law and order.
 - He rejected two challenges to criminal prosecutions begun by independent counsels, allowing the criminal proceedings to go forward.
 - He rejected a challenge to the statute under which the U.S. Judicial Conference investigates and reports on judicial misconduct.
- o At the same time, Judge Ginsburg has shown that he is willing to reverse convictions when the constitutional rights of prisoners are really at stake.
 - In United States v. Brown, Judge Ginsburg voted to overturn over 400 separate verdicts in what is reportedly the longest and most expensive criminal trial ever held in the District of Columbia.
- o In short, Judge Ginsburg has demonstrated that he shares Lewis Powell's commitment to protect the rights of victims, as well as criminals.

THE CONFIRMATION PROCESS

- o The Supreme Court seat of retired Justice Lewis Powell has now been vacant for over four months--one of the longest vacancies in American history. Traditionally, the Senate has acted speedily to confirm or reject Presidential nominees--in 21 cases, voting to confirm the nominee within one day of the President's appointment.
- o Since the custom of Supreme Court nominees testifying before the Senate began with Felix Frankfurter in 1939, the average number of days between the President's nomination of a candidate to fill a vacant seat on the Court and the commencement of Senate hearings has been 17 days. During that same period, the average start-to-finish time from the President's nomination to Senate confirmation or final action has been 37 days.
- o Since 1916, when Justice Brandeis was confirmed, the average start-to-finish time from the President's nomination to fill a vacant seat on the Court to Senate confirmation or final action has been 39 days.
- o In the 200 years since John Jay was nominated as the first Chief Justice of the United States by George Washington, the average total time from nomination to Senate confirmation or other action on 138 nominees is 24 days.
- o Even in the case of controversial nominees, the Senate has typically acted responsibly to prevent lingering vacancies on the Supreme Court by scheduling hearings promptly. Hearings on Judge G. Harrold Carswell began 8 days after the President nominated him. Hearings on the nomination of Abe Fortas to be Chief Justice began within 15 days.

- o If Senate Judiciary Committee hearings are once again stalled, it will be clear that partisan politics, not concern for our overworked Supreme Court or fair consideration of this nominee, is the order of the day. Even now, the caseload of the Supreme Court is reaching ever-more burdensome levels. Although this term of the Court only began this month, the Justices have already been unable to resolve one highly significant case by virtue of a tied vote.
- o We must not repeat the long partisan delay in opening the confirmation hearings of Judge Bork--a delay designed to permit the unprecedented distortions and mischaracterizations of his record mounted against him by special interest groups. One political campaign waged against a Supreme Court nominee is one too many.
- o Nor does the excuse used for the delay in Judge Bork's hearings -- that Judge Bork's unique and voluminous record required more review than usual -- apply to Judge Ginsburg. Judge Ginsburg is a man of impeccable qualifications with a distinguished career in the law; his writings are not voluminous or controversial, and in his many years of public service his record has already been subject to continuous, close public scrutiny.
- o A prompt nonpartisan confirmation process is needed not only to restore the urgently-needed full complement of Supreme Court Justices, but to restore public confidence in the Senate confirmation process and the independence of the Judiciary. Confirmation hearings should be scheduled in accordance with historic practice--within the next one or two weeks, with a full Senate vote to follow shortly.
- o The Supreme Court has been operating at only partial strength for four months. Ironically, Justice Powell made it clear that he was retiring because he believed it would be unfair both to the parties with cases pending before the Supreme Court and to the remaining members of the Court to be operating without nine full-time Justices. By stepping down in late June, he graciously allowed sufficient time for his replacement to be confirmed before the October Term began.
- o There is no more urgent business before Congress than filling Justice Powell's vacant seat on the Court. The full Senate cannot avoid its constitutional responsibility to vote on this nominee before it adjourns for the year.

#

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

October 29, 1987

ANNOUNCEMENT BY THE PRESIDENT
OF SUPREME COURT JUSTICE NOMINEE
JUDGE DOUGLAS GINSBURG

The East Room

2:00 P.M. EST

THE PRESIDENT: I am announcing today that, in accordance with my duty under the Constitution, I intend to nominate and ask the Senate to confirm Judge Douglas Ginsburg of the United States Court of Appeals for the District of Columbia Circuit for the position of Associate Justice of the Supreme Court. (Applause.)

Judge Ginsburg is a highly-regarded member of the legal profession. His career as a federal judge, as Assistant Attorney General of the United States, as a senior official at the Office of Management and Budget, as a distinguished professor at Harvard Law School, and as a former law clerk to Supreme Court Justice Thurgood Marshall makes him eminently qualified to sit on our highest court.

Just as importantly, Judge Ginsburg is highly respected by his peers across the political spectrum. When I nominated him to the U.S. Court of Appeals last year, he was unanimously confirmed by the Senate and won lavish praise not just from conservatives but from liberals as well.

Judge Ginsburg is, as I am, as every justice I've nominated has been, a believer in judicial restraint -- that is, that the proper role of the courts is to interpret the law, not make it. In our democracy, our elected representatives make laws, and unelected judges interpret the laws. And that's the foundation of our system of government. Above all, judges must be guided by our most fundamental law -- the Constitution. Every judge that I appoint must understand that he or she serves under the Constitution, not above it. And Judge Ginsburg is such a judge.

Throughout his professional career, Judge Ginsburg has shown that he also believes, as I do, that the courts must administer fair and firm justice while remembering not just the rights of criminals but, equally important, the rights of the victims of crime and the rights of society.

