

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, January 7, 2003 12:03 PM
To: Clement, Paul D; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Mark Filip

We should definitely (b) (5)

(b) (5)

-----Original Message-----

From: Clement, Paul D
Sent: Tuesday, January 07, 2003 11:54 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Dinh, Viet
Subject: RE: Mark Filip

Will do. Thanks.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, January 07, 2003 11:25 AM
To: Dinh, Viet
Cc: Clement, Paul D
Subject: RE: Mark Filip

indeed, (b) (5)

(b) (5)

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 01/07/2003 09:57:16 AM
pic26775.pcx)

Record Type: Record

To: "Clement, Paul D" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: RE: Mark Filip

None from my end. (b) (5)
(b) (5)

Brett, do you have objections? (b) (5)
(b) (5)

-----Original Message-----

From: Clement, Paul D
Sent: Tuesday, January 07, 2003 9:04 AM
To: Dinh, Viet
Subject: RE: Mark Filip

(b) (5)

-----Original Message-----

From: Dinh, Viet
Sent: Tuesday, January 07, 2003 9:02 AM
To: Clement, Paul D
Subject: RE: Mark Filip

No, (b) (5)

(b) (5)

-----Original Message-----

From: Clement, Paul D
Sent: Tuesday, January 07, 2003 7:51 AM
To: Dinh, Viet
Subject: Mark Filip

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Friday, April 25, 2003 10:56 AM
To: Dinh, Viet; 'David_G._Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Ciongoli, Adam; Clement, Paul D; Bryant, Dan
Subject: Clarification: Sinead O'Connor is to retire!! Sorry if anyone had aheart attack

-----Original Message-----

From: Dinh, Viet
Sent: Friday, April 25, 2003 10:46 AM
To: 'David_G._Leitch@who.eop.gov'; 'Kavanaugh, Brett'; 'Bartolomucci, Chris'; Garre, Gregory G; Ciongoli, Adam; Clement, Paul D; Bryant, Dan
Subject: FW: Breaking news: O'Connor to retire!
Importance: High

-----Original Message-----

From: Sales, Nathan
Sent: Friday, April 25, 2003 10:31 AM
To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L; Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP); Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

David_G_Leitch@who.eop.gov

From: David_G_Leitch@who.eop.gov
Sent: Friday, April 25, 2003 10:50 AM
To: Ciongoli, Adam; Bryant, Dan; Garre, Gregory G; Clement, Paul D; Dinh, Viet; bkavanau@who.eop.gov; h._christopher_bartolomucci@who.eop.gov
Subject: RE: Breaking news: O'Connor to retire!

I'll get even with you for this, Dinh.

-----Original Message-----

From: Viet.Dinh@usdoj.gov [mailto:Viet.Dinh@usdoj.gov]
Sent: Friday, April 25, 2003 10:46 AM
To: Kavanaugh, Brett M.; 'Bartolomucci, Chris';
Gregory.G.Garre@usdoj.gov; Adam.Ciongoli@usdoj.gov;
Paul.D.Clement@usdoj.gov; Dan.Bryant@usdoj.gov; Leitch, David G.
Subject: FW: Breaking news: O'Connor to retire!
Importance: High

-----Original Message-----

From: Sales, Nathan
Sent: Friday, April 25, 2003 10:31 AM
To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi
L; Joy, Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP);
Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Friday, April 25, 2003 10:49 AM
To: Dinh, Viet
Cc: Ciongoli, Adam; Bryant, Dan; Garre, Gregory G; Clement, Paul D;
David_G._Leitch@who.eop.gov; H._Christopher_Bartolomucci@who.eop.gov
Subject: Re: FW: Breaking news: O'Connor to retire!
Attachments: pic24973.pcx

very funny . . . my heart rate just went way up for a few seconds . . .

(Embedded
image moved "Viet.Dinh@usdoj.gov" <Viet.Dinh
to file: 04/25/2003 10:46:17 AM
pic24973.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: FW: Breaking news: O'Connor to retire!

-----Original Message-----

From: Sales, Nathan
Sent: Friday, April 25, 2003 10:31 AM
To: Dinh, Viet; Charnes, Adam; Benczkowski, Brian A; Remington, Kristi L; Joy,
Sheila; Hall, William; Benedi, Lizette D; Kesselman, Marc (OLP); Chenoweth, Mark
Subject: Breaking news: O'Connor to retire!
Importance: High

<http://www.cnn.com/2003/SHOWBIZ/Music/04/24/oconnor.reut/index.html>

Message Sent To: _____

David G. Leitch/WHO/EOP@EOP

"Gregory.G.Garre@usdoj.gov" <Gregory.G.Garre@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Adam.Ciongoli@usdoj.gov" <Adam.Ciongoli@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Paul.D.Clement@usdoj.gov" <Paul.D.Clement@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Dan.Bryant@usdoj.gov" <Dan.Bryant@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

H. Christopher Bartolomucci/WHO/EOP@EOP

Brett M. Kavanaugh/WHO/EOP@EOP

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, April 24, 2003 10:48 AM
To: 'David_G._Leitch@who.eop.gov'; 'Kavanaugh, Brett'
Subject: FW: Dem Ltr re Supreme Court

-----Original Message-----

From: Comstock, Barbara
Sent: Thursday, April 24, 2003 9:33 AM
To: Olson, Theodore B; Clement, Paul D; Ciongoli, Adam; Dinh, Viet;
Bryant, Dan; Taylor, Jeffrey
Subject: Dem Ltr re Supreme Court

McAuliffe letter re Supreme Court

-----Original Message-----

URGENT ACTION ALERT: SUPREME COURT COUNTDOWN

Dear XXXXXXXXXX:

At the end of June, the current Supreme Court session will come to a close. When that happens, all signs point to one or more of the current Justices retiring, providing an opportunity for President Bush to nominate an extremist Justice who will put our most cherished American values at risk.

* There hasn't been a retirement in almost nine years, the longest drought in nearly 200 years. [1] * Several Justices are facing serious health issues and have indicated a strong desire to retire soon. [2] * Chief Justice Rehnquist has recently held secret meetings with the White House. [3] * Two weeks ago, President Bush's father hosted a fundraiser at his home to raise money for an ad campaign to push Bush's judicial nominees. [4] * The Republican chairman of the Senate Judiciary Committee, Orrin Hatch, is pressuring Justices to make their move. [5]

Civil rights. The freedom to choose. Environmental protections. The hard-won rights of workers. If President Bush stacks the Court with right-wing ideologues, all of these cherished values are in peril. You must get involved today to help protect these values.

<http://mailer.democrats.org/rdr/002JK04vsv0001D>

At the DNC, we're organizing on every level to make sure the voices of average Americans are heard on this issue. And, with your help, I promise you that we can and will defeat this threat to our values.

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, March 26, 2003 12:05 PM
To: 'Leitch, David G.'; 'Kavanaugh, Brett M.'
Cc: (b)(6) per FBI 'Carroll, James W.'; Joy, Sheila
Subject: RE: list of BIs

yes. I think so, but Jim and Sheila would know better. thanks.

-----Original Message-----

From: Leitch, David G. [mailto:David_G_Leitch@who.eop.gov]
Sent: Wednesday, March 26, 2003 10:46 AM
To: Dinh, Viet; Kavanaugh, Brett M.
Cc: (b)(6) per FBI Carroll, James W.
Subject: RE: list of BIs

Do you know what other WH quarters (PPO, I assume) are asking for what to be a priority? We might be able to relieve some of that pressure here.

-----Original Message-----

From: Dinh, Viet [mailto:Viet.Dinh@usdoj.gov]
Sent: Wednesday, March 26, 2003 10:35 AM
To: Kavanaugh, Brett M.; Leitch, David G.
Cc: (b)(6) per FBI
Subject: FW: list of BIs

David,

Per our conversation yesterday, (b) (5), (b) (6)

(b) (5), (b) (6)

Thanks,

Viet

-----Original Message-----

From: (b)(6) per FBI
Sent: Wednesday, March 26, 2003 10:30 AM
To: Dinh, Viet
Cc: Charnes, Adam
Subject: FW: list of BIs

Attached is the list of 4/25 nominees with outstanding BI's. Viet- if you agree, can I have Heather fax this over to (b)(6) per FBI?

BAB

-----Original Message-----

From: Joy, Sheila

Sent: Tuesday, March 25, 2003 9:21 PM

To: (b)(6) per FBI

Subject: list of BIs

(b)(6) per FBI one of these was not on Brett's list but I believe he probably should have been - VA,W Earl Conrad. Sheila

TO: (b)(6) per FBI

FM: Sheila

RE: Judicial Nomine (b) (5)

| Area | Candidate |
|------|-----------|
|------|-----------|

1st Circuit Area

none

2nd Circuit Area

| | |
|------|-------------|
| NY,N | Gary Sharpe |
|------|-------------|

| | |
|------|---------------|
| NY,E | Dora Irizarry |
|------|---------------|

3rd Circuit Area

| | |
|------|------------|
| PA,W | Kim Gibson |
|------|------------|

4th Circuit Area

| | |
|------|---------------|
| NC,W | Robert Conrad |
|------|---------------|

| | |
|------|----------------|
| NC,W | Brent McKnight |
|------|----------------|

| | |
|------|-------------|
| VA,W | Earl Conrad |
|------|-------------|

5th Circuit Area

| | |
|------|--------------|
| TX,E | Marcia Crone |
|------|--------------|

| | |
|------|----------------|
| TX,W | Frank Montalvo |
|------|----------------|

| | |
|------|------------------|
| TX,W | Kathleen Cardone |
|------|------------------|

| | |
|------|-------------|
| TX,W | Earl Yeakel |
|------|-------------|

6th Circuit Area

(b) (6)

| | |
|------|-----------------|
| TN,E | J. Ronnie Greer |
|------|-----------------|

7th Circuit Area

none

8th Circuit Area

none

9th Circuit Area

| | |
|------|--------------|
| CA,C | Dale Fischer |
|------|--------------|

| | |
|------|-------------|
| CA,S | Larry Burns |
|------|-------------|

| | |
|------|--------------|
| CA,S | John Houston |
|------|--------------|

| | |
|------|-------------|
| CA,S | Dana Sabraw |
|------|-------------|

| | |
|------|---------------|
| CA,S | William Hayes |
|------|---------------|

| | |
|------|---------------|
| CA,S | Roger Benetiz |
|------|---------------|

(b) (5)

OR Michael Mosma

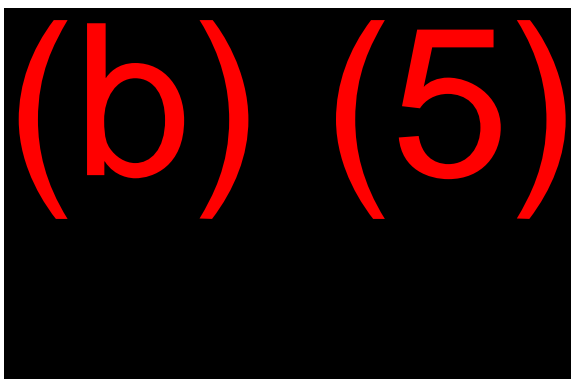
10th Circuit Area

NM Jim Browning

NM Robert Brack

11th Circuit Area

FL,S James Cohn



Dinh, Viet

From: Dinh, Viet
Sent: Thursday, February 27, 2003 10:58 AM
To: Ciongoli, Adam; Clement, Paul D; 'David_G._Leitch@who.eop.gov'; 'Kavanaugh, Brett'; Charnes, Adam; Benczkowski, Brian A; Sales, Nathan; Remington, Kristi L; Benedi, Lizette D; Chenoweth, Mark; 'Kavanaugh, Brett'; 'Jennifer_G._Newstead@who.eop.gov'
Subject: You say rosa, I say Rasa; you say filibuster, I say bluster.

Let's call the whole thing off.

