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Increasing Balance on the Federal Bench

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ESSAY

INCREASING BALANCE ON THE FEDERAL BENCH

*Carl Tobias**

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When Governor Bill Clinton was campaigning for the presidency, he criticized President Ronald Reagan and President George Bush for substantially reducing the gender, racial, and political diversity on the bench, which President Jimmy Carter had vigorously promoted.¹ Governor Clinton promised to rectify the imbalance in the federal courts if the American people elected him Chief Executive.² The Clinton Administration inherited an excellent opportunity to fulfill that pledge because 113 judicial vacancies existed when the President took office.³

In President Clinton's first year of service, he nominated unprecedented numbers and percentages of highly qualified women and minorities to the federal judiciary.⁴ The Clinton Administration correspondingly employed an effective process for choosing potential jurists that generated relatively little controversy.⁵

Some wondered whether President Clinton could improve his first year judicial selection record during his second year in office, especially given the number of international conflicts and pressing domestic matters that faced the Administration. These complications threatened to deflect the Administration's attention from naming judges.

Now that the 103d Congress has adjourned and President Clinton has reached mid-term, the Administration's record of choosing judges should be evaluated to determine exactly what has been achieved. This Essay undertakes that effort by focusing on the appointment of female and minority attorneys to the federal bench.⁶

1. See *Bush v. Clinton: The Candidates on Legal Issues*, 78 A.B.A. J., Oct. 1992, at 57, 57-58 [hereinafter *Bush v. Clinton*] (noting that Reagan and Bush appointed fewer women and minorities to the federal bench, while the number of qualified women and minorities in the legal profession increased).

2. See Stephen Labaton, *President's Judicial Appointments Are Diverse, but Well in the Mainstream*, N.Y. TIMES, Oct. 17, 1994, at A11 (noting that President Clinton has abided by his pledge to appoint judges of diverse backgrounds to fill the great number of vacancies present when he took office).

3. Henry J. Reske, *Keeping Pace with Judicial Vacancies*, A.B.A. J., July 1994, at 34, 34.

4. See Department of Justice, Clinton Administration Judicial Record, Analysis of Judicial Nominations (1994) [hereinafter DOJ Record] (presenting relevant figures) (on file with the *Houston Law Review*). The Senate, however, failed to consider for confirmation 40% of the nominees. *Id.*

5. See David A. Andelman, *Justice Affirmed*, MGMT. REV., June 1994, at 34, 35 (describing the current Administration's focus for its judicial appointments on judicial competence rather than judicial activism).

6. See also Carl Tobias, *Closing the Gender Gap on the Federal Courts*, 61 U. CIN. L. REV. 1237, 1247 n.51 (1993) (noting the need for greater numbers of minority appointments in light of the Reagan and Bush Administrations' "abysmal" records).

I initially examine the recent history of judicial selection, concentrating on the selection policies of, and the numbers and percentages of women and minorities named, in the Carter, Reagan, and Bush Administrations. I then analyze the practices applied and the numbers and percentages of female and minority lawyers nominated and appointed to judgeships in the second year of the Clinton presidency.

I find that the Clinton Administration once again nominated and appointed record numbers and percentages of very competent women and minorities.⁷ I therefore conclude that the efficacious selection procedures instituted during the Chief Executive's first year of service continued to operate smoothly during his second year. The number of female and minority jurists nominated and confirmed testify to this.

I also determine that President Clinton filled an impressive number of the vacant judgeships and that his Administration bears little responsibility for the openings that remain.⁸ Concluding that the processes which could lead to the appointment of even greater numbers and percentages of female and minority federal judges and to the elimination of all judicial vacancies are now firmly in place, I then explore why President Clinton should strive to attain these goals and how his Administration might achieve them.

I. FEDERAL JUDICIAL SELECTION SINCE 1977

The history of choosing federal judges over the last seventeen years requires relatively little attention in this Essay, as it has been thoroughly recounted elsewhere.⁹ However, the objectives enunciated, the procedures employed, the attorneys

7. The Senate did not consider for confirmation 14 presidential nominees, even though 53 judicial seats remained empty when Congress adjourned in October 1994. See DOJ Record, *supra* note 4.

8. See Labaton, *supra* note 2, at A11 (noting that Clinton judicial appointees total 129). It is obviously important to have the full complement of sitting judges. This will assist in expediting dispute resolution, reducing current backlogs in numerous districts, and relieving additional pressures that the new crime bill will certainly impose on the courts. See *id.* (recognizing that the crime bill will burden the federal courts "with thousands of new cases that were once the sole province of the states").

9. See, e.g., DAVID O'BRIEN, JUDICIAL ROULETTE: REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON JUDICIAL SELECTION (1988) (surveying judicial recruitment in this century and noting that, while traditionalist presidents used judicial selection to reward the party faithful, more recent presidents have attempted to reshape the judiciary to conform to their own legal policy goals); Sheldon Goldman, *Bush's Judicial Legacy: The Final Imprint*, 76 JUDICATURE 282, 285-86 (1993) (describing President Bush's judicial selection process); Carl Tobias, *Rethinking Federal Judicial Selection*, 1993 B.Y.U. L. REV. 1257, 1258-74 (describing the federal judicial selection processes employed by the Carter, Reagan, and Bush administrations).

named, and the substantive judicial decisions rendered during the Carter, Reagan, and Bush Administrations are considered here because an understanding of these Presidents' judicial selection enhances comprehension of the Clinton Administration's record.

A. *The Carter Administration*

President Jimmy Carter was the first Chief Executive who expressly pledged to increase the percentages of women and minorities on the federal bench and who instituted affirmative measures to fulfill that promise.¹⁰ Perhaps the most effective selection mechanisms established by President Carter were the merit-based nominating commissions for appellate and district courts. These entities successfully searched for, discovered, and fostered the candidacies of very qualified female and minority lawyers.¹¹

The Carter Administration's efforts to place highly competent women and minorities on the courts were very effective. Several of these judges had to satisfy more stringent requirements than other nominees despite appearing better qualified than some colleagues selected through more traditional procedures.¹² Moreover, in the aggregate, the female and minority

10. See, e.g., Steve McGonigle, *Clinton's Judges Changing the Face of Federal Judiciary*, BATON ROUGE ADVOC., Sept. 5, 1994, at 7B (noting that President Carter is "credited with being the first president to stress diversity on the federal bench"). Women and minority males accounted for approximately one-third of President Carter's selections. *Id.*; see also Elliot E. Slotnick, *Lowering the Bench or Raising it Higher?: Affirmative Action and Judicial Selection During the Carter Administration*, 1 YALE L. & POL'Y REV. 270, 276 (1983) (noting that President Carter himself called the absence of women and minorities "disturbing" and pledged to address the problem with the Omnibus Judgeship Act); Tobias, *supra* note 9, at 1259-64 (cataloging the steps taken by President Carter to promote greater gender and racial diversity on the federal courts and noting that some of those efforts have sparked controversy). Refer to text accompanying notes 19-20 *infra* (showing the insignificant number of female and minority federal judges when President Carter took office).