Too often, judges have reinterpreted the Constitution and have made law enforcement a game in which clever lawyers can try to find ways to trip up the police on the rules.

This is not what our Founding Fathers intended when they framed our Constitution 200 years ago. They knew that among the most vital duties of government was to "ensure domestic tranquility." They drafted a Constitution and gave us a system that was true to that duty while protecting the rights of all Americans. I believe that Judge Ginsburg will take a tough, clear-eyed view of this essential purpose of the Constitution while remaining sensitive to the safety of our citizens, and to the problems facing law enforcement professionals.

Much has been said about my agenda for the courts. I want courts that protect the rights of all citizens. No one has rights when criminals are allowed to prey on society. Judge Ginsburg understands that. And that's why I am nominating him. That's why I have selected each of the people I have put forward for the Supreme Court.

MORE

In taking up this nomination, I hope we can all resolve not to permit a repetition of the campaign of pressure politics that has so recently chilled the judicial selection process. It is time for the Senate to show that it will join with me in defending the integrity and independence of the American system of justice.

And a good way to begin would be by holding hearings promptly. When Justice Powell announced his retirement 4 months ago, he made it plain that he believed it would be unfair to the parties with cases before the Supreme Court, and unfair to the remaining members of the Court, to be left without nine full-time Justices. He graciously stepped down from the Court to enable the President and the Congress to select his replacement before this October term began. But, as a result of the longest delay in starting hearings to fill a vacant seat on the Court since the custom of taking testimony from Supreme Court nominees first began in 1939, the nation's highest court is still operating at less than full strength over 4 months later.

The long delay in scheduling hearings for Judge Bork had other results as well. Since June 1987, when Justice Powell resigned, the work of the Supreme Court has grown even more burdensome. All during the months of July, August, and September, nearly one-third of the literally hundreds of cases that the remaining eight justices reviewed for hearing were criminal cases. Throughout this time, the empty seat on the Supreme Court has been a casualty in the fight for victims' rights and the war against crime.

During the last 25 years, the average time between nomination and the start of hearings has been less than 18 days. In fact, in the entire 200-year history of our country since the nomination of John Jay, the average start-to-finish time from a President's appointment to confirmation or other action by the Senate has been only 24 days.

One senator has boasted that the reason for the 70-day delay in beginning Judge Robert Bork's hearings was to allow time to gear up the political campaign against him. And that was, very simply, a disservice to the court and to the nation. If these hearings take longer than 3 weeks to get going, the American people will know what's up.

It's time to put the national interest ahead of partisan political interests. No excuses about the press of other business before the Senate Judiciary Committee. There's no more important business before that Committee than to bring the Supreme Court up to full strength. The Senate has a duty in this regard, just as I do.

So this is my call to the Senate today. Let us all resolve that the process of confirming a Supreme Court nominee will never again be distorted. Alexander Hamilton wrote that "The complete independence of the courts of justice is essential in the Constitution." Let us resolve this time that guarding that independence will be the Senate's highest priority. The American people want this. They have a right to expect it.

By selecting Judge Ginsburg -- I've gone the extra mile to ensure a speedy confirmation. I've been impressed by the fact that in academia, in government, and on the bench, Judge Ginsburg has been enormously popular with colleagues of all political persuasions. A word that many have used to describe Douglas Ginsburg is "unpretentious." Now, that's quite a compliment for a judge. (Laughter.) But I guess that's just one reflection of a man who believes profoundly in the rule of law. In the last analysis, it is just such men and women who ensure the continued respect for our constitutional system. And that's why I'm so pleased to nominate Judge Douglas Ginsburg to the highest court of our nation.

Let me say in closing, it is up to all of us to see to it that Senate consideration of Judge Ginsburg's nomination is fair and dispassionate -- and above all, prompt. I believe America is looking for a sign that, this time, the process will protect the independence of our judiciary -- as the framers of the Constitution intended. I urge Senator Biden and Senator Thurmond and the other members of the Senate Judiciary Committee to join me in the spirit of bipartisan cooperation, and to demonstrate this spirit by meeting during this coming week to schedule hearings on this nomination.

And now, I believe that Judge Ginsburg -- who already has one supporter in the group -- (laughter) -- has a few words to say. (Applause.)

JUDGE GINSBURG: Thank you. Thank you, Mr. President. I want to express my deep appreciation for the confidence you've placed in me and nominating me to be an Associate Justice of the Supreme Court. I just want to say that I'm looking forward to the confirmation process and, upon confirmation, to taking a place in the Court and playing a part in the work that it does that's so important in our system of government. Thank you again. (Applause.)

END

2:12 P.M. EST

WHITE HOUSE ISSUE BRIEF

(Overview, continued)

- o At his confirmation hearings last year, Senator Kennedy paid tribute not only to his "insightful mind" but to his "sense of compassion." Senator Kennedy went on to say:

"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. I think we are fortunate to have this nominee for this extremely important position...."

WHITE HOUSE ISSUE BRIEF

CRIMINAL LAW

- o Criminal cases make up the largest single category of cases heard by the Supreme Court.
- o These cases also have the most immediate impact on our citizens.
 - Supreme Court decisions will determine whether convicted murderers may receive the death penalty.
 - Supreme Court decisions will determine whether the rights of victims will be considered, as well as the rights of accused and convicted criminals.
 - Supreme Court decisions will have a vital impact on the success of the Nation's war on drugs.
 - Supreme Court decisions will determine whether court-created rules will help -- or hinder -- the search for truth in the courtroom.
- o The Supreme Court's criminal law cases are particularly vital to the poor, women, the aged, and minority groups, who are disproportionately victimized by crime and who have the greatest interest in fair and effective law enforcement. When our criminal justice system fails -- when hardened criminals are set free to prey on the public again -- these Americans are the first to suffer.