<http://www.nj.com/columns/ledger/mulshine/index.ssf?/base/columns-0/1046330217302940.xml>

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, January 23, 2003 3:44 PM
To: Charnes, Adam; Olson, Theodore B; Clement, Paul D; Whelan, M Edward III; 'Kavanaugh, Brett'; 'David_G._Leitch@who.eop.gov'
Subject: Estrada Documents
Attachments: Senator Schumer Ltr..pdf

Please see attached the latest missive from Schumer on Dept response to his request. Nothing new, an (b) (5) Adam Charnes will take lead in drafting a response for circulation. Please provide him with any initial drafting thought you may have. Miguel is on the markup tomorrow, so time is of essence. thanks much.

United States Senate

WASHINGTON, DC 20510

January 23, 2003

The Honorable John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear General Ashcroft:

I write to respond to the claims you make in your Department's letter of October 8, 2002, in which you argue that both historical precedent and policy considerations support not disclosing documents written by Mr. Miguel Estrada, a nominee to a lifetime seat on the D.C. Circuit, when he was Assistant to the Solicitor General. I write also to ask that you reconsider your decision not to disclose Mr. Estrada's memoranda.

Your argument on historical precedent boils down to a claim that the Department has never turned over such documents written by individuals who held the position Mr. Estrada held at the Department. You list several nominees who were also Assistants to the Solicitor General (or who held similar positions) and point out that the Department did not disclose these types of writings with regard to their nominations. While your assertion is true, no Senator ever requested any such materials for these nominees, so this is hardly precedent for refusing to provide them now that Congress has actually asked for them.

If the factual record ended there, you would have a persuasive case. But it does not. There is ample historical precedent for the request we have made, policy considerations argue in favor of disclosing the materials we have asked for, and this Bush Administration has already disclosed similar memoranda in connection with a Senate-confirmed nominee. Your concerns about keeping secret some once-sensitive information from long-settled cases is unpersuasive, as is your contention that current employees of the Department will somehow be chilled by the disclosure you seek.

The historical record I refer to includes the disclosure of previously confidential, internal documents relating to the nominations of:

- Robert H. Bork, to become an Associate Justice on the Supreme Court;
- William Bradford Reynolds, the Assistant Attorney General for Civil Rights, to become Associate Attorney General;
- Benjamin Civiletti to become Attorney General;
- Stephen Trott to become a judge on the Ninth Circuit; and
- Justice William H. Rehnquist to become Chief Justice.

Documents provided in the course of Judge Bork's nomination are particularly illustrative. I understand that at the Committee's request, the Department disclosed to the Senate memoranda written to then-Solicitor General Bork by lower level attorneys (in the same capacity as Mr. Estrada) making recommendations about appeals. For example, the Justice Department apparently provided the Senate Judiciary Committee with memoranda related to its legal analysis of school integration cases, memoranda from Seventh Circuit Judge Frank Easterbrook when he was an Assistant Solicitor General, internal memoranda and non-public material related to Bork's analysis of President Nixon's refusal to release his Watergate-related tapes, and other memoranda regarding the pocket veto, executive privilege, and the firing of Archibald Cox.

Just as the historical precedent supports the disclosure of the requested documents, the policy considerations at stake here weigh heavily in favor of production of these materials to Congress. Perhaps the most important policy consideration is that the Senate's "consent" power, granted by the Constitution, not be thwarted. It should be exercised – pro or con – only after the Senate obtains adequate information about a nominee. No Senator could relish the prospect of voting on nominees who refuse to answer questions and whose views of the law are a near-total mystery.

You suggest that the Senate can sufficiently evaluate Mr. Estrada's qualifications for the federal bench by reviewing his already public written work. But that is simply not good enough. Mr. Estrada's work on behalf of clients in private practice and as directed by superiors at the Department of Justice does not tell us what we need to know.

Mr. Estrada's abject refusal to discuss even the most innocuous Supreme Court cases leaves Senators with distressingly little to go on in evaluating whether or not he has extreme views that may make him an unacceptable choice for a seat on the very important D.C. Circuit. When Mr. Estrada testified before the Judiciary Committee, he declined to answer all questions about his approach to the law. I asked him to name any case from recent Supreme Court jurisprudence of which he was critical. I asked him to comment on a case of which I have been critical. He declined both requests.

Given the red flags that have been raised about Mr. Estrada, it is imperative that we understand how he would approach legal questions were he confirmed. That he is nominated to the D.C. Circuit, the second-highest court in the land, and would be the swing vote on that court, makes it especially important that we know more about Mr. Estrada's views. We simply cannot rely on the scant amount of information already public to do that.

Not only do historical precedent and policy argue in favor of disclosure, but the current practice of this Administration belies your refusals. This President has already taken a position contrary to that which you advance here. Just last year, the Administration disclosed legal memoranda written by an attorney from the White House Counsel's office in connection with the nomination of Jeffrey Holmstead to be Assistant Administrator at the Environmental Protection Agency, a term appointment of far less import than this powerful lifetime appellate post. Nonetheless, in Mr. Estrada's case, the

Administration has refused to provide any of the documents sought. Such refusal raises questions about the reasons underlying the Administration's unwillingness to disclose Mr. Estrada's writings. Those questions only sound more alarm bells regarding this nomination.

Finally, I would like to address two seemingly reasonable concerns that you expressed in your letter and explain why they are just ephemeral justifications for keeping Mr. Estrada's work secret longer.

You note the Department's interest in keeping the writings of members of the Office of the Solicitor General private. I can appreciate the sensitivity of these memoranda, but we are requesting documents relating to cases that likely were resolved years ago. (Should any case remain active, we would be glad to discuss appropriate precautions to ensure no damage is done to the government's interests.) I see no prejudice to the Department's interests on this score.

The other point you argue is that current employees will feel a chilling effect if they know that one day their writings may be made public. Given the public nature of the work they are tasked with, I fail to see why Assistant Solicitors General would be worried that their analyses of cases might be given to Congress. Any time one of these memoranda is written, the employee must assume that his/her advice will be accepted by a superior and the views articulated in the memo will become the official position of the United States – a step that necessarily would make the substance within the memo a matter of public record. It is hard to see how a risk of future publicization creates a chilling effect under these circumstances.

We cannot properly exercise our Constitutional responsibilities on lifetime judicial appointments without adequate information. The information we need to consider Mr. Estrada's nomination is the hands of the Department of Justice. I sincerely hope that both the Bush Administration and Mr. Estrada will reconsider the efforts to block the Senate's access to this important information before we are forced into an untimely vote on his confirmation.

Sincerely



Charles E. Schumer
United States Senator

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, December 19, 2002 11:31 AM
To: Bybee, Jay; Clement, Paul D; Bradshaw, Sheldon; Benedi, Lizette D; Bryant, Dan; Collins, Dan; 'Kavanaugh, Brett'
Subject: Victims Rights Amendment
Attachments: VRA SJ Res 35 redline.wpd

The sponsors have agreed to incorporate the 180-day provision into the text of the Amendment. Attached is a suggested revision, pegged after the resolution introduced in the 106th. Jay and Sheldon, can you review and advise? Thanks.

Dinh, Viet

From: Dinh, Viet
Sent: Friday, July 19, 2002 4:37 PM
To: Ciongoli, Adam; 'brett_m._kavanaugh@who.eop.gov'
Subject: Fw: Victims Rights Amendment

For now, FYI only. Paul and I will work it out, (b) (5)

(b) (5)

-----Original Message-----

From: Dinh, Viet <Viet.Dinh@USDOJ.gov>
To: Bybee, Jay <Jay.Bybee@USDOJ.gov>; Collins, Dan <Dan.Collins@USDOJ.gov>
CC: Clement, Paul D <Paul.D.Clement@USDOJ.gov>; Larsen, Joan <Joan.Larsen@USDOJ.gov>; Bradshaw, Sheldon <Sheldon.Bradshaw@USDOJ.gov>; Ho, James <James.Ho@USDOJ.gov>; Bryant, Dan <Dan.Bryant@USDOJ.gov>; Benedi, Lizette D <Lizette.D.Benedi@USDOJ.gov>
Sent: Fri Jul 19 16:04:09 2002
Subject: Re: Victims Rights Amendment

I will revise and we will work it out. In the pantheon of issues that paul and I have worked through in this process (b) (5)

(b) (5)

-----Original Message-----

From: Bybee, Jay <Jay.Bybee@USDOJ.gov>
To: Dinh, Viet <Viet.Dinh@USDOJ.gov>; Collins, Dan <Dan.Collins@USDOJ.gov>
CC: Clement, Paul D <Paul.D.Clement@USDOJ.gov>; Larsen, Joan <Joan.Larsen@USDOJ.gov>; Bradshaw, Sheldon <Sheldon.Bradshaw@USDOJ.gov>; Ho, James <James.Ho@USDOJ.gov>; Bryant, Dan <Dan.Bryant@USDOJ.gov>; Benedi, Lizette D <Lizette.D.Benedi@USDOJ.gov>
Sent: Fri Jul 19 09:57:00 2002
Subject: RE: Victims Rights Amendment

I have always appreciated Dan's good judgment and have, accordingly, thought carefully about his suggestion (b) (5)

(b) (5)

(b) (5)

(b) (5)

--Dan

-----Original Message-----

From: Bybee, Jay
Sent: Thursday, July 18, 2002 4:58 PM
To: Dinh, Viet
Cc: Collins, Dan; Clement, Paul D; Larsen, Joan; Bradshaw, Sheldon; Ho, James
Subject: Victims Rights Amendment

Viet--

We have reviewed the draft letter expressing the views of the Department of Justice on S.J. Res. 35. As we discussed this morning, we have comments on three sections of the draft letter.

(b) (5)

(b) (5)

(b) (5)

Jay Bybee
Assistant Attorney General
Office of Legal Counsel

-----Original Message-----

From: Dinh, Viet
Sent: Thursday, July 18, 2002 6:28 PM
To: Collins, Dan; Bybee, Jay
Cc: Clement, Paul D; Larsen, Joan; Bradshaw, Sheldon; Ho, James; Bryant, Dan; Benedi, Lizette D
Subject: Re: Victims Rights Amendment

(b) (5) I will revise draft in light of these and other edits and recir.
Lizette can you l (b) (5) Thx

-----Original Message-----

From: Collins, Dan <Dan.Collins@USDOJ.gov>
To: Bybee, Jay <Jay.Bybee@USDOJ.gov>; Dinh, Viet <Viet.Dinh@USDOJ.gov>
CC: Clement, Paul D <Paul.D.Clement@USDOJ.gov>; Larsen, Joan <Joan.Larsen@USDOJ.gov>; Bradshaw, Sheldon <Sheldon.Bradshaw@USDOJ.gov>; Ho, James <James.Ho@USDOJ.gov>; Bryant, Dan <Dan.Bryant@USDOJ.gov>
Sent: Thu Jul 18 18:03:20 2002
Subject: RE: Victims Rights Amendment

(b) (5)

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Friday, June 21, 2002 9:09 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Willett, Don
Subject: RE: FW: Joint SG Letter

Brett, trouble maker.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, June 20, 2002 7:56 PM
To: Willett, Don
Cc: Dinh, Viet
Subject: RE: FW: Joint SG Letter

no problem, and thanks much for effort on this, which is going to be awesome.

(Embedded
image moved "Willett, Don" <Don.Willett@usdoj.gov>
to file: 06/20/2002 07:08:43 PM
pic20740.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM
Return Requested)
Subject: RE: FW: Joint SG Letter

Thanks, Brett (b) (5)

(b) (5)

DRW

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, June 20, 2002 7:01 PM
To: Willett, Don
Subject: Re: FW: Joint SG Letter

I hate to add a complication, but (b) (5)
we can accomplish that?

(Embedded

image moved "Willett, Don" <Don.Willett@usdoj.gov> to file: 06/20/2002 11:11:08 AM pic08206.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: FW: Joint SG Letter

-----Original Message-----

From: Dinh, Viet
Sent: Thursday, June 20, 2002 10:00 AM
To: 'SWaxman@wilmer.com'
Cc: Clement, Paul D; Willett, Don
Subject: Joint SG Letter

Dear Seth,

The letter is now finalized, with the only major revision being the deletion of the last sentence offering up Drew and Walter for testimony. They did not think that a good idea, and I agree. We have personal sign-offs from all signatories, with the exception of Ken Starr (who was at the Microsoft argument yesterday).

