



MEMORANDUM

ACLJ MEMORANDUM ON JUDICIAL NOMINEES March 10, 2008

BACKGROUND

It is high time that the Senate Judiciary Committee stopped playing partisan politics and started fulfilling its Constitutional responsibility of giving judicial nominees a prompt vote. To continue blocking these votes puts the American people at risk by leaving scores of crucial federal positions vacant. Furthermore, the Senate Judiciary Committee's mistreatment of well-qualified men and women who have stepped forth to serve their country is absolutely inexcusable. These men and women are not just "Bush nominees"; ***they are real people with lives and families and careers on hold.*** The Senate's conduct is blocking the confirmation process for the sake of partisan politics is abusive, at best, and must come to an end today.

Over 180 Bush nominees to federal courts and agencies currently await an up-or-down vote in the Senate: about ninety have been waiting over 100 days, thirty have been waiting over a year, and nine have been waiting *over two years*.¹ In the final two years of the Clinton Administration, the Senate confirmed 15 circuit judges and 57 district court judges. During the last two years of the Bush Administration, however, the Senate has confirmed only six circuit court judges and 34 district court judges. Most importantly, only five Bush judicial nominees have even been granted hearings in the 110th Congress.² Currently, 11 circuit court nominees and 18 district court nominees are pending before the Senate.³

It is crucial that as many Bush nominees as possible are confirmed to federal judgeships. Whichever judgeships are not filled by the current administration will be filled by the next one, and while we are ever hopeful to see a conservative administration take office on January 21, 2009, we have no guarantees to that effect. ***That is why we must urge the Senate to move forward with these pending nominees.*** As President Bush has stated:

These are real folks making real sacrifices, and they should not be treated like political pawns. Senators should examine every nomination closely, but they should not drag them out indefinitely. If the Senators holding up this process

¹ The White House, President Bush Discusses Pending Presidential Nominations, Urges Senate Confirmation, <http://www.whitehouse.gov/news/releases/2008/02/20080207-8.html> (last visited Mar. 10, 2008).

² Senator Arlen Specter, *Justice Delayed*, THE WALL STREET JOURNAL, Feb. 1, 2008, available at http://specter.senate.gov/public/index.cfm?FuseAction=NewsRoom.Articles&ContentRecord_id=D559F5BE-BF7E-14D9-7843-509E9B909B85.

³ The White House, Just the Facts: Pending Nominations Delayed by Partisan Politics, <http://www.whitehouse.gov/news/releases/2007/12/20071212-12.html> (last visited Mar. 10, 2008).

believe my nominees are unworthy for confirmation, the course of action is clear: Hold a vote and see if the majority agree. If these nominees are not approved, they can move on with their lives. If they are approved, they can take office.⁴

It's that simple.

While the overall confirmation of these conservative nominees is important, the confirmation of conservative jurists to the D.C. and Fourth Circuits is *imperative*. Both courts have an especially great impact on national policy and in light of the upcoming change in administrations, it is essential that we secure conservatives on these courts. The D.C. Circuit interprets and enforces important federal statutes and agency regulations. Its decisions directly impact areas such as presidential decisions concerning terrorism/enemy combatants, labor and environmental law, and energy regulation. As such, it is considered second in importance only to the Supreme Court. (Interestingly, the D.C. Circuit has been recognized as a stepping stone to the Supreme Court: four current Justices sat on the D.C. Circuit prior to their confirmation to the Court.) Currently, the court consists of three Democrat-appointed judges and seven Republican-appointed judges.⁵ The Fourth Circuit has traditionally had the reputation of being the most conservative circuit court and has also played a key role in national security cases since September 11, 2001. The conservative nature of the Fourth Circuit, however, is at stake. At present, the 15-judge court has five vacancies and there is a 5-5 split between Republican appointees and Democratic appointees. With a third of these seats now vacant, conservatives are in danger of losing the Fourth Circuit.⁶

PETER KEISLER (D.C. Circuit)

Timeline:

- First nominated on June 29, 2006.
- Hearing in August 2006.
- Re-nominated on November 15, 2006, due to Senate inaction.
- Re-nominated for the second time on January 8, 2007 (second hearing likely required).
- ***Nomination pending before the Senate for over 600 days.***

General. Peter Keisler was born in Hempstead, New York, and currently resides in Bethesda, Maryland. He earned his B.A., graduating *magna cum laude*, from Yale College in 1981, and his J.D. from Yale Law School in 1985. Immediately following law school, Keisler served in the White House under the Reagan Administration. More recently, he served under the [George W.] Bush Administration as Acting Attorney General and Assistant Attorney General for the Civil Rights Division. Keisler has clerked for both Judge Robert Bork (D.C. Circuit) and Justice Anthony Kenney (Supreme Court). He engaged in private practice for twenty-three years at Sidley Austin Brown & Wood in Washington, D.C. The American Bar Association (ABA) has given Keisler a unanimous rating of well-qualified. The *L.A. Times* and the *Washington Post*

⁴ The White House, *supra* note 1.