11. See Elaine Martin, *Gender and Judicial Selection: A Comparison of the Reagan and Carter Administrations*, 71 JUDICATURE 136, 140 (1987) (noting that the use of merit-based nominating commissions increased the number of people participating in the selection process and produced more strong female candidates); Carl Tobias, *The Gender Gap on the Federal Bench*, 19 HOFSTRA L. REV. 171, 174 (1990) (criticizing the Bush Administration for failing to use the Carter Administration's merit-based selection panels, "described as the most effective mechanism that has been created for increasing the number of successful female candidates").

12. See Slotnick, *supra* note 10, at 297 (offering, in support of the argument that affirmative action has not diminished the quality of the federal bench, the opinion of Professor Sheldon Goldman: "[I]n my view the credentials of the black, women, and Hispanic Carter appointees and nominees have been impressive. . . . Indeed, it is my distinct impression . . . that [their] credentials . . . on the whole may even be more distinguished than the over-all credentials of the white males chosen by

appointees possessed qualifications equal to their predecessors in terms of certain important parameters.¹³

A number of these women and minorities, such as Supreme Court Justice Ruth Bader Ginsburg and Circuit Court Judges Harry Edwards, Stephanie Seymour, and Jose Cabranes, have rendered valuable service to the judiciary.¹⁴ Their contributions to judicial decision making and to the effective operation of the courts illustrate the importance of having diverse perspectives that are derived from personal life experiences.¹⁵ The attorneys whom President Carter appointed have been comparatively solicitous of individual rights, have been responsive to congressional intent expressed in substantive statutes, and have afforded litigants with few resources relatively open access to the judicial system.¹⁶

During President Carter's first 2 years of service, 6 of his 60 judicial appointees (10%) were female¹⁷ and, during his 4 year term, 40 of the 258 appointees named (15.5%) were female.¹⁸ These appointees markedly increased diversity on the

Carter and previous administrations.'"). This view is admittedly controversial and depends substantially on one's definition of "qualified." See *id.* at 297-98.

13. See *id.* at 280-96 (comparing white male and nontraditional nominees in areas such as educational backgrounds).

14. See, e.g., Carl Tobias, *Keeping the Covenant on the Federal Courts*, 47 SMU L. REV. 1861, 1863, 1867 (1994) (recognizing the accomplishments of Justice Ginsburg and Judge Edwards); Ruth Marcus & Kenneth J. Cooper, *Hispanic Caucus Backs Cabranes for Court*, WASH. POST, Apr. 15, 1994, at A7 (discussing Judge Cabranes as a possible Supreme Court nominee); Paul Richter & David G. Savage, "Wow" Candidate for High Court is Sought, L.A. TIMES, May 29, 1993, at A18 (noting that circuit court Judge Stephanie Seymour was considered as a possible Supreme Court nominee).

15. See Tobias, *supra* note 14, at 1867, 1872-73 (discussing several benefits of diversity in the judiciary). Service by females and minorities on the judiciary also makes it more representative of society. See Tobias, *supra* note 9, at 1276 (suggesting that many citizens have more faith in a judiciary that "more closely approximates the gender and racial composition of American society").

16. See, e.g., Tobias, *supra* note 9, at 1262 (stating that the judges placed on the federal bench by President Carter are more likely to so decide cases than those appointed by President Reagan and President Bush); see also Sheldon Goldman, *Carter's Judicial Appointments: A Lasting Legacy*, 64 JUDICATURE 345, 355 (1981) (characterizing the Carter appointees' political viewpoints as moderate to liberal). I appreciate that some observers would find these views to be indicia of unsuccessful selection. See Tobias, *supra* note 9, at 1262-63 (noting that conservatives have criticized the Carter selection process and have implied that judges whom they characterize as "affirmative action appointees" are less qualified).

17. See Sheldon Goldman, *Reagan's Judicial Appointments at Mid-Term: Shaping the Bench in His Own Image*, 66 JUDICATURE 335, 339 tbl.1, 345 tbl.2 (1983). All recent administrations have increased the numbers and percentages of women appointed over time. See Tobias, *supra* note 6, at 1240 (noting that even those presidents with weak records increased the number of female appointees by the end of their terms).

18. See Sheldon Goldman, *Reagan's Judicial Legacy: Completing the Puzzle and*

federal bench. When the Carter Administration assumed office, only 1 woman and 2 African-Americans were among the 97 judges serving on the courts of appeals.¹⁹ And of the more than 400 district judges, only 5 were female and only 20 were African-American or Latino.²⁰

B. *The Reagan Administration*

President Ronald Reagan came into office believing that he had a strong mandate to make the federal government, including the judiciary, more conservative. The Chief Executive specifically declared that his principal goal in choosing members of the bench was to create less liberal courts.²¹ The President concomitantly seemed to find judicial appointments a relatively cost-free means of appealing to the conservative components of his political party.²²

The Reagan Administration attempted to achieve the goal of making the courts more conservative in numerous ways. First, President Reagan apparently eschewed the Carter Administration's objectives and procedures. For example, the Reagan Administration eliminated the merit-based panel for circuit courts and de-emphasized the district court commissions.²³ President Reagan correspondingly rejected practically

Summing Up, 72 JUDICATURE 318, 322 tbl.2, 325 tbl.4 (1989) (comparing the district and appellate court appointees of Presidents Reagan, Carter, Ford, Nixon, and Johnson); Patricia M. Wald, *Women in the Law*, 24 TRIAL, Nov. 1988, at 75, 80 (noting the number of Carter female appointees, but concluding that women are still a minority on the federal bench). President Carter also appointed 37 African-Americans out of 258 judges (14.3%) in his 4 year tenure. See Goldman, *supra*, at 322 tbl.2, 325 tbl.4. Of the 258 appointees, 16 were Latinos and 2 were Asian-Americans. See ALLIANCE FOR JUSTICE, THE FEDERAL COURTS AT A CROSSROADS: JUDICIAL SELECTION PROJECT ANNUAL REPORT 4 (1992) [hereinafter JSP ANNUAL REPORT] (providing a breakdown of judicial appointments based on race and ethnicity).