I expect to get his signoff this morning. I have attached the final version hereto.

Now for the final part--the actual transmission of the letter. Can we impose on you to be the signatory on behalf of the group and to send the letter to the committee and concurrent correspondents? The relevant facsimile numbers are as follows.

Leahy nomination staff fax: (202) 224-9516 Hatch nomination staff fax: (202) 228-1698 Gonzales fax: (202) 456-6279 Dinh Fax (202) 514-2424

Please let me know if you'd rather not be the handler for the group, and we will find an alternative. Thank you so much, Seth.

All best,

Viet

STATUS OF SELECTED JUDICIAL NOMINEES/CANDIDATES

Nominees Pending before Judiciary with ABA Rating (no hearing)

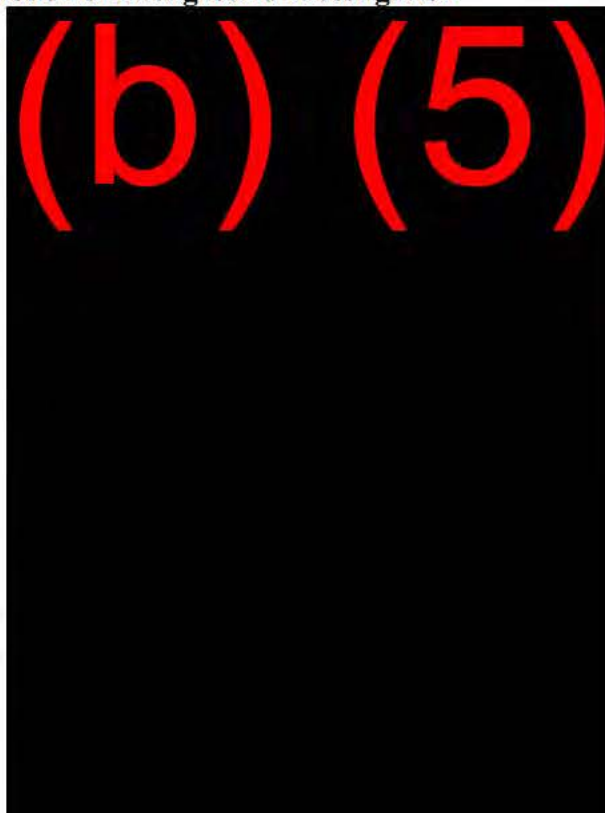
| | |
|------------------------|------|
| Ron Clark - TX, E | WQ/Q |
| Arthur Schwab - PA,W | Q/WQ |
| Terry McVerry - PA,W | WQ |
| Jose Martinez - FL,S | Q |
| Ronald Leighton - WA,W | WQ/Q |
| Stanley Chesler - NJ | WQ |
| Bill Martini - NJ | Q/NQ |

Nominees Pending before Judiciary without ABA Rating

Frederick Rohlfing - HI
James Gardner - PA,E
Timothy Corrigan - FL,M
James Dever - NC,E
Tim Stanceu - CIT

Candidates awaiting completion of Background Investigation

James Hovland - ND
Thomas Phillips - TN,E
Linda Reade - IA,N
James Kinkade - TX,N
Robert Junell- TX,W
Jose Linares - NJ
Freda Wolfson - NJ
Robert Kugler - NJ
Jeffrey White - CA,N
Sandra Feuerstein - NY,E
William Smith - RI
Kent Jordan - DE
Samuel Otero- CA,C
John Adams - OH,N
Ralph Erickson - ND
Robert Klausner - CA,C
(b) (6)
Mark Fuller - AL,M
Richard Holwell- NY,S
Gregory Frost - OH,S
Maurice Hicks - LA,W
William Quarles - MD



Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, May 21, 2002 10:59 AM
To: '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; Willett, Don; Clement, Paul D; Colborn, Paul P; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Estrada OSG memos

(b) (5)

-----Original Message-----

From:
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
[mailto:/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/]
Sent: Monday, May 20, 2002 7:26 PM
To: Willett, Don; Clement, Paul D; Colborn, Paul P; Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov
Subject: Estrada OSG memos

(b) (5)

Willett, Don

From: Willett, Don
Sent: Monday, May 20, 2002 3:06 PM
To: '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; Dinh, Viet
Cc: 'Brett_M._Kavanaugh@who.eop.gov'; Clement, Paul D; Benczkowski, Brian A
Subject: RE: Leahy Request for Miguel's OSG Memos

OLA has informed the SG's Office, I'm told.

-----Original Message-----

From:
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
[mailto:/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/]
Sent: Monday, May 20, 2002 2:25 PM
To: Willett, Don; Dinh, Viet
Cc: Brett_M._Kavanaugh@who.eop.gov
Subject: Leahy Request for Miguel's OSG Memos

Miguel just received a letter from Leahy asking for all

"appeal recommendations, certiorari recommendations, and amicus recommendations you worked on while at the United States Department of Justice. If you do not have these documents in your possession, please advise where we may obtain them."

I think (b) (5)

Benedi, Lizette D

From: Benedi, Lizette D
Sent: Monday, April 15, 2002 3:03 PM
To: Dinh, Viet; Goodling, Monica; Schauder, Andrew; Richmond, Susan; 'garry_malphrus@opd.eop.gov'; 'brett_m._kavanaugh@who.eop.gov'; Ho, James; Clement, Paul D; Martens, Matthew; Coughlin, Robert
Subject: FW: victims' rights amendment
Attachments: CUL02_121.pdf

Attached is the VRA as it was introduced at about 2:30pm today.

-----Original Message-----

From: Matthew Lamberti
[mailto:/DDV=Matthew_Lamberti@judiciary.senate.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/]
Sent: Monday, April 15, 2002 2:51 PM
To: Benedi, Lizette D
Cc: Twist(059) Steve; Stephen Higgins
Subject: victims' rights amendment

here is the version that was introduced:

Ho, James

From: Ho, James
Sent: Friday, April 12, 2002 1:36 PM
To: Dinh, Viet; Benedi, Lizette D; Clement, Paul D; Coughlin, Robert; Brett Kavanaugh (E-mail)
Cc: Larsen, Joan
Subject: RE: Victims' Rights Amendment
Attachments: VRA Article V issues.doc

Here are some thoughts on responding to Mr. Lamberti:

(b) (5)

James C. Ho
Office of Legal Counsel
U.S. Department of Justice
Room 3728
(202) 514-3658
(202) 305-8524 (fax)
(b) (6) (mobile)

Dinh, Viet

From: Dinh, Viet
Sent: Friday, April 12, 2002 11:53 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: 'Diana_L._Schacht@opd.eop.gov'; Benedi, Lizette D
Subject: RE: Victims' Rights Amendment draft

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, April 12, 2002 11:26 AM
To: Dinh, Viet
Cc: Diana_L._Schacht@opd.eop.gov
Subject: Re: Victims' Rights Amendment draft

Viet: Your thoughts on Diana's inquiry? I know you have dealt with Senate more.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/12/2002 11:25 AM -----

Diana L. Schacht
04/12/2002 09:54:17 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc:
bcc:
Subject: Re: Victims' Rights Amendment draft (Document link: Brett M.
Kavanaugh)

(b) (5)

Brett M. Kavanaugh
04/12/2002 09:30:12 AM

Record Type: Record

To: Jay P. Lefkowitz/OPD/EOP@EOP, Diana L. Schacht/OPD/EOP@EOP, Garry
Malphrus/OPD/EOP@EOP

cc:
Subject: Victims' Rights Amendment draft

FYI.

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 04/12/2002 09:29 AM -----

(Embedded
image moved Matthew_Lamberti@judiciary.senate.gov (Matthew
to file: Lamberti)
pic09822.pcx) 04/11/2002 07:20:55 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: "'dshay@viad.com'" <dshay@viad.com> (IPM Return Requested) Subject: Victims' Rights
Amendment draft

Here is the latest (and hopefully final) draft. Changes are bolded. We still have concerns about some of the additional language but in the interest of closure and to reach consensus, we will agree to it at the present time.

In addition, given the short amount of time available, we plan to circulate this draft with the representation that it has been approved by both Ashcroft and Bush. Let me know if this presents any problems.

-Matt

Message Sent To: _____

"Benedi; Lizette D" <Lizette.D.Benedi@usdoj.gov>
Stephen_Higgins@judiciary.senate.gov (Stephen Higgins)
"Ho; James" <James.Ho@usdoj.gov> (IPM Return Requested)
"Sutton; Jason" <Jason.J.Sutton@usdoj.gov> (IPM Return Requested)
"Clement; Paul D" <Paul.D.Clement@usdoj.gov> (IPM Return Requested)
"Coughlin; Robert" <Robert.Coughlin@usdoj.gov> (IPM Return Requested)
"Dinh; Viet" <Viet.Dinh@usdoj.gov> (IPM Return Requested)
"Martens; Matthew" <Matthew.Martens@usdoj.gov> (IPM Return Requested)
"Stwist (a)viad.com" <Stwist@viad.com> (IPM Return Requested)
Brett M. Kavanaugh/WHO/EOP@EOP
David_Hantman@judiciary.senate.gov (David Hantman)

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States
to protect the rights of crime victims.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States, and which shall take effect on the 180th day after ratification of this article:

"ARTICLE

"SECTION 1. The rights of victims of violent crime, being capable of protection without denying the constitutional rights of those accused of victimizing them, are hereby established and shall not be denied by any State or the United States and may be restricted only as provided in this article.

"SECTION 2. A victim of violent crime shall have the right to reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused; the rights not to be excluded from such public proceeding and reasonably to be heard at public release, plea, sentencing, **reprieve**, and pardon proceedings; and the right to decisions **in such public proceeding** that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender. These rights shall not be restricted except when and to the degree dictated by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity.

"SECTION 3. Nothing in this article shall be construed to provide grounds for a new trial or to authorize any claim for damages. Only the victim or the victim's lawful representative may assert the rights established by this article, and no person accused of the crime may obtain any form of relief hereunder.

"SECTION 4. Congress shall have power to enforce by appropriate legislation the provisions of this article. **Nothing in this article shall affect the President's authority to grant reprieves or pardons.**

"SECTION 5. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, January 23, 2002 12:51 PM
To: Suit, Neal; Schauder, Andrew
Cc: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: NEW VACANCY NUMBer

Please check, but I believe that the correct number of vacancies is now 101, not 100. Brett, is this because of the death in Texas?

Joy, Sheila

From: Joy, Sheila
Sent: Tuesday, January 22, 2002 9:40 AM
To: Dinh, Viet; Newstead, Jennifer; Clement, Paul D; Suit, Neal; Benedi, Lizette D; Carroll, James W (OLP); Keefer, Wendy J; Sales, Nathan; Yoo, John C; 'Brett_M._Kavanaugh@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; Laufman, David H; Brinkley, Winnie
Subject: Pre-hearing Prep Session on Weds 1/23

Prep session for the following individuals is scheduled for Wednesday, January 23, at 2:00 pm in OLP Conf Room, Rm 4260.
(hearing is scheduled for 1/24 at 2:00)

Mike Melloy, 8th
Jim Gritzner, IA,S
Cindy Jorgenson, AZ
Robert Blackburn, CO
Dick Leon, DC
Jay Zainey, LA,E

CC: Brett/Brad - please let any other WH Counsels know if one of these candidates was their nominee.

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Wednesday, December 05, 2001 5:25 PM
To: 'brett_m._kavanaugh@who.eop.gov'
Cc: Dinh, Viet; Joy, Sheila; Newstead, Jennifer
Subject: Jan. Nominee Chart
Attachments: jan.nom.chart.wpd

Brett,

Attached is a chart reflecting the status of the nominees from the list you sent over yesterday. As you can see, the vast majority have FBI due dates which, if met, should enable nomination by the deadline.

