

EXECUTIVE SESSION

NOMINATION OF SCOTT SNYDER FLEMING TO BE ASSISTANT SECRETARY FOR LEGISLATION AND CONGRESSIONAL AFFAIRS, DEPARTMENT OF EDUCATION

The PRESIDING OFFICER. Under the previous order, the hour of 6 p.m. having arrived, the Senate will now proceed to vote on Executive Calendar No. 567 which the clerk will report.

The assistant legislative clerk read the nomination of Scott Snyder Fleming, of Virginia, to be Assistant Secretary for Legislation and Congressional Affairs, Department of Education.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. FAIRCLOTH), the Senator from New Hampshire (Mr. GREGG), the Senator from Oklahoma (Mr. INHOFE), and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

Mr. FORD. I announce that the Senator from Illinois (Mr. DURBIN), the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Wisconsin (Mr. KOHL) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 104 Ex.]

YEAS—92

Abraham	Enzi	Mack
Akaka	Feingold	McCain
Allard	Feinstein	McConnell
Ashcroft	Ford	Mikulski
Baucus	Frist	Moseley-Braun
Bennett	Glenn	Moynihan
Biden	Gorton	Murray
Bingaman	Graham	Nickles
Bond	Gramm	Reed
Boxer	Grass	Reid
Breaux	Grassley	Robb
Brownback	Hagel	Roberts
Bryan	Harkin	Rockefeller
Bumpers	Hatch	Roth
Burns	Helms	Santorum
Byrd	Hollings	Sarbanes
Campbell	Hutchinson	Sessions
Chafee	Hutchison	Shelby
Cleland	Jeffords	Smith (NH)
Coats	Johnson	Smith (OR)
Cochran	Kempthorne	Snowe
Collins	Kerrey	Specter
Conrad	Kerry	Stevens
Coverdell	Kyl	Thomas
Craig	Landrieu	Thompson
D'Amato	Lautenberg	Thurmond
Daschle	Leahy	Torricelli
DeWine	Levin	Warner
Dodd	Lieberman	Wellstone
Domenici	Lott	Wyden
Dorgan	Lugar	

NOT VOTING—8

Durbin	Inhofe	Kohl
Faircloth	Inouye	Murkowski
Gregg	Kennedy	

The nomination was confirmed.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, Calendar Nos. 554, 558 and 569 are confirmed.

The nominations were considered and confirmed, as follows:

THE JUDICIARY

Garr M. King, of Oregon, to be United States District Judge for the District of Oregon.

Gregory Moneta Sleet, of Delaware, to be United States District Judge for the District of Delaware.

RAILROAD RETIREMENT BOARD

Cheryl T. Thomas, of Illinois, to be a Member of the Railroad Retirement Board for a term expiring August 28, 2002.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the confirmation of the nominations.

NOMINATION OF SCOTT SNYDER FLEMING

Mr. CRAIG. Mr. President, since September of 1997, the General Accounting Office, at my request, has been conducting an investigation into possible anti-lobbying violations—as well as possible violations of the Federal Advisory Committee Act—at the Department of Education.

This investigation is ongoing and I have no reason to believe at this time that the nominee in question, Mr. Fleming, is a key figure in this investigation nor have I been presented with any evidence of wrongdoing on his part that would compel me to oppose his nomination. I would, however, like to take this opportunity to urge Mr. Fleming, in his new capacity as Assistant Secretary of Education for Legislation and Congressional Affairs, to cooperate fully with the GAO investigation in order to resolve this matter expeditiously.

Mr. President, let me explain my involvement with this issue and my concerns as they relate to allegations of an unusually close, and perhaps improper, relationship between the Department of Education and certain lobbyists in this town.

This matter was first brought to my attention by an editorial that appeared in the Washington Post on September 4, 1997.

That editorial, written by nationally syndicated columnist Robert Novak, described how—each week while Congress was in session—senior Department of Education officials and special interest group representatives gathered in Secretary Riley's conference room for what, in my opinion, amounted to 'political action' or 'legislative planning' sessions.