Criminal Justice in the Balance

- o This nomination will determine whether we continue the 15-year trend away from Warren Court activism on behalf of accused and convicted criminals and toward a balanced approach rooted in the text of the Constitution.
 - Last term the constitutionality of the death penalty was sustained by a single vote -- that of Lewis Powell, whose seat Judge Ginsburg has been nominated to fill.
 - Last term, the Court struck down by one vote a state statute allowing juries in murder cases to hear statements about the impact of the crime on the victim, his or her family, and the community.
 - Within the next year it is likely that challenges to key components of the legislative and executive branch initiatives in the war on drugs will come before the Supreme Court.

WHITE HOUSE ISSUE BRIEF

(Criminal Law, continued)

- It is imperative that those challenges be heard by Justices committed to the plain mandate of the Constitution -- "to establish Justice, and to ensure domestic Tranquility."

Judge Ginsburg's Record on Criminal Law Enforcement

- o As a federal prosecutor and appellate judge, Judge Ginsburg has shown that he believes in a criminal justice system that protects not just the rights of the accused, but also those of the victims and of society as a whole.
- o Summarizing Assistant Attorney General Ginsburg's tenure at the Justice Department, the Wall Street Journal wrote in August 1986: "When it comes to pursuing price-fixing and bid-rigging and other blatantly criminal activities, the scholarly former law professor acts more like an aggressive, hard-nosed presecutor. Since taking office a year ago... Ginsburg has suprised many critics by significantly stepping up criminal enforcement efforts."
- As head of the Antitrust Division, Judge Ginsburg made criminal enforcement the Justice Department's highest priority. Under his leadership, the Antitrust Division filed criminal charges against 87 corporations and 80 individuals. Judge Ginsburg opened more than 50 grand jury investigations. By the time he was elevated to the Court of Appeals, the Division was conducting a record number of grand jury investigations.
- He led the crackdown on whitecollar criminal conspiracies that had cost taxpayers and consumers millions of dollars.
- Judge Ginsgurg began the Department's crackdown on bid-rigging in federal procurement, with particular emphasis on Defense Department procurement. That initiative continued after Judge Ginsburg's elevation to the bench and today there are 35 grand juries looking into possible bid-rigging and price-fixing on government contracts at military installations across the nation, as well as civilian government contracts. That effort will in time save taxpayers millions, if not billions, of dollars.

WHITE HOUSE ISSUE BRIEF

- In his first major speech as Assistant Attorney General, Judge Ginsburg expressed great concern that "with discouraging frequency, the price-fixers and bid-riggers we do bring to justice slip off with token punishment... [I]nstead of sending antitrust felons to jail, judges are increasingly inclined to fashion 'creative' alternative sentences involving 'community service'" In testimony before the U.S. Sentencing Commission, he called for substantial increases in sentences and fines for white-collar criminals -- suggestions largely embodied in the Commissions' final guidelines. And he introduced legislation to enable the U.S. Government, for the first time, to collect treble damages against price-fixers who had defrauded the taxpayers.
- o During his tenure on the District of Columbia Circuit, Judge Ginsburg has shown that he firmly understands the truthfinding function of criminal justice, but that he will nevertheless protect the legitimate constitutional rights of defendants.
- Judge Ginsburg joined in the opinion in United States v. Jackson, which affirmed a conviction for the illegal possession of weapons. The court held that the Armed Career Criminal Act did properly allow the district judge to consider the defendant's prior convictions in enhancing his sentence. The court also held that a search of firearm registration records that used an incorrect address for the defendant did not suggest that using the correct address would have turned up any exculpatory evidence.
- Judge Ginsburg joined in the per curiam opinion in United States v. Scarborough, which affirmed a conviction on eight counts relating to fraudulent dealings with two banks.
- Where a defendant's rights are truly in question, however, Judge Ginsburg has shown his willingness to uphold the rights of criminal defendants. Thus, he joined in the opinion of Judge Mikva in United States v. Brown, reversing the convictions of 9 defendants after 13 weeks of trial and 8 weeks of jury deliberations. The court concluded that the trial judge's dismissal of a juror in the midst of deliberations had deprived the defendants of their constitutional right to a unanimous jury.
- o In short, Judge Ginsburg has demonstrated that he shares Lewis Powell's commitment to protect the rights of victims, as well as the rights of accused or convicted criminals.

WHITE HOUSE ISSUE BRIEF

THE CONFIRMATION PROCESS

- o The Supreme Court seat of retired Justice Lewis Powell has now been vacant for over four months -- one of the longest vacancies in American history.
- o Ironically, Justice Powell made it clear that he was retiring because he believed it would be unfair both to the parties with cases pending before the Supreme Court, and to the other members of the Court, to be operating without nine full-time Justices. By stepping down late in June, Justice Powell graciously allowed sufficient time for his replacement to be confirmed before the October term began.
- o The United States Senate has the solemn responsibility of giving careful scrutiny to the qualifications of every nominee for the Supreme Court, and of determining, through the confirmation process, whether that nominee shall be approved.
- o It is critical that the Supreme Court, with its increasingly burdensome caseload, operate with a full complement of nine Justices. Since the current term began in October, the Justices have already been unable to resolve one highly significant case by virtue of a tied vote.
- o A prompt, bipartisan confirmation process is needed to fill the current Supreme Court vacancy and to ensure public confidence in the Senate confirmation process and the independence of the Judiciary.
- o There is no more urgent business before Congress than filling Justice Powell's vacant seat on the Court. The Senate must exercise its constitutional responsibility to vote on this nominee before it adjourns for the year.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

October 29, 1987

BIOGRAPHICAL INFORMATION ON
JUDGE DOUGLAS H. GINSBURG

Judge Ginsburg has had an outstanding career as a judge, as a government official with important law enforcement responsibilities, and as a distinguished professor of law at the Harvard Law School. His record makes him eminently qualified to sit on our highest court.

