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1998-0004-F[1]

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Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files

OA/ID Number: 29165
Folder ID Number: 29165-010

Folder Title:
Personnel (2 of 2) (1990) [5]: Department of Justice Appointments

Stack:	Row:	Section:	Shelf:	Position:
G	15	25	3	3

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	From C. Boyden Gray to John Sununu Re: Judicial Selection [FOIA RESTRICTIONS REDACTED] (4 pp.)	3/14/90	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Personnel (2 of 2) (1990) [5]: Department of Justice Appointments

Date Closed:	12/11/2004	OA/ID Number:	29165-010
FOIA/SYS Case #:	1998-0004-F[1]	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
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RESTRICTION CODES

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

P-1 National Security Classified Information [(a)(1) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

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

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THE WHITE HOUSE
WASHINGTON

March 14, 1990

MEMORANDUM FOR GOVERNOR JOHN H. SUNUNU
CHIEF OF STAFF

FROM: C. BOYDEN GRAY *omh*
COUNSEL TO THE PRESIDENT

SUBJECT: Judicial Selection

You were interested in a status report on judicial vacancies. Nine judges have been confirmed this year. There are presently 69 additional vacancies. We have 21 nominees pending before the Senate Judiciary Committee, 4 of whom have hearings scheduled for March 22 (one of these is Norm Stahl). There are also two hearings scheduled in April, but we do not know how many nominees or which ones will be slated for these hearings yet. We have another 22 candidates selected, four of whom we have not sent into clearance yet, the issues with respect to two of which

[REDACTED] appear likely to be resolved soon, and the issues with respect to the two others [REDACTED]

[REDACTED] may take longer. Five candidates in clearance are encountering some level of problem in the ABA or FBI checks, whose seriousness we cannot assess at this time. There are 24 additional seats for which no candidates have been selected yet. Of these, seven opened in 1988, eleven in 1989, and six in 1990.

Table

Confirmed (24) (15 in 1989, 9 in 1990)

<u>District/ Circuit</u>	<u>Nominee</u>	<u>Date Nominated</u>	<u>Date Confirmed</u>
<u>1989</u>			
9th Circuit	Pamela Rymer	2/28/89	5/18/89
9th Circuit	F. Fernandez	2/28/89	5/18/89
C.D. Calif.	Robert Bonner	2/28/89	5/18/89
S.D. Texas	Melinda Harmon	2/28/89	5/18/89
1st Circuit	Conrad Cyr	8/4/89	10/24/89
D. Md.	Marvin Garbis	8/4/89	10/24/89
E.D. Va.	Rebecca Smith	8/4/89	10/24/89

Fed. Circuit	S. Jay Plager	9/12/89	11/8/89
N.D. Ill.	George Lindberg	9/21/89	11/3/89
N.D. Calif.	Vaughn Walker	2/28/89	11/22/89
D. Kansas	Thomas Van Bebber	9/13/89	11/22/89
2d Circuit	John Walker	9/21/89	11/22/89
D. Colorado	Edward Nottingham	10/20/89	11/22/89
E.D. New York	Arthur Spatt	10/25/89	11/22/89
D. Idaho	Edward Lodge	10/30/89	11/22/89

1990 (9)

N.D. Alabama	Edwin Nelson	9/13/89	1/23/90
E/W D. Ark.	Susan Wright	9/21/89	1/23/90
D.C. Circuit	Clarence Thomas	10/30/89	3/6/90
5th Circuit	Jacques Weiner	11/17/89	3/9/90
5th Circuit	Rhesa Barksdale	11/17/89	3/9/90
E.D. Michigan	Gerald Rosen	11/9/89	3/9/90
W.D. Penn.	Donald Lee	11/9/89	3/9/90
E.D. Penn.	Ronald Buckwalter	11/17/89	3/9/90
Claims Court	Robert Hodges	1/24/90	3/9/90

Pending Before Judiciary Committee (21)

<u>District/ Circuit</u>	<u>Nominee</u>	<u>Date Nominated</u>	<u>Hearing</u>
1st Circuit	David Souter (no ABA)	1/24/90	
Fed. Circuit	Raymond Clevenger (Q/WQ)	1/24/90	
Fed. Circuit	Alan Lourie (WQ/Q)	1/24/90	3/22
S.D. New York	Lawrence McKenna (Q)	1/24/90	
S.D. New York	John Martin (WQ)	1/24/90	3/22
D. N.H.	Norman Stahl (WQ)	1/24/90	3/22
D. Colorado	Daniel Sparr (WQ)	1/24/90	3/22
S.D. Texas	John Rainey (WQ)	1/24/90	
N.D. Alaska	James Singleton (WQ)	1/24/90	
M.D. Penn.	James McClure (WQ)	1/24/90	
D. Kentucky	Joseph Hood (Q/NQ)	1/24/90	
D. Maryland	William Nickerson (no ABA)	1/24/90	
3d Circuit	Samuel Alito (no ABA)	2/20/90	
D. Arizona	Stephen McNamee (Q)	2/20/90	
E.D. Mich.	Robert Cleland (no ABA)	2/20/90	
W.D.N.C.	Graham Mullen (WQ)	2/20/90	
D. Oregon	Robert Jones (WQ)	2/20/90	
D. Montana	Jack Shanstrom (WQ)	2/23/90	
D. Maine	Brock Hornby (WQ)	3/6/90	
W.D. Virginia	Sam Wilson (Q)	3/6/90	
D. V. Islands	Adriane Dudley (WQ)	3/7/90	

Selected/In Clearance (22, 4 on hold, 5 potential problems)District/
Circuit

S.D. Alabama
 D. D.C.
 S.D. Florida
 S.D. Florida
 *W.D. Louisiana
 **D. Mississippi
 E.D. New York
 **W.D. New York
 D. South Carolina
 *N.D. Texas
 N.D. Texas
 N.D. West Virginia
 D.C. Circuit
 D.C. Circuit
 Fourth Circuit
 **Sixth Circuit
 *Eighth Circuit
 Ninth Circuit
 **Eleventh Circuit
 Eleventh Circuit
 **Federal Circuit
 *Federal Circuit

* Indicates that although selected, the candidate is not in clearance yet because of a hold placed by one or more of the offices involved in the selection process.