19. Robert J. Lipshutz & Douglas B. Huron, *Achieving a More Representative Federal Judiciary*, 62 JUDICATURE 483, 483 (1979).

20. *Id.* See generally Elaine Martin, *Women on the Federal Bench: A Comparative Profile*, 65 JUDICATURE 306 (1982) (examining the assumption that the increased number of women on the federal bench would positively influence judicial policy affecting women by comparing data on Carter's female appointees with data on the male members of the judiciary).

21. See, e.g., O'BRIEN, *supra* note 9, at 60 (stating that Reagan's choices reflected his Administration's objective of appointing conservatives and proponents of judicial restraint); Goldman, *supra* note 17, at 337 n.2 (noting a Reagan Justice Department official's statement that "the administration was trying to correct the imbalance on the federal bench brought about by Carter's appointment of so many liberal activists").

22. See Chris Reidy, *Clinton Gets His Turn*, BOSTON GLOBE, Aug. 8, 1993, at 69 (noting that the appointment of political ideologues can be a no-cost reward for like-minded supporters).

23. See Exec. Order No. 12,305, 3 C.F.R. 150 (1982), reprinted in 28 U.S.C.

all of the special efforts undertaken by President Carter to foster the judicial candidacies of highly competent female and minority attorneys.²⁴ The Republican Chief Executive invoked conventional selection procedures, such as senatorial courtesy and patronage, and rarely consulted with the Senate Judiciary Committee.²⁵ The President and personnel responsible for recruiting judges also employed affirmative techniques to attain the Administration's goal of making the courts more conservative. For instance, advisers with judicial selection duties carefully searched for lawyers who had appropriate ideological viewpoints and thoroughly reviewed the decisions of lower court judges to ascertain their fitness for service on higher courts.²⁶

Through these measures, President Reagan accomplished his proclaimed goal of creating a more conservative bench. The judges appointed were also rather homogeneous in terms of gender and race.²⁷ During the Reagan Administration's first 2 years, only 3 of 87 jurists appointed (3.4%) were female²⁸ and throughout both terms only 31 of his 372 judicial appointments (8.3%) were female.²⁹ Most of President Reagan's appointees, including those who are female, have rendered conservative decisions,³⁰ have restrictively construed the Constitution³¹

§ 44 (1988) (revoking President Carter's executive order establishing the United States Circuit Judge Nominating Commission); Exec. Order No. 12,553, 3 C.F.R. 204 (1987), reprinted in 28 U.S.C. § 133 (1988) (revoking President Carter's order establishing standards and guidelines for the merit selection of United States district judges); see also Goldman, *supra* note 17, at 336 (noting that the Reagan Administration dismantled the Carter Administration's merit-based commission for appeals court judgeships).

24. See Martin, *supra* note 11, at 140 (suggesting that by rejecting the merit-based nominating panel, the Reagan administration "abandoned the most effective mechanism to date for including women in the eligible pool of judicial candidates").

25. See O'BRIEN, *supra* note 9, at 61-62 (discussing selection methods employed by the Reagan Administration, including its use of ideological screening); Tim Weiner, *White House Builds Courts in Its Own Image*, PHILA. INQUIRER, Oct. 7, 1990, at 1A.

26. See Goldman, *supra* note 18, at 319-20 (arguing that "the Reagan administration . . . engaged in the most systematic judicial philosophical screening of judicial candidates ever seen in the nation's history").

27. See Goldman, *supra* note 9, at 287 tbl.2, 293 tbl.4 (revealing that 84.8% and 92.3%, respectively, of Reagan's district and circuit court appointees were white males).

28. Tobias, *supra* note 14, at 1865; see Goldman, *supra* note 17, at 339 tbl.1, 345 tbl.2 (presenting professional, demographic, and attribute profiles of Reagan appointees).

29. Tobias, *supra* note 14, at 1865; see Goldman, *supra* note 18, at 322 tbl.2, 325 tbl.4. African-Americans constituted only 1.9% (7 of 368) of the attorneys whom President Reagan named during his two terms. See *id.* Of 368 lawyers, 15 were Latinos and 2 were Asian-Americans. See *id.*

30. See Steve Alumbaugh & C.K. Rowland, *The Links Between Platform-Based*

and congressional legislation, and have narrowed access to the federal courts.³²

C. *The Bush Administration*

President Bush departed minimally from the Reagan Administration's objectives and procedures for selecting judges.³³ For instance, President Bush also believed that his major purpose in choosing judges was to make the federal courts more conservative, and he too relied on senatorial courtesy and patronage.³⁴ However, the Bush Administration's goals and practices did differ somewhat from those of its predecessor. Most significantly, President Bush implemented effective measures for naming very capable women and minorities to the bench, although he instituted these initiatives only at his term's mid-point and did so in a less comprehensive manner than President Carter.³⁵

President Bush was able to attain his objective of creating a more conservative judiciary, even though evidence suggests that the lawyers whom he appointed to the judiciary are ideologically less doctrinaire than those chosen by President Reagan.³⁶ The Bush Administration appointees were also more diverse in terms of gender. Of the 66 judges appointed by President Bush during his first 2 years of service, 7 (10.6%) were women.³⁷ And of his Administration's 185 judicial appointees, 36 (19.5%) were women.³⁸

The percentage of women selected during the Bush

Appointment Criteria and Trial Judges' Abortion Judgments, 74 JUDICATURE 153, 155 (1990) (noting that comparisons of published opinions reveal that Reagan appointees are much less inclined than Carter appointees to support the claims of criminal defendants or advocates of social regulation).

31. See *id.* at 330 (asserting that Reagan appointees are hostile to a liberal reading of the Bill of Rights).

32. See JSP ANNUAL REPORT, *supra* note 18, at 2 (noting that Reagan appointees are more likely than Carter, Nixon, or Ford appointees to restrict court access by denying standing).

33. See Neil A. Lewis, *Bush Picking the Kind of Judges Reagan Favored*, N.Y. TIMES, Apr. 10, 1990, at A1.

34. E.g., Letter from George Bush, President of the United States, to Robert Dole, United States Senator (Nov. 30, 1990) (on file with author) [hereinafter Bush Letter]; Lewis, *supra* note 33, at A19 (noting that "senators of the President's party are given a large role in choosing candidates from their home states").