In 1986, President Reagan nominated Judge Ginsburg to sit on the United States Court of Appeals for the D.C. Circuit. He was unanimously confirmed by the Senate.

From 1985 to 1986, Judge Ginsburg was Assistant Attorney General for Antitrust at the Department of Justice. From 1984 to 1985, he was Administrator for Information and Regulatory Affairs in the Office of Management and Budget, one of the most senior positions in that agency. From 1983 to 1984, Judge Ginsburg was a Deputy Assistant Attorney General in the Antitrust Division of the Department of Justice.

From 1975 to 1983, Judge Ginsburg was a professor at the Harvard Law School, where he taught economic regulation of business, antitrust law, and corporate law.

Judge Ginsburg clerked for Judge Carl McGowan of the United States Court of Appeals for the D.C. Circuit. He then served as law clerk for Supreme Court Justice Thurgood Marshall. He received his undergraduate degree in 1970 at Cornell University and his law degree in 1973 at the University of Chicago, where he was Articles Editor of the Law Review.

During his tenure as head of the Antitrust Division, Judge Ginsburg made criminal enforcement the Justice Department's highest antitrust priority. He led the crackdown on price-fixing conspiracies that had defrauded consumers and taxpayers of millions of dollars. Judge Ginsburg began the Department's wide-ranging initiative against price-fixing in defense procurement. He has repeatedly called for substantial increases in sentences and fines for white collar criminals.

Judge Ginsburg was born in 1946 in Chicago, Illinois. He is married and has two children. His wife, Hallee, is a doctor who worked at the Department of Health and Human Services prior to the birth of their daughter.

#

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 29, 1987

FACT SHEET

- o Judge Douglas H. Ginsburg is an outstanding nominee to the Supreme Court. His experience in government, academia, and on the bench, together with his judicial temperament, will make him a superb Justice.
 - He was an editor of the University of Chicago Law Review, a clerk to Judge Carl McGowan on the U.S. Court of Appeals for the D.C. Circuit, and a clerk to Supreme Court Justice Thurgood Marshall.
 - From 1975 to 1983, Judge Ginsburg was a professor at the Harvard Law School, specializing in corporate law, economics, and antitrust.
- o From 1983 until his appointment to the bench in 1986, Judge Ginsburg held important positions in government.
 - He was Deputy Assistant Attorney General in the Anti-trust Division of the Justice Department, Administrator for Information and Regulatory Affairs in the Office of Management and Budget, and Assistant Attorney General for Antitrust.
 - As Assistant Attorney General, Judge Ginsburg made criminal enforcement the Justice Department's highest antitrust priority.
 - Judge Ginsburg led the crackdown on price-fixing conspiracies that had defrauded consumers and taxpayers of millions of dollars, and repeatedly called for stiffer sentences for white-collar criminals.
- o In 1986, President Reagan nominated Judge Ginsburg to the U.S. Court of Appeals for the District of Columbia Circuit--the most prestigious and important of the federal courts of appeals. He was unanimously confirmed by the Senate.
- o Judge Ginsburg is a strong judicial conservative, committed to keeping the judiciary out of politics and to strong law enforcement.
- o At the same time, Judge Ginsburg has earned a reputation for being fairminded and sensible among his colleagues in academia, on the bench, and in government.
- o At his confirmation hearings last year, Senator Kennedy paid tribute not only to his "insightful mind" but to his "sense of compassion."
 - Senator Kennedy went on to say, "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. I think we are fortunate to have this nominee for this extremely important position...."

more

CRIMINAL LAW

- o Criminal cases make up the largest single category of cases heard by the Supreme Court.
- o These cases also have the most immediate impact on our citizens.
 - Supreme Court decisions will determine whether convicted murderers may receive the death penalty.
 - Supreme Court decisions will determine whether the rights of victims will be considered, as well as the rights of criminals.
 - Supreme Court decisions will have a vital impact on the success of the Nation's war on drugs.
 - Supreme Court decisions will determine whether court created rules will help-or hinder-the search for truth in the courtroom.
- o The Supreme Court's criminal law cases are particularly vital to the poor, women, the aged, and minority groups, who are disproportionately victimized by crime, and who have the greatest interest in fair and effective law enforcement. When our criminal justice system fails--when hardened criminals are set free to prey on the public again--these Americans are the first to suffer.

Criminal Justice in the Balance

- o This nomination will determine whether we continue the 15-year trend away from Warren Court activism on behalf of accused and convicted criminals and toward a balanced approach rooted in the text of the Constitution.
 - Last term the constitutionality of the death penalty was sustained by a single vote--that of Lewis Powell, whose seat Judge Ginsburg has been nominated to fill.
 - Last term, the Court struck down by one vote a state statute allowing juries in murder cases to hear statements about the impact of the crime on the victim, his or her family, and the community.
 - Within the next year it is likely that challenges to key components of the legislative and executive branch initiatives in the war on drugs will come before the Supreme Court. It is imperative that those challenges be heard by Justices committed to the plain mandate of the Constitution--"to establish Justice, and to ensure domestic Tranquillity."