** Indicates potential ABA or FBI problem

Vacancies (24)District/
Circuit

N.D. Calif.)
 C.D. Calif.)
 E.D. Calif. (3))
 D. Delaware
 D. Guam
 D. Kansas
 W.D. Louisiana
 S.D. New York(4))

E.D. Pennsylvania

W.D. Pennsylvania

N.D. Texas

S.D. Texas

D. Vermont

D. Virg Islands

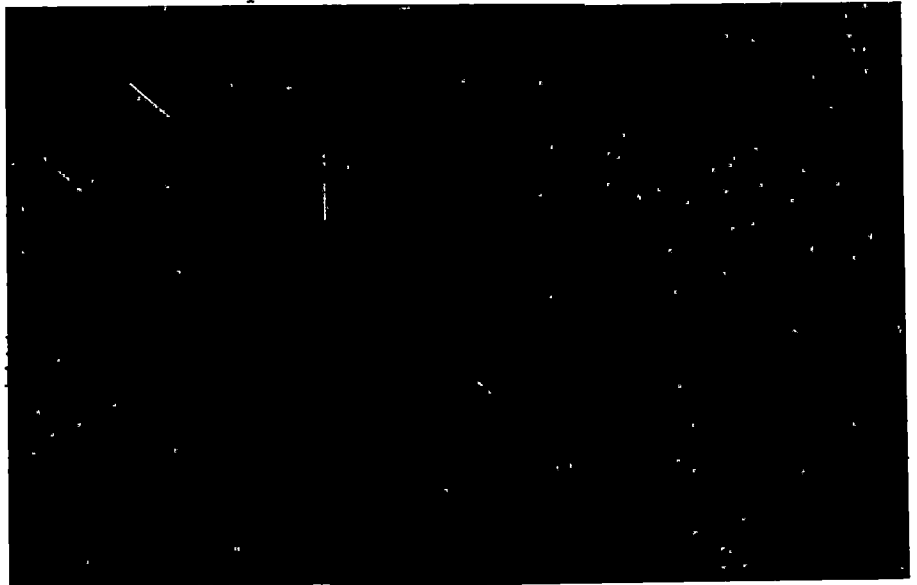
Second Circuit

Third Circuit

Sixth Circuit

Eleventh Circuit

Ct of Int'l Trade



Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Memo	From C. Boyden Gray to John Sununu Re: Judicial Selection (2 pp.)	9/20/89	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Personnel (2 of 2) (1990) [5]: Department of Justice Appointments

Date Closed: 12/11/2004 **OA/ID Number:** 29165-010

FOIA/SYS Case #: 1998-0004-F[1]

Appeal Case #:

Re-review Case #: 2005-0426-S

Appeal Disposition:

P-2/P-5 Review Case #:

Disposition Date:

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Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
03. Memo	From Murray Dickman to John Sununu Re: Candidate for DoJ Position [2 copies] (2 pp.)	9/20/89	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Personnel (2 of 2) (1990) [5]: Department of Justice Appointments

Date Closed:	12/11/2004	OA/ID Number:	29165-010
FOIA/SYS Case #:	1998-0004-F[1]	Appeal Case #:	
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04. List	Deputy Attorney General Candidates [2 copies] (4 pp.)	5/31/89	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Personnel (2 of 2) (1990) [5]: Department of Justice Appointments

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Groups Fault Justice Dept. Nominee For Inexperience on Juvenile Crime

27 Nov 89

By Ruth Marcus
Washington Post Staff Writer

A number of groups are gearing up to fight the nomination of a conservative former Education Department official to head a Justice Department juvenile justice office, asserting that his lack of experience in the juvenile justice field makes him unqualified for the job.

President Bush last month nominated Robert W. Sweet Jr., currently an education analyst for the Senate Republican Policy Committee, to head the Office of Juvenile Justice and Delinquency Prevention.

The office, with an annual appropriation of about \$70 million, makes grants to states and private groups to improve the juvenile justice system, emphasizing such measures as removing juveniles from adult jails.

The Reagan administration each year sought to eliminate the program but was rebuffed by Congress. President Bush sought no funding in his 1990 budget request.

Sweet, a former high school science teacher, textbook salesman and sign store owner who headed the New Hampshire affiliate of the Moral Majority, generated controversy in 1983 when he was accused of seeking to set up a "New Right think tank" at the Education Department.

Former education secretary T.H. Bell wrote in his memoirs that he demanded Sweet's removal following "horror tales" of his efforts, as deputy director of the National Institute of Education (NIE), to undermine Bell's choice as director.

When Sweet obtained a new job as executive director of the National Council on Educational Research, an advisory group for NIE, he sought to use the new position to seize control of the institute, according to Bell.

At the Education Department, Sweet—who complained to Educa-

tion Week about "a preponderance of studies supporting busing" that had been done at NIE—oversaw studies on such conservatively oriented issues as home schooling and the effects of desegregation on black students' achievement. The desegregation study proceeded from the thesis that "the most important problem is the fact that racial-balance busing amounts to discrimination against minorities."

Sweet, who joined the White House staff after his ouster from the Education Department, has no formal training or experience in the juvenile justice area. The statute establishing the office requires that the administrator be appointed "from among individuals who have had experience in juvenile justice programs."