However, Sheila advises that (b) (5)

(b) (5)

You asked who the Judge should call. The person in charge of the background investigation unit, who Sheila speaks to all the time, is (b)(6), (b)(7)(e) per FBI. If you want to go higher up the chain, Sheila can advise who the next up would be.

Finally -- for those whose FBIs are not yet underway -- (b) (5)

(b) (5)

(b) (5)

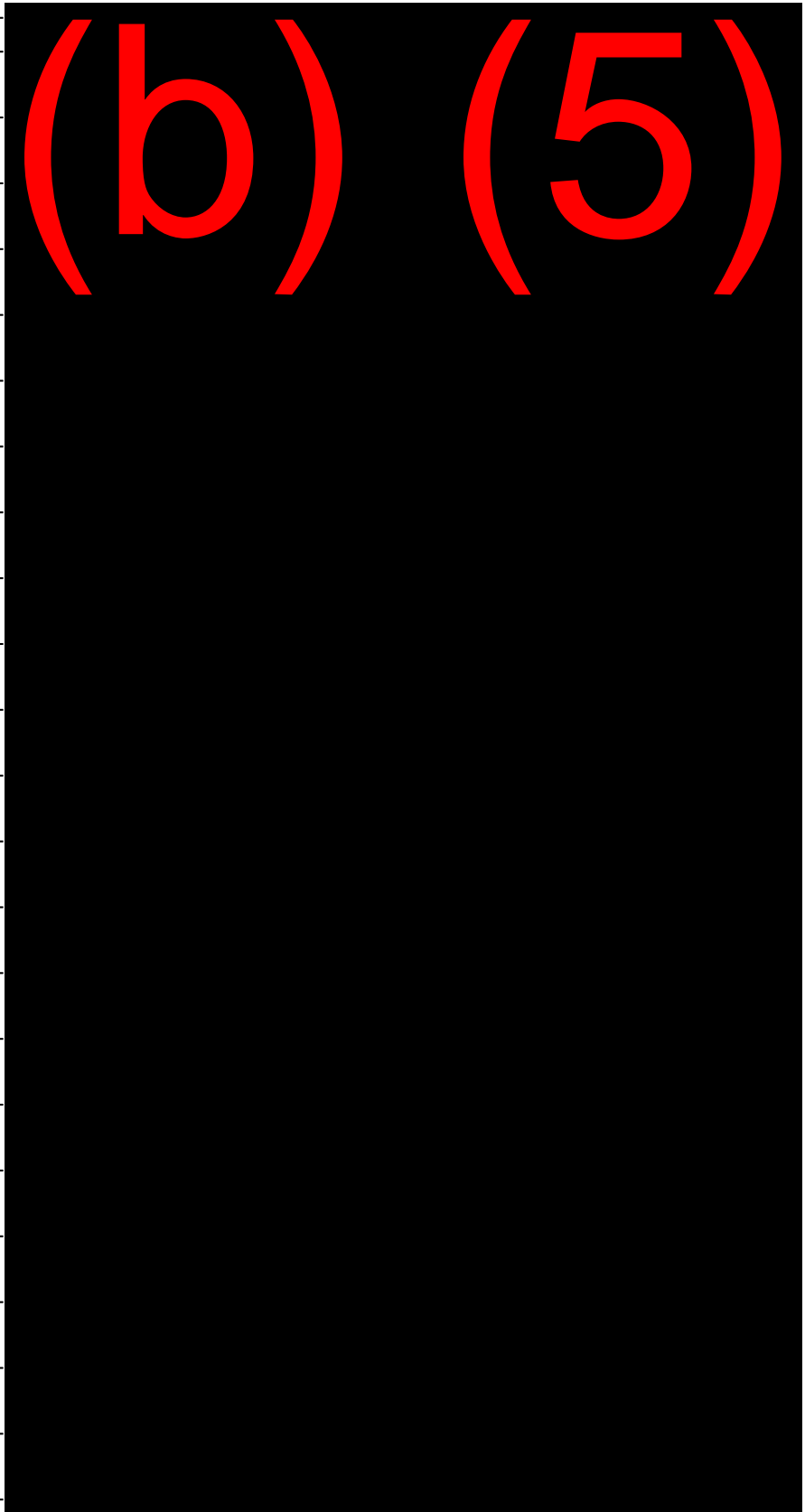
complain about doing them by Jan. (b) (5)

I'm sure the FBI is going to

Speak to you soon

Jen

| Candidate |
|----------------------------|
| Reena Raggi CA2 |
| (b) (6) CA3 |
| (b) (6) CA4 |
| John Rogers CA6 |
| Richard Griffin CA6 |
| Ralph Beistline D. Ark. |
| John Walter D. CA |
| Percy Anderson D. CA |
| Tim Corrigan D. Fl. |
| Ken Marra D. Fl. |
| Jose Martinez D. Fl. |
| (b) (6) D. Hi |
| Lance Africk D. La |
| Tom Ludington D. Mi |
| (b) (6) D. Mi |
| (b) (6) D. Mn. |
| Henry Autrey D. Mo. |
| Richard Dorr D. Mo. |
| Bill Martini D. NJ |
| Stanley Chesler D. NJ |
| (b) (6) D. ND |
| Thomas Rose D. Oh |



| |
|----------------------------|
| (b) (6) |
| D. Or. |
| Cynthia Rufe D. Pa |
| Timothy Savage D. Pa |
| James Gardner D. Pa |
| Legrome Davis D. Pa |
| Michael Baylson D. Pa |
| Chris Conner D. Pa |
| John Jones D. Pa |
| Joy Conti D. Pa |
| Arthur Schwab D. Pa |
| Terry McVerry D. Pa |
| Alexander Lindsay D. Pa |
| David Cercone D. Pa |
| Sam Hardy Mays D. Tn |
| Ronald Clark D. Tx |
| Leonard Davis D. Tx |
| David Godbey D. Tx |
| Andrew Hanen D. Tx |
| D. Tx |
| Henry Hudson D. Va |
| Ron Leighton D. Wa |
| William Griesbach D. Wi |

(b) (5)

Joy, Sheila

From: Joy, Sheila
Sent: Thursday, November 29, 2001 1:17 PM
To: Dinh, Viet; Newstead, Jennifer; Suit, Neal; Benedi, Lizette D; Carroll, Jim E; Keefer, Wendy J; 'Timothy_E._Flanigan@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Bradford_A._Berensen@who.eop.gov'; Scottfinan, Nancy; Clement, Paul D; Yoo, John C; O'Brien, Pat
Subject: Judicial Hearings and Prep session

Two hearings scheduled

Hearing Wednesday, **Dec 5 at 10:00 am** for the following:

Callie Granade, AL,S
James Mahan, NV
Marcia Krieger, CO
Philip Martinez, TX,W
Ashley Royal, GA,M

Pre-hearing **prep session** for the above is scheduled for **Tuesday, Dec 4 at 2:00 pm** in OLP conference room, Main Justice, rm 4260

Tentative **hearing** Monday, **Dec 10 at 10** for the following:

David Bunning, Ky,E

Assuming the hearing is formally noticed, pre-hearing **prep session** will be on **Friday, Dec 7 at 2:00 pm** in OLP, Rm 4260

Dinh, Viet

From: Dinh, Viet
Sent: Monday, October 8, 2001 11:26 AM
To: 'Richard_E._Green (b) (6)'; Newstead, Jennifer; 'Courtney_S._Elwood@who.eop.gov'
Cc: 'Brett_M._Kavanaugh@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Heather_Wingate@who.eop.gov'; 'Irene_Kho (b) (6) Jones, Gregory M
Subject: RE: LRM IKK115 -- Statement of Administration Policy on S1510 Uniting and Strengthening America Act of 2001
Attachments: revised OMB SAP.wpd; OMB SAP Redline.wpd

Richard,

attached please find my suggestions for the SAP. Enclosed is a revision and redline. thanks.

-----Original Message-----

From: Richard_E._Green (b) (6) [mailto:Richard_E._Green (b) (6)]
Sent: Monday, October 08, 2001 10:32 AM
To: Newstead, Jennifer; Courtney_S._Elwood@who.eop.gov
Cc: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov; Bradford_A._Berenson@who.eop.gov; Heather_Wingate@who.eop.gov; Irene_Kho@ (b) (6)
Subject: RE: LRM IKK115 -- Statement of Administration Policy on S1510 Uniting and Strengthening America Act of 2001

Re: Courtney's and Jennifer's e-mails -- Does anyone have a suggestion for specific language to be included in the SAP?

----- Forwarded by Richard E. Green/OMB/EOP on 10/08/2001 10:27 AM -----

Irene Kho
10/08/2001 10:24:49 AM

Record Type: Record

To: Richard E. Green/OMB/EOP@EOP

cc:

Subject: RE: LRM IKK115 - - Statement of Administration Policy on S1510
Uniting and Strengthening America Act of 2001

----- Forwarded by Irene Kho/OMB/EOP on 10/08/2001 10:25 AM -----

(Embedded
image moved "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov>
to file: 10/08/2001 10:02:13 AM
pic17981.pcx)

Record Type: Record

To: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) ,
Courtney S. Elwood/WHO/EOP, Irene Kho/OMB/EOP

cc: Brett M. Kavanaugh/WHO/EOP, Bradford A. Berenson/WHO/EOP, Heather
Wingate/WHO/EOP

Subject: RE: LRM IKK115 - - Statement of Administration Policy on S1510
Uniting and Strengthening America Act of 2001

(b) (5)

-----Original Message-----

From: Courtney_S._Elwood@who.eop.gov
[mailto:Courtney_S._Elwood@who.eop.gov]

Sent: Monday, October 08, 2001 8:32 AM

To: Newstead, Jennifer; Dinh, Viet; Irene_Kho (b) (6)

Cc: Brett_M._Kavanaugh@who.eop.gov; Bradford_A._Berenson@who.eop.gov;
Heather_Wingate@who.eop.gov

Subject: Re: LRM IKK115 - - Statement of Administration Policy on S1510
Uniting and Strengthening America Act of 2001

Uniting and Strengthening America Act of 2001

I reviewed the SAP only quickly. But I have an initial thought: (b) (5)

(b) (5)

From: Irene Kho on 10/05/2001 07:56:52 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message Subject: LRM IKK115 -- Statement of Administration Policy on S1510 Uniting and Strengthening America Act of 2001

Attached is a draft SAP on S. 1510. The bill may be considered on Senate floor as early as Wednesday, October 10th. Please review and provide comments by 9:30 AM, Tuesday, October 9th.

(See attached file: S1510sapsen.wpd)

LRM ID: IKK115

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Friday, October 5, 2001

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Irene Kho

PHONE: (202) FAX: (202)

SUBJECT: Statement of Administration Policy on S1510 Uniting and Strengthening America Act of 2001

DEADLINE: 9:30 AM Tuesday, October 9, 2001 In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is a draft SAP on S. 1510. The bill may be considered on Senate floor as early as Wednesday, October 10th. Please review and provide comments by 9:30 AM, Tuesday, October 9th.