35. E.g., Bush Letter, *supra* note 34.

36. Tobias, *supra* note 9, at 1273.

37. See Goldman, *supra* note 9, at 286 tbl.1, 292 tbl.3.

38. See *id.* at 287 tbl.2, 293 tbl.4. African-Americans comprised 6.5% (12 of 185) of President Bush's appointees. See *id.* Of the 185 judges, 8 were Latinos. See *id.*

presidency constituted a record at that time, but several pragmatic considerations probably explained the Administration's effort to promote diversity. For instance, a number of these female jurists were appointed after Justice Clarence Thomas's controversial confirmation proceedings and in the year when President Bush was desperately attempting to retain the White House.³⁹

II. JUDICIAL SELECTION IN THE SECOND YEAR OF THE CLINTON PRESIDENCY

A. Data

During the Clinton Administration's second year, 29 of the 101 judges appointed were female (29%) and 37 were minorities (37%). Of the 95 nominees submitted in President Clinton's second year, 26 were female (27%) and 30 were minorities (31%).⁴⁰ These numbers and percentages of female and minority attorneys nominated and appointed are unprecedented and are markedly better than the judicial selection records of Presidents Reagan, Bush, and Carter.⁴¹ For instance, the Clinton Administration appointed more African-Americans in two years than Presidents Reagan and Bush appointed in twelve. Moreover, President Clinton appointed nearly as many women in his first half-term of service as President Reagan appointed in two terms and as President Bush appointed in one term.⁴² In fact, only slightly more than two-fifths of the

39. See Tobias, *supra* note 6, at 1241 (noting that the Bush Administration's timing is perceived by some "as a crude form of damage control"); Tobias, *supra* note 9, at 1272 (observing that President Bush made greater efforts to nominate women to the federal bench only after his term's mid-point).

40. Telephone Interview with Barbara Moulton, Alliance for Justice, Washington, D.C. (Sept. 28, 1994) [hereinafter Moulton Interview]. I include the numbers and percentages of women and minorities nominated as well as appointed because nominees indicate an administration's commitment to naming female and minority judges. The number of appointees (101) was more than the number of nominees (95) during President Clinton's second year because of the carryover of several nominees from the first to the second session of the 103d Congress. The total number of jurists appointed by President Clinton during his first two years constitutes substantial progress toward filling the 113 judicial vacancies that existed when he assumed office. Upon congressional adjournment in October 1994, 53 openings remained and the Senate had not yet considered 14 nominees. See DOJ Record, *supra* note 4.

41. See Al Kamen, *Vow on Federal Judges Still on Hold*, WASH. POST, Oct. 29, 1993, at A25 (explaining that 21 of Clinton's first 33 nominees were women or minorities, while 25 of Carter's first 26 nominations were white males). Refer to notes 17-18, 28-29, 37-38 *supra* and accompanying text.

42. DOJ Record, *supra* note 4; see JSP ANNUAL REPORT, *supra* note 18, at 4 (revealing that Reagan and Bush appointed only 7 and 11 African-Americans, respec-

Clinton Administration nominees have been white males.⁴³

The jurists appointed by President Clinton are apparently very well qualified.⁴⁴ They are intelligent, industrious, and independent while displaying integrity and properly balanced judicial temperaments. The American Bar Association has rated as well qualified sixty-three percent of the Clinton Administration's nominees, as compared to fifty-three and fifty-two percent respectively for Reagan and Bush nominees.⁴⁵ One of those jurists appointed, Judge Jose Cabranes, received serious consideration for several Supreme Court openings before being elevated by President Clinton to the United States Court of Appeals for the Second Circuit.⁴⁶ The Clinton Administration correspondingly named to the Fourth Circuit Judge Diana Gribbon Motz, who served with distinction on the Maryland Court of Appeals.⁴⁷

B. Reasons for President Clinton's Success

It is not difficult to determine why President Clinton named so many women and minorities to the federal bench in his second year of service. One reason is that this Chief Executive believes in the covenant that he made with the American public. A second reason is that the President seems to have substantive perspectives on the federal judiciary and has employed judicial selection goals and practices that more

tively, during their terms).

43. See DOJ Record, *supra* note 4; see also Keith C. Epstein, *More Minorities, Women Named Federal Judges*, CLEV. PLAIN DEALER, Sept. 25, 1994, at 1A (acknowledging that, compared to the records of other presidents, a far greater proportion of Clinton nominees were women and minorities, but observing that Clinton's efforts had yet to be directed toward districts and circuits where no woman or minority had served).

44. See David G. Savage & Ronald J. Ostrow, *Clinton's Big Bench: Judges of All Stripes and Colors Appointed*, L.A. TIMES, Nov. 16, 1994, at A5 (explaining that the ABA, which investigates and analyzes the legal experience of all judicial nominees, has rated as "well-qualified" 65% of Clinton appointees).

45. See DOJ Record, *supra* note 4; Al Kamen, *Cutler to Face Backlog in Seating Judges*, WASH. POST, Mar. 14, 1994, at A17.

46. See, e.g., Joan Biskupic, *Mitchell, Cabranes Said to Top High Court List*, WASH. POST, Apr. 8, 1994, at A4 (stating that Bush had considered Cabranes as a replacement for Justice Brennan, but selected Souter in part because Souter was considered more conservative); Marcus & Cooper, *supra* note 14, at A7 (noting the Hispanic community's division over whether Cabranes was too conservative).

47. See Marcia Myers, *Diana Motz Joins Federal Bench Today*, BALTIMORE SUN, July 22, 1994, at 1B (describing the history of Motz's legal career and her dedication to the law); *Clinton Picks Diana Motz for 4th Circuit Bench*, BALTIMORE SUN, Jan. 28, 1994, at 9B (pointing out that Motz had also served with the Maryland Attorney General's office and was appointed by Chief Justice Rehnquist to a panel charged with reviewing the federal courts).

closely resemble the policies and processes of President Carter than those of his two Republican predecessors.⁴⁸

President Clinton is, therefore, implementing campaign promises that he made. For example, during his presidential campaign, President Clinton pledged that he would "appoint to the federal bench only men and women of unquestioned intellect, judicial temperament, broad experience and a demonstrated concern for, and commitment to, the individual rights protected by our Constitution, including the right to privacy."⁴⁹ Implicit in this promise may have been his goal of simultaneously enhancing gender and racial diversity on the federal courts.⁵⁰

During the second year of the Clinton presidency, Administration officials meticulously and thoroughly effectuated the Chief Executive's commitments, and the pace of nomination and confirmation quickened. Correspondingly, the United States Senate carefully exercised its power of advice and consent. Many senators, as well as the Senate Judiciary Committee, were receptive to President Clinton's objectives in selecting judges and worked closely with the Chief Executive and his aides. For instance, Senator Joseph Biden, Jr., while serving as chairman of the Senate Judiciary Committee, confirmed the "committee's willingness to treat filling judicial vacancies as one of its highest priorities."⁵¹ The Senator stated that he had asked the Administration to forward judicial nominees at a steady pace so that the Senate could confirm as many judges as possible during 1994.⁵² He added that he had also asked the American Bar Association to dedicate the necessary resources to facilitate the timely review of all nominees.⁵³ A

48. See Tobias, *supra* note 14, at 1868.

49. *Bush v. Clinton*, *supra* note 1, at 57.