Citing Sweet's lack of such experience, the National PTA, the American Psychological Association, and People for the American Way, a liberal lobbying group, have written to the Senate Judiciary Committee urging that the nomination be withdrawn or defeated.

"It does not appear to us that Robert Sweet is the person for this task," the American Psychological Association said in its letter to the committee chairman, Sen. Joseph R. Biden Jr. (D-Del.). "His credentials in the juvenile justice field are simply nonexistent."

Reps. Augustus F. Hawkins (D-Calif.), chairman of the Education and Labor Committee, and Dale E. Kildee (D-Mich.), chairman of the human resources subcommittee, also called on the Judiciary Committee to reject Sweet.

"An examination of Mr. Sweet's professional background reveals experience in teaching, sales, personnel management, sign fabrication/installation, and federal policy development and administration with an exclusive focus on education and disability issues," they wrote in a Nov. 15 letter. "Significantly, Mr. Sweet does not possess

the single qualification that the statute requires—experience in juvenile justice."

Although it does not take positions on nominees, the American Bar Association is considering sending a letter to the committee urging that it scrutinize Sweet's record, according to Janet Fink, who chairs the ABA's juvenile justice committee.

"The most major concern is that the act requires that the administrator be someone with experience in juvenile justice programs," Fink said. "We would hope that the Senate would ask questions concerning the experience level of the nominee."

Sweet declined to comment on his nomination. "At this point I don't have any priorities per se," he told Child Protection Report last month. "I haven't even been briefed on the office."

Justice Department spokesman David Runkel cited Sweet's "substantial experience" in education and his work with the Domestic Policy Council at the White House.

"I think his experience at the White House and in the education areas certainly touch on the juvenile justice field," Runkel said. "He certainly doesn't have experience in locking kids up, but he may have relevant experience in trying to keep them on the straight and narrow."

The juvenile justice office was the subject of controversy during the Reagan years with the appointment of Alfred S. Regnery, a Justice Department lawyer whose car bore a bumper sticking asking, "Have You Slugged Your Kid Today?"

Regnery, who was the target of similar criticisms about his lack of experience, approved a \$734,000 grant to an American University researcher to perform a "content analysis" of Playboy and Penthouse magazines, and a \$186,000 contract to a prominent conservative activist to prepare a course for high school students on the Constitution.

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
05. Letter	From Dick Thornburgh to John Sununu Re: Recommendation for Deputy Attorney General (1 pp.)	6/21/89	(b)(6)	

Collection:

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Series: Sununu, John, Files
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Gordon J. Humphrey
United States Senator
New Hampshire

June 23, 1989

Dear Colleague:

As you know, the Justice Department has advocated the nomination of Mr. Robert Fiske, Jr., to the post of Deputy Attorney General, the number two spot at the Department. So far, the White House, has not made a nomination, apparently out of concern that some Republican senators oppose the candidate. This week, the Justice Department has undertaken a lobbying campaign in the Senate.

The purpose of my letter is to succinctly lay out the arguments against such a nomination. I do not question the candidate's professional competence or his character. My concerns center on the conduct of the ABA's Standing Committee on Federal Judiciary during Mr. Fiske's chairmanship, and on the \$1,000 campaign contribution Mr. Fiske gave to a Democrat running for the U. S. Senate seat in Vermont in 1988.

Mr. Fiske chaired the ABA Committee on judicial selection from August, 1984 to August, 1987. There are two fundamental complaints. First, the Committee divulged to an outside group the names of persons under consideration for nomination, violating the confidential basis under which the names were provided the ABA by the Justice Department. Second, the Committee at least in some cases showed a bias against conservative candidates.

During Mr. Fiske's chairmanship, the Committee began divulging names to the Judicial Selection Project of the Alliance for Justice. According to an Alliance document (attached), the Judicial Selection Project "...will coordinate the opposition from public interest groups to the nominations during the confirmation process in the Senate." Obviously, the ABA Committee was not merely divulging names to a fact-finding organization that would discreetly comment to the ABA; instead the ABA was divulging names to an organization publicly committed to coordinating opposition to those nominees it found unacceptable according to its liberal standards.

Further, the Judicial Selection Project was working with Democrats on the Judiciary Committee. The attached document states, "Second, the presence of the project [Judicial Selection Project] has already energized some of the minority members [Judiciary Committee Democrats] and their staffs. For example, Susan Liss, the project director, has been working with them [Judiciary Committee Democrats] in drafting an extensive questionnaire to send to nominees..." Clearly, the Project, to which the ABA Committee was divulging

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June 23, 1989

confidential lists of names, was not exactly a neutral, objective participant in the process.

The membership of the Alliance reveals its ideological imbalance. Some of its members are (full list attached): National Education Association; Children's Defense Fund; National Organization for Women Legal Defense and Education Fund; Center for Law and Social Policy; and New York Lawyers for the Public Interest. Not surprisingly, the Alliance for Justice submitted testimony strongly opposing Robert Bork's nomination to the U.S. Supreme Court.

Mr. Fiske now acknowledges the divulging of names was a "mistake." However, Mr. Fiske never questioned the practice until conservative organizations asked the Committee for access to names on the same basis as enjoyed by the liberal Judicial Selection Project. Ten weeks after the request, Mr. Fiske discontinued the practice, explaining that the Department of Justice "provides us with the names on a confidential basis." It is odd that Mr. Fiske, with his experience as a U. S. Attorney and practicing lawyer, somehow overlooked the impropriety of the arrangement with the Judicial Selection Project, made under his chairmanship, and only discovered the impropriety when conservative groups asked for the same arrangement.

Here are examples which I believe show bias by the ABA Committee against Reagan Administration candidates for nomination and actual nominees.