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Edward H. Chase
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Diana L. Schacht
S. A. Noe
NEC LRM
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K. Philippa Malmgren
Robert Marsh
Cesar Conda
Nancy P. Dorn
WHGC LRM
Brett M. Kavanaugh
Courtney S. Elwood
Kristen Silverberg
Lisa Gordon-Hagerty
George M. Andricos
Robert E. Rzemieniewski

(b)(6), (b)(3) - 50 USC § 3507

Brian C. Conklin
Adrienne C. Erbach
Noah Engelberg
Douglas Pitkin
David J. Haun
Eric W. Hunn
Jonathan R. Scharfen

(b)(6), (b)(3) - 50 USC § 3507

Frank G. Klotz
Daniel J. Chenok
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Robert S. Fairweather
Edward Ingle
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David S. Addington
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John B. Bellinger
D. Marcus Sumerlin
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Michael Casella

Heather Wingate

LRM ID: IKK115 SUBJECT: Statement of Administration Policy on S1510 Uniting and Strengthening America Act of 2001

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Irene Kho Phone: Fax:

Office of Management and Budget

Branch-Wide Line (to reach legislative assistant):

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Message Sent To: _____

llr@do.treas.gov
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laffairs@ustr.gov
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CLRM@doc.gov
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OSTP LRM
usdaobpaleg@obpa.usda.gov
usdaocrleg@obpa.usda.gov
ola@opm.gov
NASA_LRM@hq.nasa.gov
epalrm@epamail.epa.gov

Message Copied To: _____

Edward H. Chase/OMB/EOP@EOP
Andrew D. Hire/OMB/EOP@EOP
Shannon Richter/OMB/EOP@EOP
Suzanne L. White/OMB/EOP@EOP

Glenn R. Schlarman/OMB/EOP@EOP
J. Michael Daniel/OMB/EOP@EOP
Robert H. Goldberg/OMB/EOP@EOP
Kenneth L. Schwartz/OMB/EOP@EOP
Mark J. Schwartz/OMB/EOP@EOP
Debra J. Bond/OMB/EOP@EOP
Lloyd A. Blanchard/OMB/EOP@EOP
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John R. Strachan/OMB/EOP@EOP
James M. Kulikowski/OMB/EOP@EOP
Khushali Parikh Shah/OMB/EOP@EOP
Karen F. Lee/OMB/EOP@EOP
Brooke Dickson/OMB/EOP@EOP
Kamela G. White/OMB/EOP@EOP
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Augustine T. Smythe/OMB/EOP@EOP
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Cameron M. Leuthy/OMB/EOP@EOP
Wendell H. Waites/OMB/EOP@EOP
Randolph M. Lyon/OMB/EOP@EOP
Stephen Suh/OMB/EOP@EOP
Steven M. Mertens/OMB/EOP@EOP
Timothy A. Rosado/OMB/EOP@EOP
Lori A. Krauss/OMB/EOP@EOP
Janet E. Irwin/OMB/EOP@EOP
Gary Ceccucci/OMB/EOP@EOP
James Boden/OMB/EOP@EOP
Michael F. Crowley/OMB/EOP@EOP
Diana L. Schacht/OPD/EOP@EOP
S. A. Noe/OMB/EOP@EOP
NEC LRM
John M. Ackerly/OPD/EOP@EOP
K. Philippa Malmgren/OPD/EOP@EOP
Robert Marsh/WHO/EOP@EOP
Cesar Conda/OVP/EOP@EOP

Nancy P. Dorn/WHO/EOP@EOP
WHGC LRM

Brett M. Kavanaugh/WHO/EOP@EOP

Courtney S. Elwood/WHO/EOP@EOP

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Lisa Gordon-Hagerty/NSC/EOP@EOP

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Robert E. Rzemieniewski/NSC/EOP@EOP

(b)(6), (b)(3) - 50 USC § 3507

Brian C. Conklin/WHO/EOP@EOP

Adrienne C. Erbach/OMB/EOP@EOP

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Jonathan R. Scharfen/NSC/EOP@EOP

(b)(6), (b)(3) - 50 USC § 3507

Frank G. Klotz/NSC/EOP@EOP

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Edward Ingle/WHO/EOP@EOP

Albert Hawkins/WHO/EOP@EOP

Sean C. O'Keefe/OMB/EOP@EOP

David S. Addington/OVP/EOP@EOP

Joshua B. Bolten/WHO/EOP@EOP

John B. Bellinger/NSC/EOP@EOP

D. Marcus Sumerlin/OPD/EOP@EOP

John M. Bridgeland/OPD/EOP@EOP

Ethan A. Hastert/OVP/EOP@EOP

Sylvie Volel/OMB/EOP@EOP

Patrick Aylward/OMB/EOP@EOP

Keith J. Fontenot/OMB/EOP@EOP

Thomas Reilly/OMB/EOP@EOP

Barry T. Clendenin/OMB/EOP@EOP

Diana Espinosa/OMB/EOP@EOP

Ronald L. Silberman/OMB/EOP@EOP

Michael Casella/OMB/EOP@EOP

Richard E. Green/OMB/EOP@EOP

James J. Jukes/OMB/EOP@EOP

Steven J. Isakowitz/OMB/EOP@EOP

Diana E. Furchtgott-Roth/CEA/EOP@EOP

Douglas J. Holtz-Eakin/CEA/EOP@EOP

Mathew C. Blum/OMB/EOP@EOP
Susan E. Alesi/OMB/EOP@EOP
Wendy A. Taylor/OMB/EOP@EOP
John F. Morrall III/OMB/EOP@EOP
Ingrid M. Schroeder/OMB/EOP@EOP
Constance J. Bowers/OMB/EOP@EOP
John W. Howard/WHO/EOP@EOP
Daniel J. Keniry/WHO/EOP@EOP
Stephen S. Ruhlen/OVP/EOP@EOP
Anthony Wier/OMB/EOP@EOP
John R. Strachan/OMB/EOP@EOP
S. A. Noe/OMB/EOP@EOP
Courtney B. Timberlake/OMB/EOP@EOP
Michael Casella/OMB/EOP@EOP
Heather Wingate/WHO/EOP@EOP

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, October 4, 2001 5:41 PM
To: Dinh, Viet; 'alex.azar@hhs.gov'
Cc: Elwood, John; Bryant, Dan; Daley, Cybele
K; 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'; 'Candida_P._Wolff@ovp.eop.gov'; Newstead, Jennifer
Subject: Tauzin BioTerrorism
Attachments: Bioterrorism.wpd

Please see attached analysis from OLC.

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, October 4, 2001 11:31 AM
To: Dinh, Viet; 'alex.azar@hhs.gov'
Cc: Elwood, John; Bryant, Dan; Daley, Cybele K; 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'; 'Candida_P._Wolff@ovp.eop.gov'; Newstead, Jennifer; 'Heather_Wingate@who.eop.gov'; 'Nancy_P._Dorn@who.eop.gov'
Subject: RE: Tazsin BioTerrorism

All,

Please note that HHS (b) (5) DoJ is also reviewing for policy and constitutionality. (b) (5)

(b) (5) Comments to follow--for now, I recommend no action pending comments. Crim and TVCS are also talking with Senate Foreign Relations Committee about there concerns relating to the CWC.

Best,

Viet

-----Original Message-----

From: Dinh, Viet
Sent: Thursday, October 04, 2001 10:49 AM
To: 'alex.azar@hhs.gov'
Cc: Elwood, John; Bryant, Dan; Daley, Cybele K; 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'; 'Candida_P._Wolff@ovp.eop.gov'; Newstead, Jennifer
Subject: FW: Tazsin BioTerrorism

Alex,

Can you confirm that your guys have vetted this and support it? (b) (5)

(b) (5)

Hope you're feeling better and all best,

Viet

-----Original Message-----

From: Daley, Cybele K
Sent: Thursday, October 04, 2001 10:41 AM
To: Dinh, Viet; Bryant, Dan
Cc: O'Brien, Pat; Thorsen, Carl; Elwood, John
Subject: RE: Tauzin BioTerrorism

(b) (5)

-----Original Message-----

From: Dinh, Viet
Sent: Thursday, October 04, 2001 10:37 AM
To: Daley, Cybele K; Bryant, Dan
Cc: O'Brien, Pat; Thorsen, Carl; Elwood, John
Subject: RE: Tauzin BioTerrorism

(b) (5)

-----Original Message-----

From: Daley, Cybele K
Sent: Thursday, October 04, 2001 10:10 AM
To: Dinh, Viet; Bryant, Dan
Cc: O'Brien, Pat; Thorsen, Carl; Elwood, John
Subject: Tauzin BioTerrorism
Importance: High

Viet and Dan -- House Energy and Commerce advise that they have vetted with HHS and HHS is ok with their bill. (b) (5)

Please advise. I am getting pressure from their staff for over a week and not been able to be very responsive.

Thanks for your help on this.....

-----Original Message-----

From: Wheat, Marc [mailto:Marc.Wheat@mail.house.gov]
Sent: Thursday, October 04, 2001 9:01 AM
To: Elwood, John; Daley, Cybele K
Subject: We reported this out yesterday - all of our terrorism pieces on now in one package
Importance: High

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO COMMITTEE PRINT OF SEPTEMBER 28, 2001**

OFFERED BY _____

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Bioterrorism Preven-
3 tion Act of 2001”.

4 SEC. 2. EXPANSION OF BIOLOGICAL WEAPONS STATUTE.

5 (a) SELECT AGENTS.

6 (1) IN GENERAL. Section 175 of title 18,
7 United States Code, is amended

8 (A) by redesignating subsection (b) as sub-
9 section (c); and

10 (B) by inserting after subsection (a) the
11 following subsection:

12 “(b) SELECT AGENTS.

13 “(1) UNSAFE HANDLING.

14 “(A) IN GENERAL. Whoever possesses,
15 uses, or exercises control over a select agent in
16 a manner constituting reckless disregard for the
17 public health and safety, knowing the select
18 agent to be a biological agent or toxin, shall be



1 fined under this title, imprisoned for not more
2 than one year, or both.

3 “(B) AGGRAVATED OFFENSE. Whoever,
4 in the course of a violation of subparagraph
5 (A), causes bodily injury to another shall be
6 fined under this title, or imprisoned for not
7 more than 10 years, or both; except that if
8 death results from such violation, the person
9 committing the violation shall be fined under
10 this title, or imprisoned for any term of years
11 or for life, or both.

12 “(2) UNREGISTERED FOR POSSESSION. Who-
13 ever knowingly possesses a biological agent or toxin
14 where such agent or toxin is a select agent for which
15 such person has not obtained a registration under
16 section 511(f) of the Antiterrorism and Effective
17 Death Penalty Act of 1996 shall be fined under this
18 title, or imprisoned for not more than 5 years, or
19 both.

20 “(3) TRANSFER TO UNREGISTERED PERSON.
21 Whoever knowingly transfers a select agent to a per-
22 son who has not obtained a registration under sec-
23 tion 511(e) of the Antiterrorism and Effective Death
24 Penalty Act of 1996 shall be fined under this title,
25 or imprisoned for not more than 5 years, or both.



1 “(4) RESTRICTED PERSONS. Whoever is a re-
2 stricted person and knowingly ships or transports a
3 select agent in interstate or foreign commerce, or
4 knowingly receives a select agent so shipped or
5 transported, or knowingly possesses a select agent in
6 or affecting interstate or foreign commerce, shall be
7 fined under this title, or imprisoned for not more
8 than 5 years, or both. The preceding sentence does
9 not apply with respect to any duly authorized gov-
10 ernmental activity under title V of the National Se-
11 curity Act of 1947.”.

12 (2) DEFINITIONS. Section 175 of title 18,
13 United States Code, as amended by paragraph (1)
14 of this subsection, is amended by amending sub-
15 section (c) to read as follows:

16 “(c) DEFINITIONS. As used in this section:

17 “(1) The terms ‘biological agent’ and ‘toxin’
18 have the meanings given such terms in section 178,
19 except that, for purposes of subsection (b), such
20 terms do not encompass any biological agent or
21 toxin that is in its naturally occurring environment,
22 if the biological agent or toxin has not been cul-
23 tivated, cultured, collected, or otherwise extracted
24 from its natural source.



1 “(2) The term ‘bodily injury’ has the meaning
2 given such term in section 1365.

3 “(3) The term ‘for use as a weapon’ includes
4 the development, production, transfer, acquisition,
5 retention, or possession of any biological agent,
6 toxin, or delivery system, other than for prophylactic,
7 protective, or other peaceful purposes.

8 “(4)(A) The term ‘restricted person’ means a
9 person

10 “(i) who is described in section 922(g), as
11 such section was in effect on the day before the
12 effective date of this paragraph; or

13 “(ii) who is an alien, other than an alien
14 lawfully admitted for permanent residence or an
15 alien who under subparagraph (B) is considered
16 not to be a restricted person.

17 “(B) For purposes of subparagraph (A)(ii):

18 “(i) An alien is considered not to be a re-
19 stricted person if the alien is within a category
20 designated under clause (ii) of this subpara-
21 graph.