50. See Stephen Labaton, *Clinton May Use Diversity Pledge to Remake Courts*, N.Y. TIMES, Mar. 8, 1993, at A1 (quoting Senator Joseph Biden, Jr.'s statement that "there will be an insistence upon diversity" in the Clinton Administration). When campaigning for the presidency, Governor Clinton stated:

[O]ne of the troubling aspects of the Reagan and Bush federal court appointments has been the sharp dropoff in selection of women and minority judges, at precisely the time when more and more qualified women and minority candidates were reaching the time of their lives where they could serve as judges.

Bush v. Clinton, *supra* note 1, at 57-58; see also Sandra Torry, *Seeing a Chance for Bench that Resembles the District*, WASH. POST, Aug. 9, 1993, at F7 (noting that minority attorneys expected Clinton to bolster their numbers on the federal bench).

51. Letter from Senator Joseph R. Biden, Jr., Chair, U.S. Senate Judiciary Comm., to Chief U.S. District Judges 1 (June 6, 1994) (on file with the *Houston Law Review*).

52. *Id.* at 2.

53. *Id.*; see also AMERICAN BAR ASSOCIATION, THE ABA STANDING COMMITTEE

number of senators concomitantly employed or revitalized district court nominating panels to identify and promote the candidacies of highly qualified female and minority lawyers.

President Clinton generally employed methods for choosing nominees that were analogous to the measures used by the Carter Administration; however, these processes departed minimally from the procedures of President Bush and only somewhat from those of the Reagan Administration.⁵⁴ Under this selection methodology, White House personnel continued to assume great responsibility for selecting judges by helping identify possible nominees, while the Department of Justice actively participated in reviewing each potential nominee who was deemed a serious candidate.⁵⁵

Senatorial courtesy and patronage also remained important in the selection of district court nominees⁵⁶ and President Clinton continued to defer to legislators from the geographical locales in which the judicial vacancies occurred.⁵⁷ The Administration concomitantly encouraged greater reliance on the district court nominating commissions that were already used by many senators.⁵⁸

The White House maintained considerable control over the selection of most appeals court nominees but remained responsive to senators who represented the areas from which those nominees were selected.⁵⁹ President Clinton was substantially

ON FEDERAL JUDICIARY: WHAT IT IS AND HOW IT WORKS (1991) (discussing the ABA Committee's role in evaluating nominees). The Committee does not propose candidates and does not consider the ideology of prospective nominees. *Id.* at 1.

54. See Tobias, *supra* note 9, at 1258-74 (surveying the recent history of judicial selection). This sentence and much of the remainder of this Part are premised substantially on interviews with Administration officials who have judicial selection responsibility and Senate Judiciary Committee staff who are knowledgeable about the selection procedures employed by the Clinton Administration [hereinafter Interviews].

55. See Reidy, *supra* note 22, at 69 (noting that the Clinton Justice Department has relinquished to the White House even more power to select nominees than did the Bush Justice Department); Interviews, *supra* note 54.

56. See Epstein, *supra* note 43, at 1A (noting that presidents generally rely on senators for nominee recommendations); Neil A. Lewis, *Clinton is Considering Judgeships for Opponents of Abortion Rights*, N.Y. TIMES, Sept. 18, 1993, § 1, at 1 (noting that the White House customarily evaluates candidates who are proposed by a state's highest democratic officeholder for the federal courts).

57. See Michael York, *Clout Sought in Choosing U.S. Judges*, WASH. POST, Feb. 5, 1993, at D3 ("The Clinton administration has signaled that it intends to give considerable [judicial selection] deference to Democratic senators, and if there are no Democratic senators from a particular state, then to Democratic members of congress."); see also Interviews, *supra* note 54.

58. Interviews, *supra* note 54.

59. See Andelman, *supra* note 5, at 35 (describing the Administration's close scrutiny of each potential nominee as well as its reliance on recommendations by

responsible for choosing his Administration's second Supreme Court Justice, Stephen G. Breyer, and it appears certain that the Chief Executive will be actively involved in designating any future nominees for the Court.

President Clinton and his assistants informally consulted on possible nominees with the Senate Judiciary Committee and with specific senators before formally nominating potential jurists.⁶⁰ Indeed, careful consultation seemingly facilitated Justice Breyer's relatively noncontroversial appointment to the Supreme Court. This was evidenced by the level of strong support for the Breyer nomination of Republican Senators Orrin Hatch and Strom Thurmond, both long-standing members of the Judiciary Committee.⁶¹

President Clinton and his aides also continued to undertake numerous special efforts to discover and nominate highly qualified female and minority attorneys.⁶² These officials secured and relied upon the contributions and recommendations of women's groups, public interest organizations, and minority political entities.⁶³ A number of senators were also inclined to seek out and propose female and minority candidates, and the pronouncements of the Chief Executive and his assistants probably encouraged other senators to institute similar efforts.⁶⁴ Some senators solicited aid and suggestions for potential nominees from sources such as women's organizations, criminal defense counsel and associations, minority political

Democratic senators in districts with court vacancies); York, *supra* note 57, at D3. The Clinton Administration has not reinstituted the Circuit Judge Nominating Commission employed during the Carter Administration.

60. Interviews, *supra* note 54.

61. See, e.g., Joan Biskupic, *Senators Question Breyer's Economics*, WASH. POST, July 15, 1994, at A6 (recounting how Senator Hatch's support helped Breyer avoid difficult questioning concerning a potential conflict of interest stemming from investments in Lloyd's of London and noting Senator Thurmond's characterization of Breyer as "an able man and a fair man"); *Open Minds?*, NAT'L L.J., July 25, 1994, at A18 (noting Senator Hatch's reaffirmation of support for Breyer); see also Ruth Marcus, *President Asks Wider Court Hunt*, WASH. POST, May 6, 1993, at A1 (describing the Clinton Administration's exhaustive search for an appropriate replacement for Justice White).