News of these meetings surfaced in a report published by the Alexis de Tocqueville Institution's, Paul Steidler. For seven months, Mr. Steidler attended these meetings and kept detailed minutes of what was discussed. What emerges from the Steidler notes, if substantiated, is extremely troubling.

Without discussing the particulars of this investigation, Mr. President, let me note that I take Mr. Steidler's allegations very seriously. Collusion between special interest lobbyists and the executive branch for the express purpose of defeating or promoting specific legislation, at the grass roots level or here in Congress, is unacceptable.

Mr. President, the GAO investigation into these matters is still underway. And, as I said, it does not appear that Mr. Fleming was a central figure in the formation or conduct of the weekly meetings in question.

My concern is that the Department of Education cooperate fully with this investigation so this body and the American people can be certain that the Department of Education's interests correspond with our children's best interests and not just the needs of those special interests that dominate the landscape here in Washington.

I ask unanimous consent that the Novak editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 4, 1997]

TRIUMPH OF THE BLOB

(By Robert D. Novak)

At 4 p.m. today, some 45 education lobbyists—"back to school" after the August congressional break—will resume weekly sessions with Department of Education officials in the secretary of education's conference room. There is doubt whether these meetings are legal but no question that they have been effective and, until now, a rare Washington secret.

They began in 1995, when what former education secretary William J. Bennett calls The Blob—the special-interest groups that want to maintain the educational status quo—feared the worst from a newly Republican Congress. With more than a hundred bills for abolition of the Department of Education introduced, the Thursday meetings began without the formal notification required by law for "advisory committees". After 2½ years of this collaboration the tide has turned on education, with the Republicans in full retreat.

"It's pretty much an open meeting," Acting Deputy Education Secretary Marshall (Mike) Smith, who usually presides, told me. He added that I would be welcome, which he conceded would make me the first journalist there. In fact, the sessions have been attended almost exclusively by The Blob, providing intelligence for the government bureaucrats who in turn disclose Clinton administration strategy. "We rely on you, partly, as your eyes and ears," Smith told participants July 24.

But an interloper appeared at this year's meetings. Paul Steidler, senior fellow of the conservative Education Reform Project, heard about them and asked to attend. He got permission after interrogation by reluctant education officials. Steidler's subsequent weekly minutes offer a wondrous insight into how Bill Clinton's Washington works.

"There was boisterous conversation, and one could sense the camaraderie in the air,"

Steidler said of the atmosphere preceding his first meeting. The regulars represent such pro-Clinton groups as the National School Boards Association, the American Association of School Administrators and the American Federation of Teachers. First among equals is the National Education Association (NEA), the powerful teachers' union. Joel Packer, the NEA's expert lobbyist, sits next to and is deferred to by the Education Department's senior official present.

When an Education Department official described Republican Sen. Paul Coverdell's proposal for \$50 million in grants to fund school-choice pilot programs somebody exclaimed, "Yeah, the fear voucher." Another voice joined in: "You get it if you are scared." Steidler noted: "There was loud and sustained laughter. I found this to be quite chilling."

Through seven months of these minutes, the administration and The Blob marched in lock step to maximize federal funding and suppress school choice, with scarcely a critical word for the Clinton administration and no kind word for Republicans.

When it was mentioned that former education secretary Lamar Alexander would testify to Congress, "moans and snickers" were followed by the NEA's Packer saying, "It's called Mr. Voucher time". Commenting on a C-SPAN broadcast of Republican congressmen discussing education, then-Education Department lobbyist Kay Casstevens said: "If you didn't see it, you're probably better off."

Ad budget negotiations neared their climax, Smith asked everybody to make sure they could be reached if they left town. The joint Education Department-NEA clout soon was demonstrated.

At the June 16 meeting, the NEA's Adele Robinson alerted the department to House committee approval of Democratic Rep. Benjamin Cardin's proposed \$150 tax credit for after-school private tutoring. Smith declared: "It drives a stake through [the president's] America Reads [program]. It's close to a voucher, folks." Cardin's proposal was eliminated, thanks to administration pressure.

