U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 10, 2004.

Hon. JOHN D. ASHCROFT,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL ASHCROFT: We write to request that the Department of Justice open a criminal investigation into the theft and use of Democratic computer files from the Senate Judiciary Committee computer server and appoint a special counsel to conduct that investigation.

A criminal investigation into the theft and use of these files is warranted. In addition to press accounts since the middle of November 2003 about the stolen computer files, there has been an investigation by Senator Hatch of his staff and a Senate Sergeant-at-Arms inquiry into this matter. Neither of these investigations had the tools a federal prosecutor has available to compel testimony or subpoena evidence in order to investigate fully who stole or spied on Democratic computer files and how the stolen files were used.

Based on the recent report of the Sergeant-at-Arms, it appears that from some time in 2001 until at least the spring of 2003, and possibly until November 2003, staff of Republican Senators stole and used information from internal and confidential Democratic office computer files, including memoranda from counsel to Senators. Republican staff knowingly exceeded authorized access and intentionally accessed materials on government computers which they knew, from the directory and subdirectory titles, they were not entitled to access, and thereby obtained information used for their advantage and possibly in violation of law. They read, download, printed, and used such files for their own personal and partisan purposes. Employees from Senator Hatch's Judiciary Committee staff and from Majority Leader Frist's Republican Senate leadership staff have resigned in connection with these activities. We believe that the unauthorized accessing, reading, downloading, printing, and use of these files constitute violations of multiple federal and local criminal laws and warrant criminal investigation.

It would be in the public interest to appoint an outside special counsel to investigate these crimes because of the conflict of interest these cases present to the Department. We also respectfully suggest that it would be appropriate for you to recuse yourself from the consideration of this request for a special counsel. Your direct involvement in this matter would present a conflict of interest due to your recent service as a United States Senator and your close personal and political relationships with some of the Senators whose offices are subjects of the investigation and with other Members of the Judiciary Committee. In addition, several former Republican Judiciary Committee staff members, including two with supervisory responsibilities during the period in question, now serve in senior positions within the Department of Justice and others have in the recent past.

Among the many outstanding questions is whether the stolen computer files or information derived therefrom was shared with the Department of Justice or White House directly or indirectly. You and your staff were actively engaged in issues relating to judicial nominations during the period when the activities at issue here were being carried out. As you know, a number of Senators recently wrote to ask about your and the Department's knowledge of, or involvement in, the matter of the stolen computer files and information derived therefrom. Any thorough investigation would have to address these issues as well.

Only a special counsel can investigate this matter in a manner that will have credibility with the public. It is plainly in the public interest to appoint a special counsel. Political appointees should not investigate this matter when the very purpose of the wrongdoing was to assist with politically sensitive judicial confirmations sought by this Administration and managed, in large part, by the Department. We trust that you, or your designee, will agree that a special counsel with a reputation for integrity and impartial decisionmaking and with appropriate experience and resources should be appointed to conduct such an inquiry. Among those resources would be the expertise of the Computer Crimes and Intellectual Property Section of the Criminal Division, which has assisted in the investigation and prosecution of similar federal crimes. We respectfully request that a special counsel of the highest integrity and independence be appointed and that the special counsel receive a broad and clear mandate for independent action, including the discretionary ability to report to Congress and to the public and protection against termination unless the appointing official finds and certifies to extraordinary improprieties.

Thank you for your prompt consideration and action in response to this request.

Sincerely,

Patrick Leahy, U.S. Senator; Herb Kohl, U.S. Senator; Charles E. Schumer, U.S. Senator; Edward M. Kennedy, U.S. Senator; Dianne Feinstein, U.S. Senator; Richard J. Durbin, U.S. Senator; Joseph R. Biden, Jr., U.S. Senator; Russell D. Feingold, U.S. Senator; John Edwards, U.S. Senator.

U.S. SENATE,
Washington, DC, March 11, 2004.

Hon. ORRIN G. HATCH,
Chairman,
Senate Committee on the Judiciary.

DEAR CHAIRMAN HATCH: A week has passed since the public release of the Report on the Investigation into Improper Access to the Senate Judiciary Committee's Computer System (Mar. 4, 2004) prepared by the Sergeant at Arms of the United States Senate. The Sergeant at Arms' report sets forth in great detail factual findings regarding the improper access of computer files belonging to Democratic staff members of the Senate Committee on the Judiciary (the committee) by two former Republican committee staff members. As explained in the Sergeant at Arms' report, this investigation was initiated in November of last year, shortly after the Wall Street Journal and Washington Times printed articles in which they acknowledged receipt of Democratic staff memoranda.