The President's Nominee

- o Both in government and on the bench, Judge Ginsburg has shown that he is committed to law enforcement.
 - As head of the Antitrust Division of the Justice Department, Judge Ginsburg made criminal enforcement the Department's highest priority.
 - He led the crackdown on whitecollar criminal conspiracies that had cost taxpayers and consumers millions of dollars.

- Judge Ginsburg began the Department's wide-ranging initiative against price-fixing in defense procurement.
- In testimony before the U.S. Sentencing Commission, he called for substantial increases in sentences and fines for white-collar criminals -- suggestions largely embodied in the Commission's final guidelines. And he introduced legislation to enable the U.S. Government, for the first time, to collect treble damages against price-fixers who had defrauded the taxpayers.
- o On the bench, Judge Ginsburg has also shown his commitment to law and order.
 - He rejected two challenges to criminal prosecutions begun by independent counsels, allowing the criminal proceedings to go forward.
 - He rejected a challenge to the statute under which the U.S. Judicial Conference investigates and reports on judicial misconduct.
- o At the same time, Judge Ginsburg has shown that he is willing to reverse convictions when the constitutional rights of prisoners are really at stake.
 - In United States v. Brown, Judge Ginsburg voted to overturn over 400 separate verdicts in what is reportedly the longest and most expensive criminal trial ever held in the District of Columbia.
- o In short, Judge Ginsburg has demonstrated that he shares Lewis Powell's commitment to protect the rights of victims, as well as criminals.

THE CONFIRMATION PROCESS

- o The Supreme Court seat of retired Justice Lewis Powell has now been vacant for over four months--one of the longest vacancies in American history. Traditionally, the Senate has acted speedily to confirm or reject Presidential nominees--in 21 cases, voting to confirm the nominee within one day of the President's appointment.
- o Since the custom of Supreme Court nominees testifying before the Senate began with Felix Frankfurter in 1939, the average number of days between the President's nomination of a candidate to fill a vacant seat on the Court and the commencement of Senate hearings has been 17 days. During that same period, the average start-to-finish time from the President's nomination to Senate confirmation or final action has been 37 days.
- o Since 1916, when Justice Brandeis was confirmed, the average start-to-finish time from the President's nomination to fill a vacant seat on the Court to Senate confirmation or final action has been 39 days.
- o In the 200 years since John Jay was nominated as the first Chief Justice of the United States by George Washington, the average total time from nomination to Senate confirmation or other action on 138 nominees is 24 days.
- o Even in the case of controversial nominees, the Senate has typically acted responsibly to prevent lingering vacancies on the Supreme Court by scheduling hearings promptly. Hearings on Judge G. Harrold Carswell began 8 days after the President nominated him. Hearings on the nomination of Abe Fortas to be Chief Justice began within 15 days.

- o If Senate Judiciary Committee hearings are once again stalled, it will be clear that partisan politics, not concern for our overworked Supreme Court or fair consideration of this nominee, is the order of the day. Even now, the caseload of the Supreme Court is reaching ever-more burdensome levels. Although this term of the Court only began this month, the Justices have already been unable to resolve one highly significant case by virtue of a tied vote.
- o We must not repeat the long partisan delay in opening the confirmation hearings of Judge Bork--a delay designed to permit the unprecedented distortions and mischaracterizations of his record mounted against him by special interest groups. One political campaign waged against a Supreme Court nominee is one too many.
- o Nor does the excuse used for the delay in Judge Bork's hearings -- that Judge Bork's unique and voluminous record required more review than usual -- apply to Judge Ginsburg. Judge Ginsburg is a man of impeccable qualifications with a distinguished career in the law; his writings are not voluminous or controversial, and in his many years of public service his record has already been subject to continuous, close public scrutiny.
- o A prompt nonpartisan confirmation process is needed not only to restore the urgently-needed full complement of Supreme Court Justices, but to restore public confidence in the Senate confirmation process and the independence of the Judiciary. Confirmation hearings should be scheduled in accordance with historic practice--within the next one or two weeks, with a full Senate vote to follow shortly.
- o The Supreme Court has been operating at only partial strength for four months. Ironically, Justice Powell made it clear that he was retiring because he believed it would be unfair both to the parties with cases pending before the Supreme Court and to the remaining members of the Court to be operating without nine full-time Justices. By stepping down in late June, he graciously allowed sufficient time for his replacement to be confirmed before the October Term began.
- o There is no more urgent business before Congress than filling Justice Powell's vacant seat on the Court. The full Senate cannot avoid its constitutional responsibility to vote on this nominee before it adjourns for the year.

#

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

October 29, 1987

ANNOUNCEMENT BY THE PRESIDENT
OF SUPREME COURT JUSTICE NOMINEE
JUDGE DOUGLAS GINSBURG

The East Room

2:00 P.M. EST

THE PRESIDENT: I am announcing today that, in accordance with my duty under the Constitution, I intend to nominate and ask the Senate to confirm Judge Douglas Ginsburg of the United States Court of Appeals for the District of Columbia Circuit for the position of Associate Justice of the Supreme Court. (Applause.)