⁵ Alliance for Justice, Report on the Nomination of Peter D. Keisler to the D.C. Circuit Court of Appeals, <http://www.afj.org/assets/resources/nominees/updated-keisler-report-10-02-07.pdf> (last visited Mar. 10, 2008).

⁶ Jerry Markon, *Vacancies Whittle Away Right's Hold on Key Court*, WASHINGTONPOST.COM, Aug. 8, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/07/AR2007080701896.html>.

have deemed Keisler a “moderate conservative” and “highly qualified nominee” who “certainly warrants confirmation.”⁷ Keisler’s nomination has now been pending in the Senate for over 600 days.

Personal. Keisler is married to Susan Keisler and has three children, Sydelle, Alexander and Phillip. After retiring from the Justice Department, Keisler, described as “low-key,” intimated that he was looking forward to spending some down time with his wife and three children. Unfortunately, he had to temporarily defer that plan in light of his temporary appointment as Acting Attorney General in 2007.⁸ Keisler has been described by colleagues as a brilliant attorney, a good listener and one who approaches cases in light of the facts and the appropriate law rather than partisan politics or ideologies.

ROBERT J. CONRAD (Fourth Circuit – *Judicial Emergency*)⁹

Timeline:

- Nominated on July 17, 2007.
- No hearing received.
- ***Nomination pending before the Senate – with no action taken – for over 220 days.***

General. Conrad is a native of Chicago, Illinois, and currently resides in Charlotte, North Carolina. He earned his B.A., *magna cum laude*, from Clemson University in 1980, and his J.D. from the University of Virginia in 1983. Since then, Conrad has practiced law in both the public and private sectors. As a private litigator, he handled issues such as corporate investigations, commercial litigation and white-collar criminal defense. Conrad is best known for his time in the public sector, where he worked as a U.S. Attorney, Campaign Finance Task Force Chief (appointed by then-Attorney General Janet Reno to head the investigation of Al Gore’s fundraising activities during the 1996 election), and his current position as Chief Judge of the Western District of North Carolina. The ABA has given Conrad a unanimous rating of well-qualified.

Personal. Conrad—described by friends and colleagues as a “family man”—is married to Ann Conrad and has five children. While discussing how the ordinary practice of law can be a religious calling, he once described his calculated attempt “to avoid the compartmentalization and schizophrenia that otherwise comes with fragmenting work and family life” by integrating these ostensibly distinct aspects of life. He has also expressed his desire for his children to watch him “engage in meaningful work to the glory of God.” His daughter once described him as “a storyteller and a reader, an adventurer and a homebody, a jokester and a leader. Bob Conrad is a man of contradictions, two people in one personality—a distinguished career-man and a giving father.”

⁷ Senator Arlen Specter, *supra* note 2.

⁸ Lara Jakes Jordan, *Bush Taps Keisler to Fill in As AG*, ABC NEWS, Oct. 15, 2007, <http://abcnews.go.com/TheLaw/wireStory?id=3732269>.

⁹ All information concerning Robert J. Conrad’s nomination to the Fourth Circuit Court of Appeals has been taken from: American Center for Law & Justice, *Nomination of Robert J. Conrad, Jr., to the United States Court of Appeals for the Fourth Circuit*, http://www.aclj.org/media/pdf/Nominee-to-the-US-Court-of-Appeals-for-the-Fourth-Circuit-Robert-J-Conrad-Jr_020508.pdf (last visited Mar. 10, 2008).

Inadvertently symbolizing his ability to successfully stave off the compartmentalization of work life and family life, Conrad was wearing a walking cast at the time he was sworn in as a federal judge for the Western District of North Carolina. He had recently suffered a torn tendon while playing in a “Dads v. Sons” basketball game against his son’s eighth grade team. In spite of the injury sustained earlier in the game, Conrad’s resilient and competitive spirit shone through as he landed the final free throws to win the game for the Dads. (In college, Conrad was named an Academic All-American in basketball, and he is now a member of the Clemson University Hall of Fame.)

Conrad is a devout Catholic and active member of his church. He recently told the Mecklenburg County (NC) Bar that the words of Micah the prophet are his inspiration in his role as judge: “to do justly, and to love mercy, and to walk humbly with thy God.” (Micah 6:8). He desires for his service on the bench to reflect “a faithful application of the law, a respect for the human dignity of every person in the process, and a commitment to excellence.”