1. In 1985, Professor Lino Graglia, a distinguished Professor of Law at University of Texas Law School, was a candidate for a vacancy on the Fifth Circuit Court of Appeals. The Judicial Selection Project targeted Graglia for defeat even before he was nominated (Congressional Quarterly, 9/7/85, p 1763), because of his writings criticizing Supreme Court decisions on forced busing. The ABA Committee under Mr. Fiske gave this well-qualified candidate a negative rating and the Reagan Administration decided not to offer the nomination.

2. Also in 1985, President Reagan was prepared to nominate Professor William Harvey of University of Indiana Law School for the U.S. Court of Appeals, Seventh Circuit. Professor Harvey, a former dean, is the author of a treatise on federal practice, a distinguished constitutional scholar, and an experienced and successful litigator as well. In 1982, Professor Harvey served as Chairman of the Legal Services Board, where he sought to eliminate certain grant programs by

Page Three
June 23, 1989

which the ABA's Fund for Public Education had benefitted to the extent of \$485,000.

The ABA assigned Mr. Steven Keane to investigate Professor Harvey. Mr. Keane had been active in raising money for the ABA Fund. Mr. Keane's fund-raising responsibilities did not include seeking federal grants; nonetheless, his involvement in raising money for the ABA's Fund for Public Education created a conflict of interest between his role as fund-raiser and his role as impartial evaluator of Professor Harvey. The ABA Committee gave Professor Harvey a preliminary rating of "not qualified", and the Administration declined to nominate. Thus, another nominee who shared President Reagan's judicial philosophy was blocked through improper conduct by the ABA. To be sure, Mr. Keane was the investigator assigned to the Seventh Circuit, but because of the conflict of interest he should have been replaced.

3. In 1986, President Reagan nominated Judge J. Kenneth Porter for the United States District Court in Tennessee. Judge Porter, a seasoned and highly-respected state court judge and former President of the Tennessee Trial Judges Association, was at first rated qualified, unanimously, by the ABA Committee. However, after the Alliance for Justice circulated criticisms that Judge Porter was too prosecution-oriented, the ABA Committee conducted a second evaluation. Despite overwhelming support for Judge Porter from leading figures of the Tennessee bench and bar, those who knew him best, the ABA Committee under Mr. Fiske reversed itself and unanimously changed Judge Porter's rating to not qualified.

And there were others. In a speech given on October 19, 1988, Nan Aron of the Alliance for Justice proudly proclaimed how "we were able to convince the ABA with respect to William Harvey, Michael Horowitz, lots and lots of people whose names were never submitted to the [Senate Judiciary] Committee, that these individuals were unqualified. We were lucky in that we got the names of the nominees from the ABA directly."

I respectfully suggest we ought to hold Mr. Fiske accountable for the improprieties which occurred during his tenure as chairman; we should not reward him with one of the most important positions in the government.

Mr. Fiske's defenders point to his support of Judge Bork. This is knocking down a straw man. No one has suggested Mr. Fiske opposed Judge Bork. It's interesting to note, however, that when asked by Senator Biden to comment on the four ABA Committee members who found Judge Bork not qualified to serve on the Supreme Court, Mr. Fiske replied

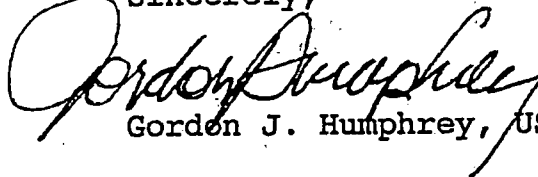
Page Four
June 23, 1989

they "were conscientious and acted in good faith." Given an opportunity to criticize the obvious ideological bias of Judge Bork's ABA detractors, Mr. Fiske instead let them off the hook.

Since this letter is directed only to Republican members of the Senate, I cite the \$1000 contribution from Mr. Fiske to the Democratic candidate for U. S. Senate in Vermont, in 1988. At a time when all of us and thousands of our supporters across the country were struggling to gain every last possible seat in order to advance towards the goal of a Republican majority, Mr. Fiske subordinated his loyalty to our party and aided the other. It is true Mr. Fiske earmarked his checks for the primary. But the Democrat candidate never had a primary opponent, a fact Mr. Fiske must have known when he wrote his second \$500 check a full month after the filing deadline for candidates had passed. Thus, Mr. Fiske's \$1000 was used against our nominee. One has to conclude Mr. Fiske is either politically naive or politically indifferent. In either case, I submit, there are candidates better suited for the post of Deputy Attorney General.

Finally, Carol Crawford, Assistant Attorney General for Congressional Relations, in seeking to allay the concerns of Mr. Fiske's opponents, assures senators that Mr. Fiske would not be involved in judicial selection. This is preposterous. No one should ask the Deputy Attorney General to recuse himself from participation in judicial selection. For the Department to suggest that Mr. Fiske should not participate, or would not participate, only underscores the concerns of those who find they must oppose him.

Sincerely,



Gordon J. Humphrey, USS

Encls.

NAN ARON
Executive Director

WILLIAM L. TAYLOR
Chair

MEMBERS

Business and Professional
People for the Public Interest

Center for Law and
Social Policy

Center for Law in the
Public Interest

Center for National
Policy Review

Center for Science
in the Public Interest

Consumers Union

Education Law Center

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Environmental Defense Fund

Equal Rights Advocates

Food Research and
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Harmon & Weiss

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Representation

Juvenile Law Center

Mental Health Law Project

National Education Association

NOW Legal Defense
Education Fund

National Wildlife Federation

National Women's Law Center

Native American Rights Fund

Natural Resources Defense
Council

New York Lawyers for the
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Public Advocates, Inc.