22 “(ii) The Secretary of Health and Human
23 Services, in consultation with the Attorney Gen-
24 eral, may designate categories of individuals
25 who have



1 “(I) nonimmigrant visas as defined in
2 section 101(a)(26) of the Immigration and
3 Nationality Act; and

4 “(II) expertise valuable to the United
5 States regarding select agents.

6 “(5) The term ‘select agent’ means a biological
7 agent or toxin, as defined in paragraph (1), that

8 “(A) is on the list that is in effect pursu-
9 ant to section 511(d)(1) of the Antiterrorism
10 and Effective Death Penalty Act of 1996 (Pub-
11 lic Law 104 132); and

12 “(B) has not been exempted from the ap-
13 plicability of regulations under section 511(e) of
14 such Act.”.

15 (3) EFFECTIVE DATE REGARDING RESTRICTED
16 PERSONS; REGULATIONS.

17 (A) EFFECTIVE DATE. Section 175(b)(4)
18 of title 18, United States Code, as added by
19 subsection (a)(1)(B) of this section, takes effect
20 upon the expiration of the 90-day period begin-
21 ning on the date of the enactment of this Act.

22 (B) REGULATIONS. Not later than 30
23 days after the date of the enactment of this
24 Act, the Secretary of Health and Human Serv-
25 ices shall determine whether the Secretary will



1 designate any categories or individuals for pur-
2 poses of section 175(c)(4)(B) of title 18, United
3 States Code, as added by subsection (a)(1)(B)
4 of this section. If the Secretary determines that
5 one or more such categories will be designated,
6 the Secretary shall promulgate an interim final
7 rule for purposes of such section not later than
8 60 days after such date of enactment.

9 (4) CONFORMING AMENDMENT. Section
10 175(a) of title 18, United States Code, is amended
11 in the second sentence by striking “under this sec-
12 tion” and inserting “under this subsection”.

13 (b) AMENDMENTS TO ANTITERRORISM AND EFFEC-
14 TIVE DEATH PENALTY ACT OF 1996.

15 (1) POSSESSION AND USE.

16 (A) IN GENERAL. Section 511 of the
17 Antiterrorism and Effective Death Penalty Act
18 of 1996 (Public Law 104 132) is amended

19 (i) by striking subsection (f);
20 (ii) by redesignating subsection (g) as
21 subsection (i); and
22 (iii) by inserting after subsection (e)
23 the following subsection:

24 “(f) POSSESSION AND USE OF LISTED BIOLOGICAL
25 AGENTS AND TOXINS.



1 “(1) IN GENERAL. The Secretary shall by reg-
2 ulation provide for the establishment and enforce-
3 ment of standards and procedures governing the
4 possession and use of biological agents and toxins
5 listed pursuant to subsection (d)(1) in order to pro-
6 tect the public health and safety, including safe-
7 guards to prevent access to such agents and toxins
8 for use in domestic or international terrorism or for
9 any other criminal purpose.

10 “(2) REGISTRATION. Regulations under para-
11 graph (1) shall provide for registration requirements
12 regarding the possession and use of biological agents
13 and toxins listed pursuant to subsection (d)(1).”.

14 (B) REGULATIONS.

15 (i) DATE CERTAIN FOR PROMULGA-
16 TION; EFFECTIVE DATE REGARDING CRIMI-
17 NAL AND CIVIL PENALTIES. Not later
18 than 30 days after the date of the enact-
19 ment of this Act, the Secretary of Health
20 and Human Services shall promulgate an
21 interim final rule for carrying out section
22 511(f) of the Antiterrorism and Effective
23 Death Penalty Act of 1996, as added by
24 subparagraph (A) of this paragraph. Such
25 interim final rule takes effect 60 days after



the date on which such rule is promulgated, including for purposes of

(I) section 175(b)(2) of title 18, United States Code (relating to criminal penalties), as added by subsection (a)(1)(B) of this section; and

(II) section 511(h) of the Antiterrorism and Effective Death Penalty Act of 1996 (relating to civil penalties), as added by paragraph (3) of this subsection.

(ii) SUBMISSION OF REGISTRATION APPLICATIONS. In the case of a person who, as of the date of the enactment of this Act, is in possession of a biological agent or toxin that is listed pursuant to section 511(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996, such person shall, in accordance with the interim final rule promulgated under clause (i), submit an application for a registration to possess such agent or toxin not later than 30 days after the date on which such rule is promulgated.

(2) DISCLOSURES OF INFORMATION.



1 (A) IN GENERAL. Section 511 of the
2 Antiterrorism and Effective Death Penalty Act
3 of 1996, as amended by paragraph (1) of this
4 subsection, is amended by inserting after sub-
5 section (f) the following subsection:

6 “(g) DISCLOSURE OF INFORMATION.

7 “(1) IN GENERAL. Any information in the
8 possession of any Federal agency that identifies a
9 person, or the geographic location of a person, who
10 is registered pursuant to regulations under this sec-
11 tion (including regulations promulgated before the
12 effective date of this subsection), and any site-spe-
13 cific information relating to the type, quantity, or
14 identity of a biological agent or toxin listed pursuant
15 to subsection (d)(1) or the site-specific security
16 mechanisms in place to protect such agents and tox-
17 ins, shall not be disclosed under section 552(a) of
18 title 5, United States Code.

19 “(2) DISCLOSURES FOR PUBLIC HEALTH AND
20 SAFETY; CONGRESS. Nothing in this section may be
21 construed as preventing the head of any Federal
22 agency

23 “(A) from making disclosures of informa-
24 tion described in paragraph (1) for purposes of
25 protecting the public health and safety; or



1 “(B) from making disclosures of such in-
2 formation to any committee or subcommittee of
3 the Congress with appropriate jurisdiction,
4 upon request.”.

5 (B) EFFECTIVE DATE. The effective date
6 for the amendment made by subparagraph (A)
7 shall be the same as the effective date for the
8 final rule issued pursuant to section 511(d)(1)
9 of the Antiterrorism and Effective Death Pen-
10 alty Act of 1996 (Public Law 104-132).

11 (3) CIVIL PENALTIES. Section 511 of the
12 Antiterrorism and Effective Death Penalty Act of
13 1996, as amended by paragraphs (1) and (2) of this
14 subsection, is amended by inserting after subsection
15 (g) the following subsection:

16 “(h) CIVIL PENALTY. Any person who violates a
17 regulation under subsection (e) or (f) shall be subject to
18 the United States for a civil penalty in an amount not
19 exceeding \$250,000 in the case of an individual and
20 \$500,000 in the case of any other person.”.

21 (4) CLARIFICATION OF SCOPE OF SELECT
22 AGENT RULE; TERRORISM; RESPONSIBILITIES OF
23 SECRETARY OF HEALTH AND HUMAN SERVICES.



1 (A) IN GENERAL. Section 511 of the
2 Antiterrorism and Effective Death Penalty Act
3 of 1996 (Public Law 104 132) is amended

4 (i) in each of subsections (d) and
5 (e)

6 (I) by inserting “and toxins”
7 after “agents” each place such term
8 appears; and

9 (II) by inserting “or toxin” after
10 “agent” each place such term ap-
11 pears; and

12 (ii) in subsection (i) (as redesignated
13 by paragraph (1) of this subsection), in
14 paragraph (1), by striking “the term ‘bio-
15 logical agent’ has” and inserting “the
16 terms ‘biological agent’ and ‘toxin’ have”.

17 (B) EFFECTIVE DATE. The effective date
18 for the amendments made by subparagraph (A)
19 shall be as if the amendments had been in-
20 cluded in the enactment of section 511 of the
21 Antiterrorism and Effective Death Penalty Act
22 of 1996 (Public Law 104 132).

23 (5) CONFORMING AMENDMENTS. Section 511
24 of the Antiterrorism and Effective Death Penalty
25 Act of 1996 (Public Law 104 132) is amended



1 (A) in subsection (d)(1)(A), by striking
2 “shall, through regulations under subsection
3 (f),” and inserting “shall by regulation”;

4 (B) in subsection (e), in the matter pre-
5 ceding paragraph (1), by striking “shall,
6 through regulations under subsection (f),” and
7 inserting “shall by regulation”;

8 (C) in subsection (d)
9 (i) in the heading for the subsection,
10 by striking “AGENTS” and inserting
11 “AGENTS AND TOXINS”; and

12 (ii) in paragraph (1), in the heading
13 for the paragraph, by striking “AGENTS”
14 and inserting “AGENTS AND TOXINS”; and
15 (D) in subsection (e), in the heading for
16 the subsection, by striking “AGENTS” and in-
17 serting “AGENTS AND TOXINS”.

18 (c) REPORT TO CONGRESS. Not later than one year
19 after the date of the enactment of this Act, the Secretary
20 of Health and Human Services, after consultation with
21 other appropriate Federal agencies, shall submit to the
22 Congress a report that

23 (1) describes the extent to which there has been
24 compliance by governmental and private entities
25 with applicable regulations under section 511 of the



1 Antiterrorism and Effective Death Penalty Act of
2 1996 (Public Law 104 132), including the extent of
3 compliance before the date of the enactment of this
4 Act, and including the extent of compliance with
5 regulations promulgated after such date of enact-
6 ment; and

7 (2) describes the future plans of the Secretary
8 for determining compliance with regulations under
9 such section 511 and for taking appropriate enforce-
10 ment actions; and

11 (3) provides any recommendations of the Sec-
12 retary for administrative or legislative initiatives re-
13 garding such section 511.



Joy, Sheila

From: Joy, Sheila
Sent: Monday, October 1, 2001 6:46 PM
To: Dinh, Viet; Newstead, Jennifer; Benedi, Lizette D; Suit, Neal;
'Brett_M._Kavanaugh@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov';
Clement, Paul D; Yoo, John C; O'Brien, Patrick; Coniglio, Peter J
Subject: Prep session for Judicial Hearing scheduled for October 4

There will be the usual prep session on Wednesday, 10/3, at 2:00 pm in Main Justice, Room 4260 (OLP conf room) for the judicial candidates listed below. Hope you can attend. Brett/Brad-please let other counsels know in case they have an interest.

The judges for the judicial hearing scheduled for October 4 at 2:00 pm with Senator Kohl as Chair are the following:
Edith "Joy" Clement (5th); Karen Caldwell (Ky,E) Laurie Camp (Neb) Claire Eagan (OK,N) James Payne (OK,N)

FYI - Jay Bybee, for OLC, is also scheduled but will have his own moot sessions.

Dinh, Viet

From: Dinh, Viet
Sent: Monday, October 1, 2001 4:29 PM
To: (b) (6); Newstead, Jennifer; Lindemann, Michael; Levey, Stuart; Baxter, Laura; Cooper, Owen B
Cc: 'John_B_Bellinger' (b) (6); 'TaftWH@ms.state.gov'; (b) (6) (b) (6) 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'
Subject: RE: Terrorist Org definition, Admin Sec. 201

(b) (5)

-----Original Message-----

From: (b) (6)
Sent: Monday, October 01, 2001 2:35 PM
To: Newstead, Jennifer; Dinh, Viet; Lindemann, Michael; Levey, Stuart; Baxter, Laura; Cooper, Owen B
Cc: John_B_Bellinger (b) (6); TaftWH@ms.state.gov; (b) (6) (b) (6) (b) (6) Brett_M._Kavanaugh@who.eop.gov; Courtney_S._Elwood@who.eop.gov
Subject: RE: Terrorist Org definition, Admin Sec. 201

(b) (5)

-----Original Message-----

From: Newstead, Jennifer [mailto:Jennifer.Newstead@usdoj.gov]
Sent: Monday, October 01, 2001 2:13 PM
To: Dinh, Viet; Lindemann, Michael; Levey, Stuart; Baxter, Laura; (b) (6) (b) (6); Cooper, Owen B
Cc: 'John_B_Bellinger' (b) (6); Taft IV, William H. (Internet); (b) (6); (b) (6); (b) (6) 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'

Subject: RE: Terrorist Org definition, Admin Sec. 201

The 2:30 meeting has not been officially set yet, I am informed. Please get us your comments as quickly as you can; I'll let you know the definite schedule when I have it. thanks

-----Original Message-----

From: (b) (6)
Sent: Monday, October 01, 2001 1:57 PM
To: Dinh, Viet; Lindemann, Michael; Levey, Stuart; Baxter, Laura; Cooper, Owen B
Cc: Newstead, Jennifer; John B. Bellinger (b) (6)
TaftWH@ms.state.gov; (b) (6) (b) (6)
(b) (6) Brett_M._Kavanaugh@who.eop.gov;
Courtney_S._Elwood@who.eop.gov
Subject: RE: Terrorist Org definition, Admin Sec. 201
Importance: High

FYI I am just seeing this at 1:55 but will try to develop DOS comments promptly. We likely we need past 2:30. Thanks.