STEVE MATTHEWS (Fourth Circuit)¹⁰

Timeline:

- Nominated to the Fourth Circuit on September 6, 2007.
- No hearing received.
- ***Nomination pending before the Senate – with no action taken – for over 170 days.***

General. South Carolina native Steve Matthews earned his B.A., graduating *magna cum laude*, from the University of South Carolina in 1977, and his J.D. from Yale Law School in 1980. After law school, Matthews worked as a corporate law attorney for five years at Dewey Ballantine, a private Washington, D.C., law firm. He then worked for the Justice Department under the Reagan Administration, advising both President Reagan and then-Attorney General Edwin Meese on the selection of judicial appointees as well as serving as special counsel to Attorney General Meese during the Iran-Contra investigation. During his tenure at the Justice Department, Matthews served as: Deputy Assistant Attorney General, Civil Division (1985), Special Counsel to Assistant Attorney General, Civil Rights Division (1985-1986), Deputy Assistant Attorney General, Office of Legal Policy (1986-1987), and Executive Assistant to the Attorney General (1988)—a role for which he received the Department of Justice Special Achievement Award. Upon leaving the Justice Department, Matthews joined Haynesworth Sinkler Boyd, a Columbia, South Carolina-based law firm known for its conservative outlook and pro-business reputation. He currently practices law in the “area of information technology where he represents both developers and licensee-purchasers of software and hardware.” A substantial majority of the ABA gave Matthews a rating of well-qualified, while a minority gave him a rating of not qualified. Matthews has the full support of his home state Senators, Lindsey Graham (R-SC) and Jim Demint (R-SC).

¹⁰ All information concerning Steve Matthews’ nomination to the Fourth Circuit has been taken from American Center for Law & Justice, Nomination of Steve A. Matthews to the United States Court of Appeals for the Fourth Circuit, http://www.aclj.org/media/pdf/Nominee-to-the-US-Court-of-Appeals-for-the-Fourth-Circuit-Steve-A-Matthews_020508.pdf (last visited Mar. 10, 2008).

CATHARINA HAYNES (Fifth Circuit – *Judicial Emergency*)¹¹

Timeline:

- Nominated on July 17, 2007
- Hearing on February 21, 2008 (over seven months after nomination)
- ***Nomination pending before the Senate for over 220 days***

General. Haynes, a Melbourne, Florida native, currently resides in Dallas, Texas. She attended Florida Institute of Technology, completing her Psychology degree and finishing first in her class at the astonishing age of nineteen. By the time she was twenty-two, Haynes had earned her law degree, finishing second in her class at Emory University School of Law. In 1986, she joined Dallas-based private firm Thompson & Knight as an associate. Two years later, she joined Baker Botts LLP, where she eventually became a partner and stayed until 1998. At that point, Haynes, a Republican, was elected judge of the 191st Civil District Court in Dallas. She served for two four-year terms, and in 2006, a Democrat defeated her bid for a third term. During the elections, the *Dallas News* endorsed Haynes, considering her “an efficient administrator who handles her caseload smoothly and knows the law.” Following her 2006 defeat, she returned to Baker Botts LLP, where she remains today.

Haynes has enjoyed a distinguished career, receiving appointments by the Supreme Court of Texas to the Court Reporters Certification Board and the State Bar of Texas Professional Ethics Committee. She has also won several awards and professional honors and has multiple publications, speeches, and presentations to her name. Many of these relate to insurance issues, ethics and professionalism, and advice to attorneys about the practice of law. Haynes was given a unanimous rating of well-qualified from the ABA.

Personal. Haynes was born to Dutch immigrants and thus learned the importance of education and hard work. At age ten, she determined that she wanted to be an attorney when a female attorney spoke to her fifth grade class. Haynes wrote to the attorney, asking “what should I do to become an attorney?” In light of how quickly (and successfully) Haynes achieved her dream of being an attorney, she has been dubbed a “legal Doogie Howser,” and her life has been hailed as a “true American story.” She is married to attorney Craig Haynes who is a partner at Thompson & Knight and who has also served as an elder in the Presbyterian church. During college, Haynes was active in Inter-Varsity Christian Fellowship, an evangelical campus mission. Currently, both she and her husband are actively involved in Youth Believing in Change, a Christian organization that seeks to use Biblical principles to help develop at-risk youths into strong leaders. In the past, Haynes has also taught classes to non-English speaking immigrants at an adult literacy program known as the Vickery Meadow Learning Center in Dallas.¹²

¹¹ Unless otherwise noted, all information concerning Catharina Haynes’ nomination to the Fifth Circuit has been taken from American Center for Law & Justice, Catharina Haynes, Nominee for the United States Court of Appeals for the Fifth Circuit, http://www.aclj.org/media/pdf/HaynesMemo_07202007.pdf (last visited Mar. 10, 2008).