So was a Coverdell amendment to the tax bill permitting parents to use their own tax-free savings for kindergarten through 12th-grade private schools. "On behalf of the NEA," Packer said at the July 31 meeting, "I want to profusely thank the administration for its stand on Coverdell."

Is the administration's failure to list these meetings in the Federal Register a violation of the Federal Advisory Committee Act (FACA)? "The meetings are not covered by FACA" acting Education Department General Counsel Jiumenne Studley told me, because they have no fixed membership or specific purpose. "Anyone who wants can join in," she said. But her assertions are refuted by Paul Steidler's minutes, as Mike Smith may hear when he comes up for Senate confirmation.

NOMINATION OF GARR "MIKE" KING

Mr. SMITH of Oregon. Mr. President, we have confirmed the nomination of an outstanding judicial nominee to the U.S. District Court for the District of Oregon. Garr "Mike" King is a consummate professional, who is universally respected within the Oregon legal community for his integrity and professionalism. His long and distinguished legal career as a trial lawyer began as a Deputy District Attorney with the Multnomah County Oregon District Attorney's Office. He helped draft the Oregon Rules for Civil Procedure and wrote the arbitration rules used in

Multnomah County. Since 1971, as a partner with the Portland firm of Kennedy, King & Zimmer, he has handled a variety of cases, including commercial litigation, professional malpractice, products liability, and employment litigation in an exemplary fashion. In addition, Mr. King has been active in the U.S. District Court mediation program, has served as an arbitrator through the American Arbitration Association and, in 1995, was elected to the Board of Regents for the American College of Trial Lawyers.

Mr. President, I am confident that Garr "Mike" King will bring to the U.S. District Court for the district of Oregon the same dedication, professionalism, and integrity that has exemplified his entire legal career.

Mr. WYDEN. Mr. President, today we confirmed an outstanding lawyer, a knowledgeable and diligent servant of justice and great judicial nominee from my State of Oregon. It was a great honor to present to the Senate the name of Mr. Garr "Mike" King to be a United States District Judge for the District of Oregon.

Mr. King comes before the Senate today with the bipartisan support of the Oregon Congressional delegation, and with broad support from both Oregon's law enforcement community and our state's legal community. Mr. King has served as a member of the Oregon State Bar Association since 1963 and has distinguished himself as one of the finest attorneys in the state. During this period of time, Mr. King has developed a sterling reputation for integrity, hard work, intelligence, and diligence.

In addition to his outstanding career as an attorney in private practice, Mr. King also has served as Multnomah County Deputy District Attorney and was elected to the Board of Regents of the American College of Trial Lawyers. He helped draft the Oregon Rules for Civil Procedure, authored the arbitration rules for Multnomah County and served as an arbitrator through the American Arbitration Association. He has been active in the U.S. District Court Mediation program since it was initiated and has worked quite closely with the Court to improve the federal mediation system.

Mr. King is a veteran of the United States Marine Corps who served his country with honor from 1954 to 1957. He has lived in Oregon for the past 35 years and is a proud father of seven children who is deeply involved in his church and community affairs. As those of my colleagues who were at Mike's confirmation hearing can attest, I think he single-handedly managed to fill about half of the hearing room with family members from all over the country, and I believe that speaks volumes about the kind of caring, concerned and committed family man Mike King is.

As with previous recommendations that I have made for the federal bench, the recommendation of Mr. King was

preceded by an extensive bipartisan screening effort undertaken by a committee of leading Oregon attorneys. The selection committee was appointed with input from all the members of the Oregon Congressional delegation and the Governor's office. All applicants reviewed by the committee were evaluated on three criteria: judicial temperament, fitness to serve on the federal bench, and legal qualifications. Mr. King was rated very highly by the committee, and after personally interviewing him, I found him very well qualified for this position.

I want to again thank the Chairman of the Judiciary Committee, Senator HATCH for moving us to this point in the process. I am very grateful for both the amount of time and good counsel you continue to give me in the consideration of my region's needs on the federal bench.