-----Original Message-----

From: Dinh, Viet [mailto:Viet.Dinh@usdoj.gov]
Sent: Monday, October 01, 2001 1:43 PM
To: Lindemann, Michael; Levey, Stuart; Baxter, Laura; Cooper, Owen B
Cc: Newstead, Jennifer; John B. Bellinger (b) (6) Taft IV,
William H. (Internet); (b) (6) (b) (6)
(Internet); (b) (6) (b) (6)
(Internet); 'Brett_M._Kavanaugh@who.eop.gov';
'Courtney_S._Elwood@who.eop.gov'
Subject: FW: Terrorist Org definition, Admin Sec. 201

Mike, (b) (6) and company,

Can you all review and comment directly to Jennifer Newstead or Courtney, who will be meeting with Leahy et al. at 2:30. Jen's cell is 5-5077, phone 6-0038

-----Original Message-----

From: Newstead, Jennifer
Sent: Monday, October 01, 2001 12:57 PM
To: Dinh, Viet
Subject: FW: Terrorist Org definition, Admin Sec. 201

Viet -- ?? We should probably give them a reply at 2:30.

-----Original Message-----

From: Beryl Howell [mailto:Beryl_Howell@judiciary.senate.gov]
Sent: Monday, October 01, 2001 12:50 PM

To: Newstead, Jennifer; Heather_Wingate@who.eop.gov;
Courtney_S._Elwood@who.eop.gov
Cc: Bruce Cohen; Julie Katzman; Tim Lynch; David James; Melody Barnes;
Esther Olavarria; Makan Delrahim
Subject: Terrorist Org definition, Admin Sec. 201

Attached is a revised version of your 201. The immigration experts tell me that the DOJ proposal on the definition of terrorist organization appears overly vague and broad. The grounds on which the Secretary of State would designate groups outside of the section 219 process is undefined, and no limits to the definition of terrorist organization are supplied. The proposal also appears to grant the Attorney General the power to order the Secretary of State to list a group as a terrorist organization without offering any criteria for such a designation.

The proposal attached is supported by House Republicans and Democrats and is included in the Sensenbrenner-Conyers legislation to be introduced today.

It offers the Justice Department the flexibility to treat non-listed organizations as terrorist organizations but provides some outer boundary to that flexibility to prevent problems of overbreadth and vagueness. It also treats differently for purposes of the terrorist activity definition the solicitation of funds, individuals, and acts affording material support depending on whether the aid is given to a group that has been certified under section 219. We agree that all such support should be treated as terrorist activity where the acts are made in relation to a certified organization, but believe that when applied to noncertified groups, only conduct in furtherance of terrorist activity should be included. This avoids notice problems. This language has also been agreed to by House Republicans and Democrats.

Finally, we revise the retroactivity clause along similar lines, also adopting language agreed to in the House. Our retroactivity clause makes the new definition in the bill fully retroactive as applied to people associated with section 219 organizations that were so listed at the time, but not to those associated with groups that were not at that time section 219 organizations, unless the conduct was in furtherance of terrorist activity. Let us know if this revision is acceptable so we can get closure on this. I have also pasted in the amendment below. Beryl
Alternative Language for Sec. 201:

Amend Engage in Terrorist Activity Defined as follows:

(IV) to solicit funds or other things of value for

(a) a terrorist activity;

(b) an organization designated as a foreign terrorist organization under section 219; or

(c) a terrorist organization described in clause (v) (II), but only if the solicitor knows, or reasonably

should know, that the solicitation would further a terrorist activity;

(V) to solicit any individual

(a) to engage in conduct otherwise described in this clause;

(b) for membership in a terrorist government;

(c) for membership in an organization designated as a foreign terrorist organization under section 219; or

(d) for membership in a terrorist organization described in clause (v) (II), but only if the solicitor knows, or reasonably should know, that the solicitation would further a terrorist activity; or

(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, and radiological weapons), explosives, or training

(a) for the commission of a terrorist activity;

(b) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

(c) to an organization designated as a foreign terrorist organization under section 219; or

(d) to a terrorist organization described in clause (v) (II), but only if the actor knows, or reasonably should know, that the act would further a terrorist activity.

Replace Terrorist Organization Defined section with the following:

(V) Terrorist Organization Defined

As used in this subparagraph, the term terrorist organization means (I) an organization designated as a foreign terrorist organization under section 219; or

(II) with regard to a group that is not an organization described in subclause (I), a group of 2 or more individuals, whether organized or not, which engages in, or which has a sizable subgroup which engages in, the activities described in subclause (I), (II), or (III) of clause (iii).

Add the following section in place of Section 204:

Retroactive Application of Amendments.--

(1) In General. The amendments made by this section shall take effect on the

date of the enactment of this Act and shall apply to

(A) actions taken by an alien before such date, as well as actions taken on or after such date; and

(B) all aliens, without regard to the date of entry or attempted entry into the United States

(i) in removal proceedings on or after such date (except for proceedings in which there has been a final administrative decision before such date); or

(ii) seeking admission to the United States on or after such date.

(2) Special Rule for Aliens in Exclusion or Deportation Proceedings.

Notwithstanding any other provision of law, the amendments made by this section shall apply to all aliens in exclusion or deportation proceedings on or after the date of the enactment of this Act (except for proceedings in which there has been a final administrative decision before such date) as if such proceedings were removal proceedings.

(3) Special Rule for Section 219 Organizations.

(A) In General. Notwithstanding paragraphs (1) and (2), no alien shall be considered inadmissible under section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182 (a)(3)), or deportable under section 237(a)(4)(B) of such Act (8 U.S.C. 1227(a)(4)(B)), by reason of the amendments made by subsection (a), on the ground that the alien engaged in a terrorist activity described in subclause (IV)(b), (V)(c), or (VI)(c) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to a group at any time when the group was not a foreign terrorist organization designated by the Secretary of State under section 219 of such Act (8 U.S.C. 1189).

(B) Construction. Subparagraph (A) shall not be construed to prevent an alien from being considered inadmissible or deportable for having engaged in a terrorist activity

(i) described in subclause (IV)(b), (V)(c), or (VI)(c) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to a foreign terrorist organization at any time when such organization was designated by the Secretary of State under section 219 of such Act; or

(ii) described in subclause (IV)(c), (V)(d), or (VI)(d) of section 212(a)(3)(B)(iii) of such Act (as so amended) with respect to any group described in any of such subclauses.

Additional Technical Changes required:

Strike references to paragraph (v)(ii) in subclauses (i) and (ii) on page 1 of DOJ section 201 proposal.

Dinh, Viet

From: Dinh, Viet
Sent: Saturday, September 29, 2001 6:32 PM
To: 'John_B._Bellinger (b) (6)'; 'TaftWH@ms.state.gov'; Dinh, Viet
Cc: Fuller, Christopher; Ginsburg, Douglas; Newstead, Jennifer; Ziglar, Jim; Baxter, Laura; Lindemann, Michael; Cooper, Owen B; Busch, Philip B; (b) (6); (b) (6); 'john_b._wiegmann (b) (6)'; 'John_B._Bellinger (b) (6)'; 'Thessin (b) (6)'; (b) (6); (b) (6); (b) (6); (b) (6); Lindemann, Michael; (b)(6) Viet Dinh email; Levey, Stuart; Newstead, Jennifer; 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'
Subject: We have lift-off: new Section 201(a)
Attachments: new 201(a).wpd

Enclosed please find the revised section 201(a), (b) (5)

(b) (5)

Please substitute this for section 201(a). Thank you all.

Dinh, Viet

From: Dinh, Viet
Sent: Saturday, September 29, 2001 2:26 PM
To: 'TaftWH@ms.state.gov'
Cc: 'john_b._wiegma (b) (6)'; 'John_B._Belling (b) (6)';
(b) (6); (b) (6);
(b) (6) Lindemann,
Michael (b)(6) Viet Dinh email Levey, Stuart; Newstead, Jennifer;
'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'
Subject: FTO
Attachments: FTO Saturday.wpd

Dear Will,

Great to speak with you last night. Given tha (b) (6) sent over language last night, I worked off that proposal rather than worked up new language as we discussed last night. Enclosed herewith please find a document that revises the language to accomodate our mutual interests an (b) (5). I have also included a detailed explanation of our suggestions. In case anyone cannot access the file, I have duplicated it in this e-mail below; apologies for the unwieldy format.

Thanks and all best,

Viet

STATE PROPOSAL:

(b) (5)

DOJ VERSION:

(b) (5)

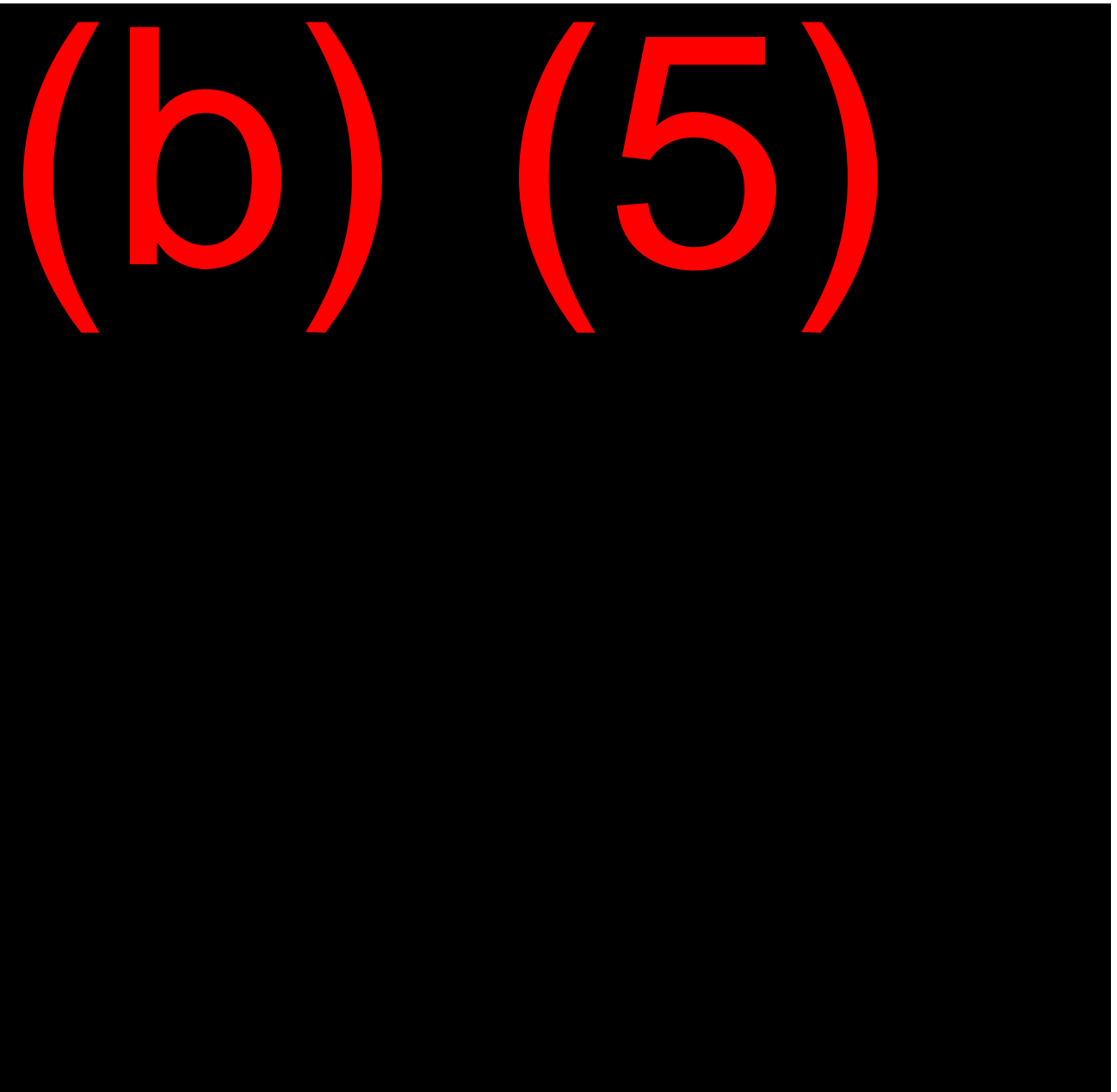
REDLINE:

(b) (5)

EXPLANATION:

(b) (5)

(b) (5)



STATE PROPOSAL:

(b) (5)

DOJ VERSION:

(b) (5)

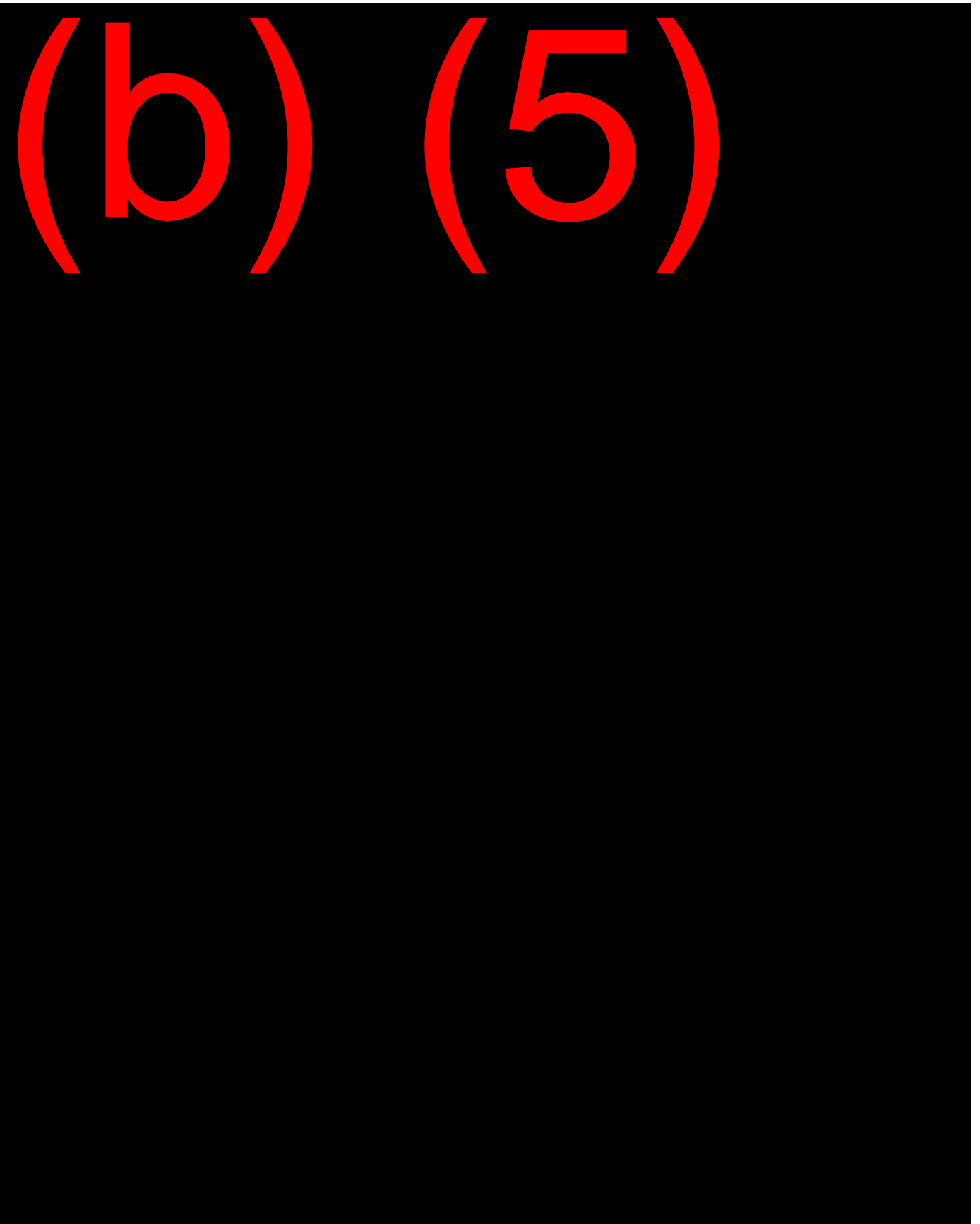
REDLINE:

(b) (5)

EXPLANATION:

(b) (5)

(b) (5)



Newstead, Jennifer

From: Newstead, Jennifer
Sent: Friday, September 21, 2001 8:39 AM
To: Kris, David; Roth, John; Cassella, Stefan; Geise, Jack; Busch, Philip B; (b)(6) per FBI
(b)(6) per FBI Stansell-Gamm, Martha; Levey, Stuart; Baxter, Laura; Jones, Kevin R;
Collins, Daniel P; Thorsen, Carl; Killion, Maureen; DeFalaize, Lou; Naimon, David;
Moses, Sandra; Pena, Jaime; Wing, Tim; Schneider,
Gary; 'Brett_M._Kavanaugh@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov';
'Diana_L_Schacht@opd.eop.gov'; 'sdevine@who.eop.gov'; 'Richard_E._Green (b)(6)
(b)(6)'; 'Irene_Kho (b)(6)'; Horowitz, Michael-CRM; Elwood, John;
Chertoff, Michael; Sandstedt, Erik; Karp, David J; Madan, Rafael; Madan, Rafael;
Keefer, Wendy J; Sales, Nathan; Yoo, John C; Whelan, M Edward III; Ziglar,
Jim; (b)(6),(b)(7)(e) per FBI Cooper, Owen B; Levey, Stuart; Laufman, David H;
Ayres, David; (b)(6) per FBI Ciongoli, Adam; Bryant, Dan; Thorsen, Carl; O'Brien,
Patrick; Wainstein, Kenneth; Baker, James; Dinh, Viet; Collins,
Dan; (b)(6) (b)(6); Jones, Gregory M;
Hussey, Thom
Subject: FW: Leahy USA Act
Attachments: JEN01_854.pdf; ATTACHMENT.TXT

An electronic copy of the Leahy bill is attached (unchanged from last night's version).

Please find attached USA Act. - Manu

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, September 20, 2001 12:47 PM
To: 'Diana_L._Schacht@opd.eop.gov'; 'John_M._Bridgeland@opd.eop.gov';
'Timothy_E._Flanigan@who.eop.gov'; 'Alberto_R._Gonzales@who.eop.gov';
'Kristen_Silverberg@who.eop.gov'; 'Jay_P._Lefkowi (b) (6)';
'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'Diana_L._Schacht@opd.eop.gov'; 'sdevine@who.eop.gov';
'Richard_E._Gre (b) (6)'; 'Irene_Kho (b) (6)'; Horowitz,
Michael-CRM; Elwood, John; Chertoff, Michael; Sandstedt, Erik; Newstead,
Jennifer; Karp, David J; Madan, Rafael; Madan, Rafael; Jones, Kevin R; Keefer,
Wendy J; Sales, Nathan; Philbin, Patrick; Yoo, John C; Whelan, M Edward III;
Ziglar, Jim (b)(6),(b)(7)(e) per FBI'; Cooper, Owen B; Levey, Stuart; Laufman, David
H; Ayres, David (b)(6) per FBI; Ciongoli, Adam; Bryant, Dan; Thorsen, Carl; O'Brien,
Patrick; Wainstein, Kenneth; Baker, James; Kris, David; Dinh, Viet; Collins, Dan;
(b) (6); (b) (6); O'Brien, Patrick; Baxter,
Laura; 'Bradford_A._Berenson@who.eop.gov'; Jones, Gregory M; Hussey, Thom
Subject: Latest Versions: Thursday Hill consultation draft:bill, redline, analysis
Attachments: atathurs; ATAThurs-redline.wpd; terror.sbs.wpd

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, September 19, 2001 1:08 PM
To: 'Diana_L._Schacht@opd.eop.gov'; 'John_M._Bridgeland@opd.eop.gov';
'Timothy_E._Flanigan@who.eop.gov'; 'Alberto_R._Gonzales@who.eop.gov';
'Kristen_Silverberg@who.eop.gov'; 'Jay_P._Lefkowi (b) (6)';
'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'Diana_L._Schacht@opd.eop.gov'; 'sdevine@who.eop.gov';
'Richard_E._Green (b) (6)'; 'Irene_Kh (b) (6) Horowitz,
Michael-CRM; Elwood, John; Chertoff, Michael; Sandstedt, Erik; Newstead,
Jennifer; Karp, David J; Madan, Rafael; Madan, Rafael; Jones, Kevin R; Keefer,
Wendy J; Sales, Nathan; Philbin, Patrick; Yoo, John C; Whelan, M Edward III;
Ziglar, Jim (b)(6),(b)(7)(e) per FBI; Cooper, Owen B; Levey, Stuart; Laufman, David
H; Ayres, David (b)(6) per FBI; Ciongoli, Adam; Bryant, Dan; Thorsen, Carl; O'Brien,
Patrick; Wainstein, Kenneth; Baker, James; Kris, David; Dinh, Viet; Collins, Dan;
(b) (6) (b) (6) O'Brien, Patrick; Baxter,
Laura; 'Bradford_A._Berenson@who.eop.gov'; Jones, Gregory M
Subject: This is the latest version--the Hill consultation draft
Attachments: ata noon; terror.sbs.wpd

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, September 19, 2001 12:57 PM
To: Thorsen, Carl; Bryant, Dan; O'Brien, Patrick; Ayres, David; Israelite, David;
'Brett_M._Kavanaugh@who.eop.gov'; 'Richard_E._Gre (b) (6)' Jones,
Gregory M
Subject: New versions--please circulate
Attachments: ata noon; terror.sbs.wpd

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, September 19, 2001 11:46 AM
To: 'Diana_L._Schacht@opd.eop.gov'; 'John_M._Bridgeland@opd.eop.gov';
'Timothy_E._Flanigan@who.eop.gov'; 'Alberto_R._Gonzales@who.eop.gov';
'Kristen_Silverberg@who.eop.gov'; 'Jay_P._Lefkowi (b) (6)';
'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'Courtney_S._Elwood@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
'Diana_L._Schacht@opd.eop.gov'; 'sdevine@who.eop.gov';
'Richard_E._Gre (b) (6)'; 'Irene_Kho (b) (6)'; Horowitz,
Michael-CRM; Elwood, John; Chertoff, Michael; Sandstedt, Erik; Newstead,
Jennifer; Karp, David J; Madan, Rafael; Madan, Rafael; Jones, Kevin R; Keefer,
Wendy J; Sales, Nathan; Philbin, Patrick; Yoo, John C; Whelan, M Edward III;
Ziglar, Jim (b)(6),(b)(7)(e) per FBI; Cooper, Owen B; Levey, Stuart; Laufman, David
H; Ayres, David (b)(6) per FBI; Ciongoli, Adam; Bryant, Dan; Thorsen, Carl; O'Brien,
Patrick; Wainstein, Kenneth; Baker, James; Kris, David; Dinh, Viet; Collins, Dan;
(b) (6); (b) (6); O'Brien, Patrick; Baxter,
Laura; 'Bradford_A._Berenson@who.eop.gov'; Jones, Gregory M
Subject: Full Bill and Analysis.
Attachments: terror.analysis.wpd; billrewrite.wpd