¹² Michael Grabell, *Former Dallas judge’s record could aid confirmation to federal court*, THE DALLAS MORNING NEWS, Feb. 20, 2008, available at <http://www.wfaa.com/sharedcontent/dws/news/politics/local/stories/022108dnmethaynes.300bf4d.html> (last visited Mar. 10, 2008).

ROD ROSENSTEIN (Fourth Circuit – *Judicial Emergency*)¹³**Timeline:**

- Nominated on November 15, 2007
- No hearing.
- *Nomination pending before the Senate – with no action taken – for over 100 days*

General. Rosenstein currently resides in Bethesda, Maryland. He earned his B.S., *summa cum laude*, from the University of Pennsylvania in 1986, and his J.D., *cum laude*, from Harvard Law School in 1989. Rosenstein’s professional experience includes serving as a law clerk to Judge Douglas Ginsburg (D.C. Circuit), Special Assistant to the Assistant Attorney General (Criminal Division, Justice Department), Associate Independent Counsel during the Whitewater investigation (Office of the Independent Counsel), Principal Deputy Assistant Attorney General (Tax Division, Justice Department) and U.S. Attorney (U.S. Attorney’s Office for the District of Maryland). He has been described as skillful lawyer who successfully mines witnesses for critical information and one who connects well with juries. Rosenstein received a unanimous rating of “well-qualified” from the ABA.

Personal. Rosenstein, 40, is married to Lisa Barsoomian and has two daughters, Allison Liza, age 4, and Julia Paige, age 7.¹⁴ The family resides in Bethesda, Maryland. Friends and colleagues say that, despite his substantial professional accomplishments, Rosenstein is properly characterized as modest and self-effacing, and is even known for riding his bike to work. He is also known for being a dedicated father.¹⁵ Rosenstein currently teaches law school classes pro bono at both the University of Maryland School of Law and the University of Baltimore School of Law.

Rosenstein once said that the key to managing the political aspect of his job as U.S. Attorney “is to recognize that it’s not a political job.”¹⁶ While he is known for being a conservative, Rosenstein’s colleagues say that they are unaware of any instances in which his political persuasion has affected a case. And despite his conservative bent, Rosenstein held several positions at the Justice Department under the Clinton Administration.¹⁷

¹³ Unless otherwise noted, all information concerning Rod Rosenstein’s nomination to the Fourth Circuit has been taken from Senator Arlen Specter, Letter to Senator Patrick Leahy, Feb, 29, 2008, *available at* http://specter.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=4b26c9ce-ebc8-48ca-b906-de9e2319e7b9.

¹⁴ Eric Rich, *Prosecutor Promises to Focus on Terror*, WASHINGTONPOST.COM, July 13, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/12/AR2005071201479.html>.

¹⁵ Matthew Dolan, *U.S. Attorney Pick’s Style is Low Key, Yet Aggressive...*, THE BALTIMORE SUN, June 15, 2005, *available at* <http://www.fopldodge4.org/news.php?id=3306>.

¹⁶ Rich, *supra* note 15.

¹⁷ Dolan, *supra* note 16.

DICK HONAKER (District of Wyoming)¹⁸

Timeline:

- Nominated on March 19, 2007.
- Hearing on February 12, 2008 (almost one year after nomination).
- ***Nomination pending before the Senate for over 300 days*** (March 10, 2008, marks the 358th day of pending nomination).

General. Honaker earned his B.S., *cum laude*, from Harvard College in 1973, and his J.D. from the University of Wyoming College of Law in 1976. He has served as a Wyoming state public defender, assistant attorney general, and legislator. During his time in the state legislature, Honaker served as a Democrat, but switched to the Republican Party upon disagreement with former President Clinton's policies. He is currently partner at Honaker, Hampton & Newman. He also currently serves as vice-chairman for the Wyoming Board of Professional Responsibility. The ABA has given Honaker a unanimous rating of well-qualified.

Personal. Honaker is married to Shannon Honaker and has three children. He is an elder at Pilgrim's Reformed Church in Rock Springs, Wyoming. He is very outspoken concerning his belief that the United States was built on Christian principles and that "God's absolute truth alone is the foundation for freedom, justice and the law."

¹⁸ All information concerning Dick Honaker's nomination to the District of Wyoming has been taken from the following sources: http://urj.org/_kd/Items/actions.cfm?action=Show&item_id=18676&destination=ShowItem; <http://incolor.inebraska.com/stuart/justice.htm>; <http://media.pfaw.org/OppositionToHonaker.pdf>; <http://www.whitehouse.gov/news/nominations/727.html>; and Senator Arlen Specter, *supra* note 14.