I also thank my colleague, Senator SMITH, for his efforts on behalf of this nominee. Senator SMITH and I have now worked together in support of two other fine candidates to the federal bench, both of whom have been confirmed by the Senate.

I am certain that Mike King will bring to the federal bench the same intelligence, legal skill and integrity that he has brought to his work as one of our state's most respected attorneys.

THE NOMINATION OF GREGORY M. SLEET

Mr. ROTH. Mr. President, I rise to recognize Judge Gregory Sleet, who was confirmed by the Senate earlier today as a District Judge for Delaware. Unfortunately, I did not have an opportunity to personally greet him or his family when they came to the Capitol for his hearing before the Judiciary Committee just over a month ago. But today, it is my pleasure to congratulate Judge Sleet, his wife Mary and their two children on this achievement.

Since 1994, Greg Sleet has served Delaware as our U.S. Attorney. From that post, he was appointed by Attorney General Janet Reno to serve as the Vice-Chair of her Advisory Committee.

While his record of public service is impressive, so, too, is his previous work in the private sector. You see, Judge Sleet served Hercules Incorporated, an outstanding Delaware company, as legal counsel before becoming our U.S. Attorney. Having worked in the same capacity with Hercules some years earlier, I know first-hand that they hire only the sharpest young lawyers to handle their legal affairs.

Mr. President, the Senate needed not even four months to complete our work on Judge Sleet's nomination. I thank Judiciary Committee Chairman HATCH for his efforts to review the nomination in such an expeditious manner. Such prompt action speaks to the quality of the nominee, and I am happy to again congratulate Judge Sleet on the occasion of his confirmation by the Senate.

Mr. BIDEN. Mr. President, I support the confirmation of the nomination of Greg Sleet to be the 22d Federal district court judge in Delaware.

One of the most important duties of any U.S. Senator is the duty of advice and consent to the President's judicial appointments. I have worked hard throughout my career to ensure that the Senate provides the Federal courts with a steady supply of judges to enforce our Federal laws.

But, after serving on the Judiciary Committee for the last 20 years, and after serving as U.S. Senator from Delaware for the last 25 years, this is my first opportunity to recommend a Federal district court judge for Delaware.

I took this responsibility very seriously. And I have no doubt that Greg Sleet is the most qualified and experienced person for this position.

This is the second time President Clinton has put Greg's name through the rigors of Senate confirmation. But this is no surprise—he enjoys a reputation for impeccable integrity in the Delaware legal community.

In 1993, when I recommended Greg as U.S. attorney for Delaware, President Clinton was wise to follow my advice—he could not have nominated a more qualified, well-rounded, experienced Delawarean.

Greg was confirmed unanimously and flawlessly, and for the past 4 years has exceeded even my highest expectations.

And it is not only his distinguished service for Delaware, but also the breadth of Greg's experience that has impressed Delawareans, and convinced me that he will make a distinguished Federal judge.

Greg is a graduate of Rutgers University School of Law and completed his undergraduate work at Hampton University in Virginia.

He began his legal career in 1976 by serving for 7 years as a Philadelphia public defender—arguing before juries and representing indigent defendants at all stages of the criminal process—from pre-trial through the appellate courts.

He then gained experience in civil litigation, civil rights, estates, and criminal defense as an associate in private firms—most recently as a sole practitioner for his own firm. I know how tough—and rewarding—running your own firm can be.

In 1990, Greg began his service as deputy attorney general for the State of Delaware, where he gained experience prosecuting a variety of criminal cases at the State level.

He has practiced corporate and commercial law as well—working as an attorney in the legal department for Hercules Inc., where he helped manage corporate operations and litigation, and provided advice on acquisitions and antitrust matters.

Since Greg became U.S. attorney, he has demonstrated strong leadership as my State's chief Federal law enforcement officer—

He has developed a solid reputation by prosecuting many significant criminal cases, including numerous Federal drug and gun cases.

He has prosecuted hate crimes and fraud cases more aggressively than ever before.