Sports Club Legal
Defense Fund

Women's Law Project

Women's Legal Defense Fund

Judicial Selection Project

SUMMARY

The Judicial Selection Project was organized under the auspices of the Alliance for Justice by a group of individuals affiliated with leading public interest, civil rights, labor and women's rights organizations. The project will monitor candidates for vacancies on the federal judiciary, and will provide an independent review of nominees' records on a number of issues important to the public interest. These issues include the nominees' views on access to the courts, their records of equity and fairness, and their commitment to equal justice.

The current administration has indicated that ideology, rather than merit, is likely to form the basis of selection of judges for the next four years. For example, the 1984 Republican Party convention passed a resolution in its platform to nominate to the Federal bench only those individuals opposed to abortion, and who have a commitment to judicial restraint. In addition, the Reagan Administration has abandoned a set of reforms instituted by the previous administration which emphasized merit selection independent of ideology as a primary criterion for judicial selection.

These developments are all the more ominous in light of the fact that President Reagan will have the opportunity over the next four years to fill approximately 265 seats on federal courts across the country. Currently, there are 105 vacancies waiting to be filled.

The project will have several different components. Working with a grassroots network of civic and bar groups, the project will collect information about potential candidates for the federal bench, decide which ones to evaluate, and investigate

selected candidates' records to assess their commitment to equal justice and fairness. The project will share the information collected with administration officials, the American Bar Association Standing Committee on the Federal Judiciary and, upon request, with the Senate Judiciary Committee.

Working with law professors and practitioners, the project will also develop standards for the appointment of federal judges. It plans to sponsor a conference shortly and invite scholars and interested individuals to discuss appropriate standards for judicial selection. The conference will also focus on the appropriate role of the Senate in the judicial selection process.

Our purpose is to encourage broader citizen participation in judicial selection, to promote the appointment of judges who will be independent and nonpartisan, and to make the judiciary more broadly representative of the diverse segments of society. We also will educate the public about the importance of the federal courts in our political system.

Because of the immediate need for this project, Susan Liss, a lawyer with broad experience in public interest work, has been hired as Director, and a screening committee has been organized. Ms. Liss has already begun reviewing those candidates whose names have been made public by the administration and setting in place a network of state and local contact groups.

The project will concentrate its efforts on candidates nominated to the District Courts and Courts of Appeals. Although most public attention has been focused on possible Supreme Court nominees, intervention at the trial and appellate court levels is essential. This is due to the large number of vacancies at the lower levels and the crucial role played by these courts in the federal judicial scheme. Of course, should a vacancy occur on the Supreme Court, the project will coordinate with other groups, including the recently-established Supreme Court Watch, in evaluating nominees.

Many leaders in the public interest community fear that without this project, judicial appointments will be made with little public awareness or participation. The only independent review of a candidate's qualifications is performed by the ABA Standing Committee on the Federal Judiciary. That review is conducted in secret, within a narrow framework, focusing solely on a candidate's professional competence. The evaluation performed by the Judicial Selection Project will be broader, taking into account the candidates' competence as well as their records of demonstrated commitment to equal justice, fairness and equity.

Not only will the project be able to affect directly a number of nominations, but we believe its presence will send a clear signal to the administration that the public is closely watching its selection process. One expert has written that the Reagan Administration has been the most systematic in its ideological screening of candidates since the Roosevelt administration. Our project will attempt to challenge the erosion of judicial independence and encourage the appointment of judges who value the basic tenets of our legal system, and who have a respect for individual rights and equal justice. Even in the current climate, with the President's party in the majority in the Senate, the project can have a significant impact on judicial appointments over the next several years. In fact, early indications are that the project has already begun to fill a void that currently exists.

First, the ABA evaluation is a critical step in the judicial selection process. Candidates who are found deficient by the Standing Committee on the Federal Judiciary are frequently withdrawn by the administration before the confirmation process commences in the Senate. Members of the ABA Committee have welcomed the establishment of the project, and indicated a strong desire to establish a close working relationship with it.

Second, the presence of the project has already energized some of the minority members of the Senate Judiciary Committee and their staffs. For example, Susan Liss, the project director, has been working with them in drafting an extensive questionnaire to send to nominees that will request information about their experience and views on a number of issues. Currently, only the Republicans on the Judiciary Committee circulate a questionnaire which is not particularly useful because it seeks only limited information and because a substantial portion of the responses are confidential. Thus, the minority questionnaire will provide both the Committee and the public with more complete data from which to analyze a nominee's record.

The project already has begun to evaluate judicial candidates. In early February, the Steering Committee met and decided to focus on four of the thirty four candidates under active consideration. They are Samuel Currin, for the District Court seat in North Carolina; Frank Easterbrook and William Harvey for two seats on the Seventh Circuit; and Alex Kozinzki for a seat on the Ninth Circuit. The project director is gathering information about the candidates and will provide the information collected to the ABA Standing Committee. Should any of the candidates be nominated, the project will coordinate opposition from public interest groups to the nominations during the confirmation process in the Senate.

LIST OF ALLIANCE FOR JUSTICE MEMBERS

Advocates for the Public Interest

Business and Professional People for the Public Interest

Center for Law and Social Policy

Center for Law in the Public Interest

Center for Public Representation

Center for Science in the Public Interest

Children's Defense Fund

Consumers Union

Education Law Center

Employment Law Center

Equal Rights Advocates

Food Research and Action Center

Harmon and Weiss

Institute for Public Representation

Juvenile Law Center of Philadelphia

Mental Health Law Project

National Education Association

NOW Legal Defense and Education Fund

National Wildlife Federation

National Women's Law Center

Native American Rights Fund

Natural Resources Defense Council

New York Lawyers for the Public Interest

Public Advocates, INC.