62. See Marcus, *supra* note 61, at A1, A27 (noting that Clinton was "described as 'anxious' to name a woman" as Justice White's successor).

63. Interviews, *supra* note 54.

64. The Administration urged senators to forward names of qualified female and minority lawyers. Neil A. Lewis, *Unmaking the G.O.P. Court Legacy*, N.Y. TIMES, Aug. 23, 1993, at A10. In 1993, the New York Times quoted a senior White House official as saying that "[w]e have spoken to each and every Democrat in the Senate and told them we expect their recommendations to include women and minorities." *Id.*; see McGonigle, *supra* note 10, at 7B (noting that after his election, Clinton encouraged Democratic senators to "reflect diversity" when making their recommendations).

caucuses, and legal services practitioners and entities.⁶⁵

In short, the Clinton Administration substantially surpassed the stellar record of judicial selection that it had compiled during its first year. President Clinton nominated unprecedented numbers of highly competent female and minority lawyers, easily eclipsing the Reagan, Bush, and Carter Administrations' records.⁶⁶ The Clinton Administration's clear objectives for choosing judges, combined with its effective selection processes, proved extremely effective in identifying and appointing well-qualified female and minority attorneys.

This success is even more compelling given the complications that President Clinton faced during his second year in office. His Administration confronted the same problems that many presidencies encounter during the second year in office, but several events, such as the resignations of Philip Heymann,⁶⁷ Webster Hubbell,⁶⁸ and Bernard Nussbaum⁶⁹ exacerbated these intrinsic difficulties.⁷⁰

Justice Harry Blackmun's resignation in the spring of 1994 also consumed considerable time and effort, particularly that of the lawyers in the Office of White House Counsel who have significant judicial selection duties. Resources devoted to finding a competent successor to Justice Blackmun and to insuring that nominee's confirmation were consequently diverted from the nomination of appellate and district court judges.

Other complications, including some that affected the White House Counsel's Office and the Justice Department, deflected the attention of policy makers in the White House and the Department of Justice from the task of judicial selection. One such complication involved the continuing Whitewater investigations, which clearly distracted the White House staff in general, and attorneys in the Office of White House Counsel in particular.⁷¹ This distraction was exacerbated when Congress called a number of Clinton Administration

65. Interviews, *supra* note 54.

66. See McGonigle, *supra* note 10, at 7B.

67. Former Deputy Attorney General.

68. Former Associate Attorney General.

69. Former White House Counsel.

70. See Gwen Ifill, *Nussbaum Out as White House Counsel*, N.Y. TIMES, Mar. 6, 1994, § 1, at 1 (discussing Nussbaum's resignation and the associated Whitewater scandal); David Johnston, *Reno's Top Deputy Resigns Abruptly, Citing Differences*, N.Y. TIMES, Jan. 28, 1994, at A1 (discussing Heymann's resignation and the expressed difficulties between Attorney General Janet Reno and Heymann); *Justice Aide Leaves Today*, N.Y. TIMES, Apr. 8, 1994, at A15 (commenting on various aspects of Hubbell's resignation, such as his last day in office, his reason for leaving, and the name of his temporary replacement, William C. Bryson).

71. See Ifill, *supra* note 70, at 1.

personnel to testify in the Whitewater hearings on Capitol Hill.⁷²

Urgent congressional business, such as the enactment of the controversial crime legislation and consideration of health care reform proposals, also delayed the nomination and confirmation processes. International concerns, including the problems involving Bosnia and the Israelis and Palestinians, consumed enormous time and energy as well.

Therefore, despite the efforts of President Clinton and the Senate Judiciary Committee, fifty-three judicial vacancies remained and fourteen nominees had not been considered for confirmation at the time of Congress's adjournment.⁷³ When the 104th Congress convened in early January 1995, there were sixty-three judicial openings.⁷⁴ Shortly thereafter, the Chief Executive resubmitted the names of most of the fourteen nominees not considered by the Senate in 1994.⁷⁵

In sum, President Clinton compiled a successful record of choosing judges during his second year of service, especially in light of the constraints imposed on his Administration. However, the Clinton Administration can and must accomplish even more in the future. It can do so by continuing to rely on the judicial selection objectives and procedures discussed above and by implementing the following recommendations.

III. SUGGESTIONS FOR THE FUTURE

A. *Reasons Why More Women and Minorities Should Be Appointed*

The reasons why President Clinton should nominate even greater numbers of highly capable female and minority attorneys to the federal bench require comparatively little treatment here. The justifications have been specifically and implicitly canvassed earlier in this Essay and have been

72. See *id.* (reporting that six White House aides were subpoenaed to testify regarding the Whitewater investigation).

73. See DOJ Record, *supra* note 4.

74. Moulton Interview, *supra* note 40.

75. *Id.* Because a new Congress convened in January, the President had to resubmit the nominees, some of whom were ideologically unacceptable to certain newly elected officials. See Joan Biskupic, *Facing Fights on Court Nominees*, *Clinton Yields*, WASH. POST, Feb. 13, 1995, at A1 (noting that President Clinton has withdrawn support from three potential nominees because of their political views); Ana Puga, *Clinton Judicial Picks May Court the Right*, BOSTON GLOBE, Dec. 29, 1994, at 1 (asserting that Clinton will back down in his fight for the more liberal nominees as a result of the changing political climate).

comprehensively surveyed elsewhere.⁷⁶ However, several reasons for achieving this goal merit special attention.

Perhaps the most compelling reason for appointing additional female and minority jurists is the diverse viewpoints that a number of these lawyers will undoubtedly bring to the federal courts. This increased diversity will invariably enhance the judiciary's understanding of complex public policy issues, such as abortion and the death penalty.⁷⁷ Many similarly believe that female and minority judges better appreciate certain problems, such as securing and retaining employment and encountering discrimination.⁷⁸ Moreover, naming greater numbers of female and minority lawyers might decrease gender and racial bias in the federal civil and criminal justice systems.⁷⁹ Appointing more female and minority practitioners

76. E.g., Sheldon Goldman, *Should There Be Affirmative Action for the Judiciary?*, 62 JUDICATURE 488 (1979); Slotnick, *supra* note 10.