Judge Ginsburg is a highly-regarded member of the legal profession. His career as a federal judge, as Assistant Attorney General of the United States, as a senior official at the Office of Management and Budget, as a distinguished professor at Harvard Law School, and as a former law clerk to Supreme Court Justice Thurgood Marshall makes him eminently qualified to sit on our highest court.

Just as importantly, Judge Ginsburg is highly respected by his peers across the political spectrum. When I nominated him to the U.S. Court of Appeals last year, he was unanimously confirmed by the Senate and won lavish praise not just from conservatives but from liberals as well.

Judge Ginsburg is, as I am, as every justice I've nominated has been, a believer in judicial restraint -- that is, that the proper role of the courts is to interpret the law, not make it. In our democracy, our elected representatives make laws, and unelected judges interpret the laws. And that's the foundation of our system of government. Above all, judges must be guided by our most fundamental law -- the Constitution. Every judge that I appoint must understand that he or she serves under the Constitution, not above it. And Judge Ginsburg is such a judge.

Throughout his professional career, Judge Ginsburg has shown that he also believes, as I do, that the courts must administer fair and firm justice while remembering not just the rights of criminals but, equally important, the rights of the victims of crime and the rights of society.

Too often, judges have reinterpreted the Constitution and have made law enforcement a game in which clever lawyers can try to find ways to trip up the police on the rules.

This is not what our Founding Fathers intended when they framed our Constitution 200 years ago. They knew that among the most vital duties of government was to "ensure domestic tranquility." They drafted a Constitution and gave us a system that was true to that duty while protecting the rights of all Americans. I believe that Judge Ginsburg will take a tough, clear-eyed view of this essential purpose of the Constitution while remaining sensitive to the safety of our citizens, and to the problems facing law enforcement professionals.

Much has been said about my agenda for the courts. I want courts that protect the rights of all citizens. No one has rights when criminals are allowed to prey on society. Judge Ginsburg understands that. And that's why I am nominating him. That's why I have selected each of the people I have put forward for the Supreme Court.

MORE

In taking up this nomination, I hope we can all resolve not to permit a repetition of the campaign of pressure politics that has so recently chilled the judicial selection process. It is time for the Senate to show that it will join with me in defending the integrity and independence of the American system of justice.

And a good way to begin would be by holding hearings promptly. When Justice Powell announced his retirement 4 months ago, he made it plain that he believed it would be unfair to the parties with cases before the Supreme Court, and unfair to the remaining members of the Court, to be left without nine full-time Justices. He graciously stepped down from the Court to enable the President and the Congress to select his replacement before this October term began. But, as a result of the longest delay in starting hearings to fill a vacant seat on the Court since the custom of taking testimony from Supreme Court nominees first began in 1939, the nation's highest court is still operating at less than full strength over 4 months later.

The long delay in scheduling hearings for Judge Bork had other results as well. Since June 1987, when Justice Powell resigned, the work of the Supreme Court has grown even more burdensome. All during the months of July, August, and September, nearly one-third of the literally hundreds of cases that the remaining eight justices reviewed for hearing were criminal cases. Throughout this time, the empty seat on the Supreme Court has been a casualty in the fight for victims' rights and the war against crime.

During the last 25 years, the average time between nomination and the start of hearings has been less than 18 days. In fact, in the entire 200-year history of our country since the nomination of John Jay, the average start-to-finish time from a President's appointment to confirmation or other action by the Senate has been only 24 days.

One senator has boasted that the reason for the 70-day delay in beginning Judge Robert Bork's hearings was to allow time to gear up the political campaign against him. And that was, very simply, a disservice to the court and to the nation. If these hearings take longer than 3 weeks to get going, the American people will know what's up.

It's time to put the national interest ahead of partisan political interests. No excuses about the press of other business before the Senate Judiciary Committee. There's no more important business before that Committee than to bring the Supreme Court up to full strength. The Senate has a duty in this regard, just as I do.

So this is my call to the Senate today. Let us all resolve that the process of confirming a Supreme Court nominee will never again be distorted. Alexander Hamilton wrote that "The complete independence of the courts of justice is essential in the Constitution." Let us resolve this time that guarding that independence will be the Senate's highest priority. The American people want this. They have a right to expect it.

By selecting Judge Ginsburg -- I've gone the extra mile to ensure a speedy confirmation. I've been impressed by the fact that in academia, in government, and on the bench, Judge Ginsburg has been enormously popular with colleagues of all political persuasions. A word that many have used to describe Douglas Ginsburg is "unpretentious." Now, that's quite a compliment for a judge. (Laughter.) But I guess that's just one reflection of a man who believes profoundly in the rule of law. In the last analysis, it is just such men and women who ensure the continued respect for our constitutional system. And that's why I'm so pleased to nominate Judge Douglas Ginsburg to the highest court of our nation.

Let me say in closing, it is up to all of us to see to it that Senate consideration of Judge Ginsburg's nomination is fair and dispassionate -- and above all, prompt. I believe America is looking for a sign that, this time, the process will protect the independence of our judiciary -- as the framers of the Constitution intended. I urge Senator Biden and Senator Thurmond and the other members of the Senate Judiciary Committee to join me in the spirit of bipartisan cooperation, and to demonstrate this spirit by meeting during this coming week to schedule hearings on this nomination.

And now, I believe that Judge Ginsburg -- who already has one supporter in the group -- (laughter) -- has a few words to say. (Applause.)