Roisman, Reno and Cavanaugh

Sierra Club Legal Defense Fund

Women's Law Project

Women's Legal Defense Fund

THE WHITE HOUSE
WASHINGTON

DATE:

FROM THE PRESIDENT

To:

Bob Fiske

Sen. Thurmond

Desk

PHOTOCOPY
GB HANDWRITING

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
06. Memo	From Fred McClure to POTUS Re: Meeting w/Senator Strom Thurmond on Nomination (2 pp.)	6/26/89	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Personnel (2 of 2) (1990) [5]: Department of Justice Appointments

Date Closed:	12/11/2004	OA/ID Number:	29165-010
FOIA/SYS Case #:	1998-0004-F[1]	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
AR Case #:		MR Case #:	
AR Disposition:		MR Disposition:	
AR Disposition Date:		MR Disposition Date:	

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

P-1 National Security Classified Information [(a)(1) of the PRA]
 P-2 Relating to the 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]

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(b)(1) National security classified information [(b)(1) of the FOIA]
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 (b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

817 Federal Building
231 W. Lafayette
Detroit, Michigan 48226

Senator Strom Thurmond
United States Senate
Washington D.C. 20530

Dear Senator Thurmond:

I hope that everything is well with you. This is to share some brief thoughts on Robert Fiske, currently under consideration for Deputy Attorney General, which I have already shared with Duke Short.

During my tenure as Assistant Attorney General for Legal Policy, I had considerable opportunity to work closely with Mr. Fiske who was then serving as Chairman of the American Bar Association's Standing Committee on the Federal Judiciary. While I have long believed that legitimate questions could be raised about the nature of the ABA's involvement in the federal judicial selection process, I do not think that it would be appropriate to attribute any defects in this process to Mr. Fiske. In my experience over several years, Mr. Fiske was invariably conscientious and fair in his role as Chairman.

Despite natural disagreements from time to time with individual evaluations reached by the Committee, I never felt that Mr. Fiske accorded the judicial candidates of President Reagan anything less than impartial and balanced consideration. At no time did I have any sense that he was predisposed in any way against the candidates of the Administration on the basis of judicial philosophy or political background; when concerns were raised about a temporary ABA practice of regularly submitting the names of potential candidates to outside organizations that were not generally in accord with President Reagan's judicial philosophy, Mr. Fiske was sensitive to those concerns and responded to eliminate this practice.

I would respectfully urge you to separate your concerns about the ABA's judicial selection role (some of which are currently being addressed by the Judiciary Committee and the Justice Department) from those of Mr. Fiske's credentials to be Deputy Attorney General. He is a respected attorney, an individual of integrity and served his country honorably as Chairman of the ABA's Committee.

In particular, I believe that it would be wrong to lay blame on Mr. Fiske for several instances of questionable conduct on the part of committee members, e.g. religious inquiries. The Committee is a highly decentralized body and its members are not subject to effective control by the Chairman. Whenever inappropriate conduct was called to Mr. Fiske's attention, it was again my experience that he was responsive and acted to prevent recurrence of these matters.

Thank you for your consideration of these thoughts.

Best in everything,

Steve Markman

Stephen Markman

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JUNE 22, 1989

NAME OF CORRESPONDENT: THE HONORABLE RICHARD THORNBURGH

SUBJECT: FORWARDS COPY OF A LETTER FROM STEVE MARKMAN
REGARDING ROBERT FISKE

ROUTE TO: OFFICE/AGENCY (STAFF NAME)		ACTION ACT CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
JOHN SUNUNU		ORG	89/06/22			
REFERRAL NOTE:						
REFERRAL NOTE:						
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REFERRAL NOTE:						
REFERRAL NOTE:						

COMMENTS:

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: _____

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*ACTION CODES:          *DISPOSITION          *OUTGOING          *
*                      *                      *CORRESPONDENCE:  *
*A-APPROPRIATE ACTION  *A-ANSWERED          *TYPE RESP=INITIALS *
*C-COMMENT/RECOM       *B-NON-SPEC-REFERRAL *OF SIGNER         *
*D-DRAFT RESPONSE      *C-COMPLETED          *CODE = A          *
*F-FURNISH FACT SHEET  *S-SUSPENDED          *COMPLETED = DATE OF *
*I-INFO COPY/NO ACT NEC*                      *OUTGOING          *
*R-DIRECT REPLY W/COPY *                      *                  *
*S-FOR-SIGNATURE       *                      *                  *
*X-INTERIM REPLY       *                      *                  *
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LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

United States Senate

WASHINGTON, DC 20510

June 14, 1989

The Honorable George Bush
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

We understand that Robert Fiske, Jr., former Chairman of the American Bar Association Standing Committee on Federal Judiciary, remains under consideration for nomination as Deputy Attorney General and that a decision on this nomination may be imminent.

We have serious concerns regarding this potential nomination. Our primary concern is based upon Mr. Fiske's role as Chairman of the ABA Committee during the period of 1985 to 1987, during which time the ABA Committee improperly applied ideological criteria to thwart the nominations of various well-qualified candidates whom President Reagan proposed to nominate to important federal judgeships. More significantly, the Committee, under Mr. Fiske, leaked to liberal organizations the names of persons under consideration by the Reagan Administration and whose names were provided the ABA on a confidential basis. Such leaks permitted groups opposed to the President's judicial philosophy to attack the candidates and prevent their nomination.