77. See, e.g., Elaine Martin, *Men and Women on the Bench: Vive la Difference?*, 73 JUDICATURE 204, 208 (1990) (finding evidence that women have perspectives that differ from men and suggesting that those different perspectives may affect "decisional output"); Slotnick, *supra* note 10, at 272 (noting the argument that "increased representation of minorities and women would sharpen the judiciary's sensitivity to the complex substantive issues and controversial social issues facing it"). Republican senators have opposed nominees who were insufficiently supportive of the death penalty. See Neil A. Lewis, *G.O.P. to Challenge Judicial Nominees Who Oppose Death Penalty*, N.Y. TIMES, Oct. 15, 1993, at A26. Others have evinced concern that President Clinton may nominate attorneys who are insufficiently committed to abortion rights. See Helen Dewar, *Appeal on Antiabortion Judges*, WASH. POST, Oct. 1, 1993, at A16 (noting that the five Democratic women senators wrote to Clinton expressing concern that he might appoint federal judges who oppose abortion); Lewis, *supra* note 56, § 1, at 1, 7 (reporting that members of the National Organization for Women and National Abortion Rights Action League are concerned about possible appointments of judges who oppose abortion to the lower courts).

78. See, e.g., Marion Z. Goldberg, *Carter-Appointed Judges: Perspectives on Gender*, TRIAL, Apr. 1990, at 108, 108 (quoting New York State Court of Appeals Judge Judith Kaye, who stated: "After a lifetime of different experiences and a substantial period of survival in a male-dominated profession, women judges unquestionably have developed a heightened awareness of the problems that other women encounter in life and in law"); Donald R. Songer et al., *A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals*, 56 J. POL. 425, 436-7 (1994) (finding that female judges were more likely than their male colleagues to rule in favor of alleged victims of employment discrimination); Tobias, *supra* note 6, at 1243 (expanding upon the justifications for greater diversity in the federal courts). Some evidence indicates that the public has greater confidence in federal courts whose makeup more closely approximates that of American society. Tobias, *supra* note 9, at 1276; see also Slotnick, *supra* note 10, at 272.

79. See REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 169 (Apr. 2, 1990); Lynn H. Schafran, *Gender Bias in the Courts: An Emerging Focus For Judicial Reform*, 21 ARIZ. ST. L.J. 237, 238, 271-73 (1989) (discussing bias in the courts and proposing methods for reducing this bias). See generally Ninth Circuit Task Force on Gender Bias, *Executive Summary of the Preliminary Report of the Ninth Circuit Task Force on Gender Bias*, 45 STAN. L. REV. 2153 (1993) (finding that female lawyers and judges agree that the predominantly male judiciary puts female practitioners at

is also an important sign of the Administration's commitment to enhancing circumstances for women and minorities in the federal courts and the legal profession.⁸⁰

Another very significant reason to appoint more women and minorities is the critical need to fill all existing judicial vacancies so that the complete complement of judges authorized will be sitting. Naming lawyers to those judgeships that are currently open would enable the federal courts to process cases more efficiently and would thereby reduce the staggering civil backlog in district courts.⁸¹ A recent study by the Administrative Office of the United States Courts showed that senior federal judges, who have assumed a larger workload, are a less satisfactory alternative than placing full-time judges in presently empty seats.⁸² Indeed, in the 1993 year-end report on the judiciary, Chief Justice Rehnquist observed that "[t]here is perhaps no issue more important to the judiciary right now than this serious judicial vacancy problem."⁸³

a disadvantage). Fewer than 2% of Reagan appointees were African-Americans, Tobias, *supra* note 9, at 1269, and President Bush named no Asian-Americans and only 8 Latinos. Goldman, *supra* note 9, at 287 tbl.2, 293 tbl.4.

The failure of the last two Republican presidents to name more female and minority jurists is especially problematic because the Reagan and Bush Administrations had much larger and more experienced pools of female and minority lawyers to draw from than did President Carter. See *Bush v. Clinton*, *supra* note 1, at 57-58 (reporting then-Governor Clinton's nearly identical criticism). For example, there were 62,000 female attorneys in 1980 and 140,000 in 1988. Tobias, *supra* note 6, at 1241 n.22. Moreover, the number of African-American, Latino, and Asian-American attorneys increased from 23,000 to 51,000 between 1980 and 1989. JSP ANNUAL REPORT, *supra* note 18, at 18.

80. See Tobias, *supra* note 6, at 1242-44 (discussing why President Bush should have appointed more women); Carl Tobias, *More Women Named Federal Judges*, 43 FLA. L. REV. 477, 484 (1991) (arguing that naming more female judges might limit the significant gender bias that exists in the federal judicial system); see also Carl Tobias, *The D.C. Circuit as a National Court*, 48 U. MIAMI L. REV. 159, 175-76 (1993) (noting the lack of racial, gender, and political diversity on the D.C. Circuit).

81. For instance, on March 31, 1994, there were 219,424 civil cases pending, 14,658 of which had been pending for over 3 years. ALLIANCE FOR JUSTICE, JUDICIAL SELECTION PROJECT MID-YEAR REPORT 4 (1994) (on file with the *Houston Law Review*); see also David G. Savage, *Clinton Missing Opportunity on Court Vacancies*, *Some Say*, L.A. TIMES, Aug. 18, 1993, at A5 (suggesting that civil cases are backlogged because of the shortage of judges). Implementation of the crime legislation recently enacted by Congress will probably exacerbate these difficulties by expanding the criminal docket.

82. See PATRICK WALKER, *THE WORK OF SENIOR JUDGES IN THE U.S. DISTRICT COURTS DURING 1985, 1990 AND 1992*, at 9 (1994) (analyzing the work completed by senior federal trial and appellate court judges in the U.S. district courts and concluding that their efforts become more important when numerous vacancies on the bench exist).

83. William H. Rehnquist, 1993 *Year-End Report on the Federal Judiciary*, 17 AM. J. TRIAL ADVOC. 571, 575 (1994).

B. Recommendations for Appointing More Women and Minorities

Recommendations for how President Clinton can name even greater numbers of highly qualified female and minority attorneys to the federal courts deserve comparatively limited examination here. Numerous suggestions have appeared elsewhere,⁸⁴ and several have been provided above. Moreover, President Clinton and the Administration officials involved in judicial recruitment are clearly committed to appointing many women and minorities⁸⁵ and have already implemented efficacious procedures for attaining this objective.⁸⁶

Some recommendations can be afforded, however. The President and his assistants might consider ways of increasing their efforts to seek out and name additional capable women and minorities. President Clinton and Administration personnel should continue to pursue aggressively the appointment of female and minority lawyers by examining new means of proceeding and relying on formerly untapped resources.