JUDGE GINSBURG: Thank you. Thank you, Mr. President. I want to express my deep appreciation for the confidence you've placed in me and nominating me to be an Associate Justice of the Supreme Court. I just want to say that I'm looking forward to the confirmation process and, upon confirmation, to taking a place in the Court and playing a part in the work that it does that's so important in our system of government. Thank you again. (Applause.)

END

2:12 P.M. EST

THE WHITE HOUSE

WASHINGTON

November 3, 1987

MEMORANDUM FOR SENIOR WHITE HOUSE STAFF

FROM: JOE RODOTA 
SUBJECT: Issue Brief on Judge Ginsburg

Attached is an "Issue Brief" concerning the nomination of Judge Ginsburg. This information duplicates parts of the "Fact Sheet" released from the Press Office on October 29, but contains additional information on Judge Ginsburg's criminal law background as well as revised language on the confirmation process.

"Issue Brief" materials are for outside distribution. Please circulate as appropriate.

JUDGE DOUGLAS H. GINSBURG

THE PRESIDENT'S NOMINEE TO THE SUPREME COURT

Overview

- o Judge Douglas H. Ginsburg is an outstanding nominee to the Supreme Court. His experience in government, academia, and on the bench, together with his judicial temperament, will make him a superb Justice.
 - He was an editor of the University of Chicago Law Review, a clerk to Judge Carl McGowan on the U.S. Court of Appeals for the D.C. Circuit, and a clerk to Supreme Court Justice Thurgood Marshall.
 - From 1975 to 1983, Judge Ginsburg was a professor at the Harvard Law School, specializing in banking law, economic regulation of business, and antitrust.
- o From 1983 until his appointment to the bench in 1986, Judge Ginsburg held important positions in government.
 - He was Deputy Assistant Attorney General in the Antitrust Division of the Justice Department, Administrator for Information and Regulatory Affairs in the Office of Management and Budget, and Assistant Attorney General for Antitrust.
 - As Assistant Attorney General, Judge Ginsburg made criminal enforcement the Justice Department's highest antitrust priority.
 - Judge Ginsburg led the crackdown on price-fixing conspiracies that had defrauded consumers and taxpayers of millions of dollars, and repeatedly called for stiffer sentences for white-collar criminals.
- o In 1986, President Reagan nominated Judge Ginsburg to the U.S. Court of Appeals for the District of Columbia Circuit -- the most important of the federal courts of appeals. He was unanimously confirmed by the Senate.
- o Judge Ginsburg is a judicial conservative, committed to keeping the judiciary out of politics and to strong law enforcement
- o At the same time, Judge Ginsburg has earned a reputation for being fairminded and sensible among his colleagues in academia, on the bench, and in government.

WHITE HOUSE ISSUE BRIEF

(Overview, continued)

- o At his confirmation hearings last year, Senator Kennedy paid tribute not only to his "insightful mind" but to his "sense of compassion." Senator Kennedy went on to say:

"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. I think we are fortunate to have this nominee for this extremely important position...."

WHITE HOUSE ISSUE BRIEF

CRIMINAL LAW

- o Criminal cases make up the largest single category of cases heard by the Supreme Court.
- o These cases also have the most immediate impact on our citizens.
 - Supreme Court decisions will determine whether convicted murderers may receive the death penalty.
 - Supreme Court decisions will determine whether the rights of victims will be considered, as well as the rights of accused and convicted criminals.
 - Supreme Court decisions will have a vital impact on the success of the Nation's war on drugs.
 - Supreme Court decisions will determine whether court-created rules will help -- or hinder -- the search for truth in the courtroom.
- o The Supreme Court's criminal law cases are particularly vital to the poor, women, the aged, and minority groups, who are disproportionately victimized by crime and who have the greatest interest in fair and effective law enforcement. When our criminal justice system fails -- when hardened criminals are set free to prey on the public again -- these Americans are the first to suffer.

Criminal Justice in the Balance

- o . This nomination will determine whether we continue the 15-year trend away from Warren Court activism on behalf of accused and convicted criminals and toward a balanced approach rooted in the text of the Constitution.
 - Last term the constitutionality of the death penalty was sustained by a single vote -- that of Lewis Powell, whose seat Judge Ginsburg has been nominated to fill.
 - Last term, the Court struck down by one vote a state statute allowing juries in murder cases to hear statements about the impact of the crime on the victim, his or her family, and the community.
 - Within the next year it is likely that challenges to key components of the legislative and executive branch initiatives in the war on drugs will come before the Supreme Court.

WHITE HOUSE ISSUE BRIEF

(Criminal Law, continued)

- It is imperative that those challenges be heard by Justices committed to the plain mandate of the Constitution -- "to establish Justice, and to ensure domestic Tranquility."

Judge Ginsburg's Record on Criminal Law Enforcement

- o As a federal prosecutor and appellate judge, Judge Ginsburg has shown that he believes in a criminal justice system that protects not just the rights of the accused, but also those of the victims and of society as a whole.
- o Summarizing Assistant Attorney General Ginsburg's tenure at the Justice Department, the Wall Street Journal wrote in August 1986: "When it comes to pursuing price-fixing and bid-rigging and other blatantly criminal activities, the scholarly former law professor acts more like an aggressive, hard-nosed presecutor. Since taking office a year ago... Ginsburg has suprised many critics by significantly stepping up criminal enforcement efforts."
- As head of the Antitrust Division, Judge Ginsburg made criminal enforcement the Justice Department's highest priority. Under his leadership, the Antitrust Division filed criminal charges against 87 corporations and 80 individuals. Judge Ginsburg opened more than 50 grand jury investigations. By the time he was elevated to the Court of Appeals, the Division was conducting a record number of grand jury investigations.
- He led the crackdown on whitecollar criminal conspiracies that had cost taxpayers and consumers millions of dollars.
- Judge Ginsgurg began the Department's crackdown on bid-rigging in federal procurement, with particular emphasis on Defense Department procurement. That initiative continued after Judge Ginsburg's elevation to the bench and today there are 35 grand juries looking into possible bid-rigging and price-fixing on government contracts at military installations across the nation, as well as civilian government contracts. That effort will in time save taxpayers millions, if not billions, of dollars.