Our doubts about Mr. Fiske's commitment to our party's philosophy are further reenforced by the fact that he contributed money to a Democratic Senatorial candidate in the crucial 1988 elections. Mr. Fiske gave \$1,000 to the campaign of Democratic candidate William Gray, who was seeking to capture Bob Stafford's seat in Vermont. While it is true, Mr. Fiske earmarked his two \$500 checks for the primary, Mr. Gray never had a primary opponent, a fact Mr. Fiske had to know, since the date of his second check followed the filing deadline by a full month. Since control of the Senate was up for grabs in the 1988 election, and every seat was crucial, Mr. Fiske's financial support of a Democratic candidate raises legitimate questions as to his commitment to the policies of a Republican Administration.

Honorable George Bush
June 14, 1989
Page Two

Mr. President, it does not appear that Mr. Fiske shares the basic approach to matters of legal and judicial policy which you so effectively articulated in your winning campaign for President. We therefore respectfully urge you to reconsider this matter and select a nominee with a demonstrated commitment to your principles, and those of the Republican platform, in these important areas.

Sincerely,

William J. Wilson

Art Bond

Alan Cook

Jerse Helms

Jim M. Clark

David Burns

Ben Lindsey

John M. Murphy

Steve Spruill

Chuck Grassley

Nert Lott

Strom Thurmond

Carrie Meach

Paul Caban

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WORKS

United States Senate

WASHINGTON, DC 20510

June 26, 1989

Honorable Strom Thurmond
Ranking Minority Member
Senate Judiciary Committee
Washington, DC 20510

Dear Strom:

As you know, the Justice Department has advocated the nomination of Mr. Robert Fiske, Jr., to the post of Deputy Attorney General. The purpose of my letter is to succinctly lay out the arguments against such a nomination. My concerns center on the conduct of the ABA's Standing Committee on Judicial Selection during Mr. Fiske's chairmanship, and on the \$1,000 campaign contribution Mr. Fiske gave to a Democrat running for the U. S. Senate seat in Vermont in 1988.

Mr. Fiske chaired the ABA Committee from August, 1984 to August, 1987. There are two fundamental complaints. First, the Committee divulged to an outside group the names of persons under consideration for nomination, violating the confidential basis under which the names were provided the ABA by the Justice Department. Second, the Committee at least in some cases showed a bias against conservative candidates.

During Mr. Fiske's chairmanship, the Committee began divulging names to the Judicial Selection Project of the Alliance for Justice. According to an Alliance document (attached), the Judicial Selection Project "...will coordinate the opposition from public interest groups to the omissions during the confirmation process in the Senate." Obviously, the ABA Committee was not merely divulging names to a fact-finding organization that would discreetly comment to the ABA; instead the ABA was divulging names to an organization publicly committed to coordinating opposition to those nominees it found unacceptable according to its liberal standards.

Further, the Judicial Selection Project was working with Democrats on the Judiciary Committee. The attached document states, "Second, the presence of the project [Judicial Selection Project] has already energized some of the minority members [Judiciary Committee Democrats] and their staffs. For example, Susan Liss, the project director, has been working with them [Judiciary Committee Democrats] in drafting

an extensive questionnaire to send to nominees...". Clearly, the Project, to which the ABA Committee was divulging confidential lists of names, was not exactly a neutral, objective participant in the process.

The membership of the Alliance reveals its ideological imbalance. Some of members are : National Education Association; Children's Defense Fund; National Organization for Women Legal Defense and Education Fund; Center for Law and Social Policy; and New York Lawyers for the Public Interest. Not surprisingly, the Alliance for Justice submitted testimony strongly opposing Robert Bork.

Mr. Fiske now acknowledges the divulging of names was a "mistake." However, Mr. Fiske never questioned the practice until conservative organizations asked the Committee for access to names on the same basis as enjoyed by the liberal Judicial Selection Project. Ten weeks after the request, Mr. Fiske discontinued the practice, explaining the Department of Justice "provides us with the names on a confidential basis." It is odd that Mr. Fiske, with his experience as a U. S. Attorney and practicing lawyer, somehow overlooked the impropriety of the arrangement with the Judicial Selection Project, made under his chairmanship, and only discovered the impropriety when conservative groups asked for the same arrangement.

Here are examples which I believe show bias by the ABA Committee against Reagan Administration candidates for nomination and actual nominees.

1. In 1985, Professor Lino Graglia, a distinguished Professor of Law at University of Texas Law School, was a candidate for a vacancy on the Fifth Circuit Court of Appeals. The Judicial Selection Project targeted Graglia for defeat even before he was nominated (Congressional Quarterly, 9/7/85, p 1763), because of his writings criticizing Supreme Court decisions on forced busing. The ABA Committee under Mr. Fiske rated this well-qualified candidate as not qualified and the Reagan Administration decided not to offer the nomination.

2. Also in 1985, President Reagan was prepared to nominate Professor William Harvey of University of Indiana Law School for the U.S. Court of Appeals, Seventh Circuit. Professor Harvey, a former dean, is the author of a treatise on federal practice, a distinguished constitutional scholar, and an experienced and successful litigator as well. In 1982, Professor Harvey served as Chairman of the Legal Services Board, where he sought to eliminate certain grant programs by which the ABA's Fund for Public Education had benefited to the extent of \$485,000.

The ABA assigned Mr. Steven Keane to investigate Professor Harvey. Mr. Keane had been active in raising money for the ABA Fund. Mr. Keane's fund-raising responsibilities did not include seeking federal grants; nonetheless, his involvement in raising money for the ABA's Fund for Public Education created a clear conflict of interest between his role as fund-raiser and his role as impartial evaluator of Professor Harvey. The ABA Committee gave Professor Harvey a rating of "not qualified", and the Administration declined to nominate. Thus, another nominee who shared President Reagan's judicial philosophy was blocked through improper conduct of the ABA. To be sure, Mr. Keane was the investigator assigned to the Seventh Circuit, but because of the conflict of interest he should have been replaced.