The selection of Supreme Court Justices and circuit court judges warrants relatively little treatment because the White House has retained much of the responsibility for those nominees.⁸⁷ Therefore, the Chief Executive and Judge Abner Mikva, the new White House Counsel,⁸⁸ will principally want to insure that the White House staff who are working on judicial selection fully appreciate the critical significance of naming more female and minority attorneys and employ the best processes for achieving this goal. Results achieved during the Clinton Administration's first two years indicate that these officials understand this specific purpose and have implemented the necessary procedures.

The goals and practices for naming district court judges, however, require greater assessment because President Clinton has deferred to senators who represent the areas where the judges will sit.⁸⁹ Either the concerns of individual senators or

84. See, e.g., Tobias, *supra* note 6, at 1245-49 (suggesting ways in which Clinton might appoint more women to the bench); Tobias, *supra* note 9, at 1274-81.

85. See David M. O'Brien, *Diversity Goal Hurts Liberals*, L.A. TIMES, Feb. 5, 1995, at M1 (observing that almost three-fifths of Clinton appointees are minorities or women and noting that Clinton has appointed more women and minorities to the federal bench than any President before him).

86. Refer to subpart II(B) *supra*.

87. Refer to notes 54-64 *supra* and accompanying text.

88. Douglas Jehl, *Judge on a Return Mission to Politics*, N.Y. TIMES, Aug. 12, 1994, at A15.

89. O'Brien, *supra* note 85, at M1 (noting that such deference was afforded

the encouragement of Administration staff seemingly led numerous senators to implement, or to continue relying upon, measures for identifying and fostering the candidacies of female and minority attorneys. The Chief Executive should openly laud those senators who have assisted his Administration in achieving its judicial selection objectives and should continue urging other senators to institute similar efforts.

President Clinton may want to repeat publicly his strong commitment to increasing diversity on the federal bench. The President could also write directly to senators asking them to forward the names of qualified women and minorities⁹⁰ and to help institute mechanisms, such as nominating panels, that will seek out, identify, and facilitate the appointment of these potential nominees.

Senators and Administration personnel with judicial selection duties should concomitantly seek the input and aid of additional sources that will be aware of capable female and minority nominees. They should maintain a close working relationship with Senator Orrin Hatch, who now chairs the Senate Judiciary Committee, and the Judiciary Committee as a whole.⁹¹ President Clinton's staff and members of the Senate should communicate with conventional entities, such as bar groups, but should rely more extensively on less traditional sources, such as women's organizations and minority political groups.

The qualifications and networking abilities of female and minority lawyers, who now constitute more than twenty-five percent of practicing attorneys in the country,⁹² will be crucial to the success of these endeavors. Equally significant will be the efforts and contacts of Hillary Rodham Clinton, who chaired the American Bar Association Commission on Women in the Profession,⁹³ and women and minorities in the Cabinet and Executive Branch.⁹⁴

even when nominees opposed Clinton's pro-choice stance on abortion). Refer to note 57 *supra* and accompanying text.

90. President Bush wrote a similar letter. See Bush Letter, *supra* note 34; see also Lewis, *supra* note 64, at A10 (quoting a White House official who stated that the Administration had encouraged all Democratic senators to support women and minorities).

91. In addition to working closely with Senator Hatch, the Clinton Administration must enlist the help of every female and minority senator. These senators may be able to persuade their colleagues to propose more women and minorities, and can assist President Clinton in promoting their candidacies.

92. See Tobias, *supra* note 6, at 1248.

93. See Bob Dart, *Bench Press: Groups Pushing Their Interests*, ARIZ. REPUBLIC, Mar. 20, 1993, at A1.

94. See Tobias, *supra* note 6, at 1248-49.

President Clinton had considerable support for, and little resistance to, his judicial selection efforts during 1993 and 1994. However, the Administration must anticipate and prepare for future complications. President Clinton will face conservative legislators who consider his nominees insufficiently solicitous of the death penalty and liberal legislators who find them insufficiently solicitous of abortion rights.⁹⁵

The confirmation process will probably proceed more slowly now that the Republican Party controls the Senate and the Senate Judiciary Committee. As the 1996 presidential election approaches, Judiciary Chairman Senator Hatch and his Republican colleagues may place partisan politics before the needs of the federal courts.⁹⁶ The Republicans should resist that temptation and should recall the prompt, equitable manner in which Democratic Senator Joseph Biden, Jr. processed President Reagan's lower court nominees during the President's last two years in office after the Democrats had recaptured the Senate.⁹⁷

The Clinton Administration must also keep in mind that a protracted confirmation fight over one controversial nominee could jeopardize its opportunity to name a full complement of federal judges.⁹⁸ President Clinton should correspondingly decide whether, and if so to what extent, he is willing to compromise the goals of increasing gender, racial, and political balance on the bench to fill all of the present openings.⁹⁹

IV. CONCLUSION

During 1994, the Clinton Administration clearly surpassed the outstanding record of judicial selection compiled in its first

95. Refer to notes 75 & 77 *supra*. Although neither type of opposition was able to muster enough votes to reject nominees in 1993 and 1994, the 1994 elections may have changed this.

96. See Neil A. Lewis, *New Chief of Judiciary Panel May Find an Early Test with Clinton*, N.Y. TIMES, Nov. 18, 1994, at A31 (noting that Republicans had stated that they had not fought the President's judicial nominations because, until recently, they were a minority); Democratic Senator Joseph Biden, Jr. fears that Senator Hatch may "face strong pressures from the right wing of the Republican Party 'to try and bring the house down.'" *Id.*

97. See *id.* (noting Senator Biden's belief that when the situation was reversed and the Democrats controlled the Senate during a Republican administration "most judicial nominations were easily approved").

98. *Id.*

99. A somewhat related effect apparently occurred during the Bush Administration after the volatile hearings surrounding the nomination of Justice Clarence Thomas and may have limited the number of circuit and district judges whom President Bush was able to name.

year. President Clinton continued to identify clearly his objectives in choosing judges and implemented efficacious procedures for accomplishing those goals. The Administration once again nominated and named record numbers and percentages of exceptionally able female and minority lawyers and made considerable progress toward filling the existing judicial vacancies. If President Clinton continues to accord judicial nominations a high priority and works closely with the new Republican majority in the Senate, his Administration will be able to appoint even greater numbers of highly qualified women and minorities to the bench and may soon fill all existing federal judiciary vacancies.