WHITE HOUSE ISSUE BRIEF

- In his first major speech as Assistant Attorney General, Judge Ginsburg expressed great concern that "with discouraging frequency, the price-fixers and bid-riggers we do bring to justice slip off with token punishment... [I]nstead of sending antitrust felons to jail, judges are increasingly inclined to fashion 'creative' alternative sentences involving 'community service'" In testimony before the U.S. Sentencing Commission, he called for substantial increases in sentences and fines for white-collar criminals -- suggestions largely embodied in the Commissions' final guidelines. And he introduced legislation to enable the U.S. Government, for the first time, to collect treble damages against price-fixers who had defrauded the taxpayers.
- o During his tenure on the District of Columbia Circuit, Judge Ginsburg has shown that he firmly understands the truthfinding function of criminal justice, but that he will nevertheless protect the legitimate constitutional rights of defendants.
 - Judge Ginsburg joined in the opinion in United States v. Jackson, which affirmed a conviction for the illegal possession of weapons. The court held that the Armed Career Criminal Act did properly allow the district judge to consider the defendant's prior convictions in enhancing his sentence. The court also held that a search of firearm registration records that used an incorrect address for the defendant did not suggest that using the correct address would have turned up any exculpatory evidence.
 - Judge Ginsburg joined in the per curiam opinion in United States v. Scarborough, which affirmed a conviction on eight counts relating to fraudulent dealings with two banks.
 - Where a defendant's rights are truly in question, however, Judge Ginsburg has shown his willingness to uphold the rights of criminal defendants. Thus, he joined in the opinion of Judge Mikva in United States v. Brown, reversing the convictions of 9 defendants after 13 weeks of trial and 8 weeks of jury deliberations. The court concluded that the trial judge's dismissal of a juror in the midst of deliberations had deprived the defendants of their constitutional right to a unanimous jury.
- o In short, Judge Ginsburg has demonstrated that he shares Lewis Powell's commitment to protect the rights of victims, as well as the rights of accused or convicted criminals.

WHITE HOUSE ISSUE BRIEF

THE CONFIRMATION PROCESS

- o The Supreme Court seat of retired Justice Lewis Powell has now been vacant for over four months -- one of the longest vacancies in American history.
- o Ironically, Justice Powell made it clear that he was retiring because he believed it would be unfair both to the parties with cases pending before the Supreme Court, and to the other members of the Court, to be operating without nine full-time Justices. By stepping down late in June, Justice Powell graciously allowed sufficient time for his replacement to be confirmed before the October term began.
- o The United States Senate has the solemn responsibility of giving careful scrutiny to the qualifications of every nominee for the Supreme Court, and of determining, through the confirmation process, whether that nominee shall be approved.
- o It is critical that the Supreme Court, with its increasingly burdensome caseload, operate with a full complement of nine Justices. Since the current term began in October, the Justices have already been unable to resolve one highly significant case by virtue of a tied vote.
- o A prompt, bipartisan confirmation process is needed to fill the current Supreme Court vacancy and to ensure public confidence in the Senate confirmation process and the independence of the Judiciary.
- o There is no more urgent business before Congress than filling Justice Powell's vacant seat on the Court. The Senate must exercise its constitutional responsibility to vote on this nominee before it adjourns for the year.

130-4
130-5

5 16 5
3 5 3 4
6 9

November 4, 1987

Jewish leaders who will be in town on the 10th (all would bve available for a meeting after 2:00 p.m.; most, if not all, could probably meet before 12:00 p.m.):

Morris Abram -

Robert Asher -

Marshall Breger e a a

Julius Berman

Ken Bialkin -

Frank Borman

Edgar Bronfman

Shoshana Cardin

Tom Dine

Sandy Eisenstadt

Max Fisher

Abe Foxman -

Chris Gersten

Bert Gold

Malcolm Hoenlein

Stanley Horowitz

Martin Indyk

Harold Jacobs -

George Klein

Frank Kreutzer -

Rabbi Israel Miller -

THE WHITE HOUSE

WASHINGTON

Ivan Novick

Ruth Popkin ?

Seymour Reich -

Milton Shapiro ~

Israel Singer

Howard Squadrun

Jack Stein

Joseph Stenstein ~

Peggy Tishman ~

Alan Wurtzel

Gordon Zacks

Ted Ellenoff, President, AJCommittee, Hasn't responded yet.

Possible Hosts:

Ken Bialkin

Max Fisher

Jack Stein

Must be invited:

Morris Abram

Marshall Breger

Julius Berman

Ken Bialkin

Ted Ellenoff or Bert Gold

Max Fisher

Dick Fox

THE WHITE HOUSE

WASHINGTON

George Klein

Rabbi Israel Miller

Seymour Reich

Jack Stein

Peggy Tishman

Gordon Zacks

THE WHITE HOUSE
WASHINGTON