3. In 1986, President Reagan nominated Judge J. Kenneth Porter for the United States District Court in Tennessee. Judge Porter, a seasoned and highly-respected state court judge and former President of the Tennessee Trial Judges Association, was at first rated qualified, unanimously, by the ABA Committee. However, after the Alliance for Justice circulated criticisms that Judge Porter was too prosecution oriented, the ABA Committee conducted a second evaluation. Despite overwhelming support for Judge Porter from leading figures of the Tennessee bench and bar, those who knew him best, the ABA Committee under Mr. Fiske reversed itself and unanimously changed Judge Porter's rating to not qualified.

And there were others. In a speech given on October 19, 1988, Nan Aron of the Alliance for Justice proudly proclaimed how "we were able to convince the ABA with respect to William Harvey, Michael Horowitz, lots and lots of people whose names were never submitted to the [Senate Judiciary] Committee, that these individuals were unqualified. We were lucky in that we got the names of the nominees from the ABA directly."

I respectfully suggest we ought to hold Mr. Fiske accountable for the improprieties which occurred during his tenure as chairman; we should not reward him with one of the most important positions in the government.

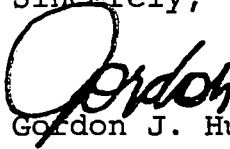
Mr. Fiske's defenders point to his support of Judge Bork. This is knocking down a straw man. No one has suggested Mr. Fiske opposed Judge Bork. Instead, as outlined, my concerns center on leaking confidential lists of names to a liberal organization which succeeded in blocking a number of President Reagan's candidates, on the bias which the ABA Committee itself exhibited, and on the political matter below.

I cite the \$1,000 contribution from Mr. Fiske to the Democrat candidate for U. S. Senate in Vermont, in 1988. At a time when all of us and thousands of our supporters across the country were struggling to gain every last possible seat in order to advance towards the goal of a Republican majority, Mr. Fiske subordinated his loyalty to our party and aided the other. It is true Mr. Fiske earmarked his checks for the primary. But the Democrat candidate never had a primary opponent, a fact Mr. Fiske must have known when he wrote his second \$500 check a full month after the filing deadline for candidates had passed. Thus, Mr. Fiske's \$1000 was used against our nominee. One has to conclude Mr. Fiske is either politically naive or politically indifferent. In either case, I submit, there are candidates better suited for the post of Deputy Attorney General.

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I hope you can prevail upon the Justice Department to select another candidate. There is no doubt the Democrats would gladly confirm Mr. Fiske, but I and a number of Republicans are not prepared to acquiesce quietly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gordon J. Humphrey", written in a cursive style.

Gordon J. Humphrey

MAN ARON
Executive Director

WILLIAM L. TAYLOR
Chair

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First, the ABA evaluation is a critical step in the judicial selection process. Candidates who are found deficient by the Standing Committee on the Federal Judiciary are frequently withdrawn by the administration before the confirmation process commences in the Senate. Members of the ABA Committee have welcomed the establishment of the project, and indicated a strong desire to establish a close working relationship with it.

Second, the presence of the project has already energized some of the minority members of the Senate Judiciary Committee and their staffs. For example, Susan Liss, the project director, has been working with them in drafting an extensive questionnaire to send to nominees that will request information about their experience and views on a number of issues. Currently, only the Republicans on the Judiciary Committee circulate a questionnaire which is not particularly useful because it seeks only limited information and because a substantial portion of the responses are confidential. Thus, the minority questionnaire will provide both the Committee and the public with more complete data from which to analyze a nominee's record.

The project already has begun to evaluate judicial candidates. In early February, the Steering Committee met and decided to focus on four of the thirty-four candidates under active consideration. They are Samuel Currin, for the District Court seat in North Carolina; Frank Easterbrook and William Harvey for two seats on the Seventh Circuit; and Alex Kozinski for a seat on the Ninth Circuit. The project director is gathering information about the candidates and will provide the information collected to the ABA Standing Committee. Should any of the candidates be nominated, the project will coordinate opposition from public interest groups to the nominations during the confirmation process in the Senate.

Withdrawal/Redaction Sheet

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Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
07. Memo	Re: Nomination of Deputy Attorney General (2 pp.)	n.d.	(b)(6)	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Personnel (2 of 2) (1990) [5]: Department of Justice Appointments

Date Closed:	12/11/2004	OA/ID Number:	29165-010
FOIA/SYS Case #:	1998-0004-F[1]	Appeal Case #:	
Re-review Case #:	2005-0426-S	Appeal Disposition:	
P-2/P-5 Review Case #:		Disposition Date:	
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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 13, 1989

The Honorable Strom Thurmond
Senate Judiciary Committee
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Strom:

As you know, I have serious objections to the nomination of Robert Fiske, Jr. as Deputy Attorney General. I will briefly outline my concerns, which I know you share.

First, Mr. Fiske, as chairman of the American Bar Association Standing Committee on the Federal Judiciary, was involved in the Committee's application of ideological criteria to obstruct the nominations of a number of well-qualified judicial candidates proposed by President Reagan.

Second, the Committee, headed by Mr. Fiske, leaked the names of possible nominees to liberal organizations. The names of these potential nominees were provided to the ABA on a confidential basis, and the leaks permitted opposition to the individuals to gain ground, thus preventing certain nominations.

Third, I question Mr. Fiske's commitment to our party, as evidenced by his contribution to a Democratic Senatorial candidate, William Gray in Vermont.

As you well know, we need someone in the number two spot at the Justice Department who shares our, and the President's, basic approach to matters of legal and judicial policy. I'm counting on you to convey our mutual opposition to the Attorney General and, if necessary, to the President.

Sincerely,

Charles E. Grassley
United States Senator