And, in addition to his accomplishments in the criminal court at the Federal level, he has made it a priority to strengthen the civil division in Delaware's U.S. attorney's office.

Mr. President, I will not take up any more time—other than to repeat my "bottom line" from Greg's Judiciary Committee hearing:

Greg Sleet's record speaks for itself—the Federal bench needs judges like him. His background makes him exceptionally qualified to service on the Federal bench, and his record shows that he is tough—as we need our Federal judges to be—with the practical abilities and experience to do the job.

I am deeply proud to be associated with Greg's service as Delaware's U.S. attorney, and look forward to his service as a U.S. district court judge.

I commend my colleagues for taking the time to review Greg's record and thank them for their support for the candidacy of this fine nominee.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, on behalf of the leader, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEFENDING THE FALSE CLAIMS ACT

Mr. GRASSLEY. Mr. President, on Friday, a new audit report was released by the Health Care Financing Administration. It is the Chief Financial Officer's report. It shows that a staggering \$20 billion of tax dollars were improperly paid through Medicare last year. That is 20 billion reasons to defend the False Claims Act and oppose the bill percolating in the House that's being pushed by the American Hospital Association, and sponsored by Congressman BILL MCCOLLUM—H.R. 3523.

The audit is only the latest reminder of why the False Claims Act is the law of the land. Whether it is the derivation of the law signed by Abraham Lincoln in 1863, or the amendments that I sponsored, which passed in 1986, the reason the law exists is to protect the public's vital interests.

In the case of health care, those vital interests are clear. The False Claims Act helps maintain the integrity of Medicare so that senior citizens won't have to fear the possibility that the program won't be there for them in the future. It helps maintain the standards we want for our seniors with respect to the quality of health care. The False Claims Act is beginning to be used successfully by U.S. Attorneys to improve the quality of care in the health care industry, such as nursing home care.

Finally, the False Claims Act is the final yet most effective line of defense

to protect the taxpayers' hard-earned money. Since my amendments in 1986, the Act has been used to return more than \$4 billion, fraudulently taken, back to the taxpayers. Nearly \$2 billion of that is from the health care industry. And somewhere between \$150 and \$300 billion-worth of potential fraud has been deterred.

There is a critical and obvious need for the False Claims Act to safeguard the public interest. The Act is also highly successful. It has built up a track record for accomplishing exactly what it was designed to do—to promote integrity in taxpayer-funded programs.

Suddenly, integrity in such programs is under a fierce attack. The attack is the McCollum bill, which would gut the False Claims Act. What's wrong with this picture?

The McCollum bill is a misguided missile in the war against fraud. If it passes, perpetrators of fraud will be celebrating in the streets. It is ill-founded, and would send the wrong message both to the public and to those who would commit fraud.

The bill is the product of the American Hospital Association. The AHA came to me earlier this year and reported what they claim are examples of the Justice Department going after hospitals with heavy-handed tactics, and using the False Claims Act to prosecute innocent mistakes. I also visited with the Iowa Hospital Association, from my home State.

After listening to their concerns, it seemed to me that the examples the AHA provided spoke more to problems in the implementation of the law, rather than to problems with the law itself. I agreed to approach the Justice Department and help begin a dialogue between DOJ, the AHA, and myself and other members of Congress. The goal was to examine the evidence and see where the problems were occurring and why. And then to fix any real problems.

After much examination and discussion, I and others determined that the AHA had some legitimate concerns involving the way some U.S. Attorneys were communicating with some hospitals around the country.

To its credit, the Justice Department has reevaluated its process and made changes. It has changed its approach, and has taken steps to ensure higher standards prior to any investigation for fraud. It is not often that the Justice Department willingly reexamines its process, admits changes are needed, and then makes them. Because it did so in this case, I believe that the Justice Department should be commended for its responsiveness.

As a case in point, let me refer to a letter I received this month from the president of a medical center in Iowa. Next year, he will be in the leadership of the Iowa Hospital Association. He is one of those who had expressed concerns to me months ago about how the Justice Department was implementing