While it is not our place as members of the committee to decide whether any of the acts described in the Sergeant at Arms' report constitute criminal violations of Federal law, we nevertheless are convinced that this is a very serious matter that needs to be reviewed and considered by the proper authorities at the earliest opportunity. As you know, our goal has always been to approach this investigation in the least politicized manner possible. We had hoped that the committee would debate the proper course of action and arrive at a bipartisan agreement on how to proceed with the information revealed in the Sergeant at Arms' report. However, we are now certain that only a determination by a prosecutor as to whether any laws were violated will bring this matter to a just and timely resolution. We commend your commitment to a thorough investigation of this matter as it affects the very integrity of our committee.

Sincerely,

Jon Kyl, John Cornyn, Jeff Sessions, Larry E. Craig, Mike DeWine, Arlen Specter, Lindsey O. Graham, Charles E. Grassley, Saxby Chambliss.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 12, 2004.

Hon. JOHN D. ASHCROFT,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL ASHCROFT: We write to request that the Department of Justice appoint a prosecutor of the highest integrity and independence to investigate, and, if appropriate, prosecute all potential crimes related to the access and dissemination of Judiciary Committee staff files outlined in the attached Report from the Senate Sergeant at Arms. We consider this breach of Senators' privacy to be a matter of the utmost seriousness. While we very much appreciate the fine work of the Sergeant at Arms, we note that the attached Report itself suggests many avenues of additional inquiry that have not been—and indeed could not have been—pursued by this preliminary Senate investigation.

Because of the potential for perceived and actual conflicts of interest, the undersigned members of the Judiciary Committee agree that this matter must be handled by a professional prosecutor who is free from all conflicts and appearances of conflict—or, if appropriate, a special counsel—who has full investigatory, charging and reporting authority; who will conduct a thorough investigation; and who will not be removable from this assignment except in case of extraordinary improprieties. Patrick Fitzgerald, the U.S. Attorney for the Northern District of Illinois, has been given such independence in the investigation of the leak of CIA operative Valerie Plame's identity, and we believe that his mandate should be a model for the mandate of the prosecutor in this case. Indeed, we agree that Mr. Fitzgerald himself would be an ideal candidate for this investigation as well. At a minimum, any special counsel or other prosecutor appointed in this matter should be of Mr. Fitzgerald's integrity and have the same degree of independence.

Sincerely,

CHARLES SCHUMER.
RICHARD J. DURBIN.
EDWARD M. KENNEDY.

SAXBY CHAMBLISS.
MIKE DEWINE.

CONFIRMATION OF JUDGE LOUIS GUIROLA

Mr. LOTT. Mr. President, I am delighted that the Senate unanimously confirmed Judge Louis Guirola by a vote of 92–0 to be a United States District Court Judge for the Southern District of Mississippi. Judge Guirola has been serving our country and the State of Mississippi as U.S. magistrate judge for the Southern District of Mississippi. I have known Judge Guirola for well over 20 years and was pleased when the President nominated him to fill the U.S. District Court judgeship that is being vacated by Judge Walter J. Gex, who is taking senior status. I am pleased that the Senate was able to efficiently do its work of advising and consenting on this nomination in order

to guarantee the smooth operation of our Federal justice system.

Judge Guirola is a 1979 graduate of the University of Mississippi Law School, and he received his undergraduate degree from William Carey College in 1973. He has had a distinguished career in the law over the past quarter of a century and has gained broad experience from the various positions he has held. He has served as an assistant district attorney, an attorney in private practice, an attorney for the Jackson County Board of Supervisors, and an attorney for the Mississippi Highway Department.

Judge Guirola began his Federal service as an assistant U.S. Attorney for the Eastern District of Texas in 1990, and he was named as a U.S. magistrate judge for the Western District of Texas in 1993. He served in this position until 1996, when he returned to Mississippi to become a U.S. magistrate judge for the Southern District of Mississippi, the position he currently holds. He clearly has an extensive knowledge of the Federal court system, and his experience will be a tremendous asset for the country. It is no surprise that the ABA's Standing Committee on the Federal Judiciary has unanimously found Judge Guirola to be ''well qualified'' to serve as a Federal district court judge.

Judge Guirola has also demonstrated a commitment to education and instruction. He has been an adjunct professor at William Carey College and the University of Southern Mississippi. He also has given lectures and conducted seminars for the U.S. Attorney General's Advocacy Institute, the Federal Bar Association, the Mississippi Bar Association, the Mississippi Law Enforcement Officers Academy, the Texas Department of Public Safety, and the U.S. Probation Office. In addition, he has authored a number of legal articles and scholarly pieces.

Judge Guirola is well-known and respected in his community, State and profession. His nomination has received widespread support in the State of Mississippi because of his reputation for fairness and hard work. I know that Judge Guirola will make an excellent district court judge, and I congratulate him on his confirmation by the Senate.

JUDICIAL CONFIRMATIONS

Mr. LEAHY. Mr. President, last night the Senate confirmed two more Federal judicial nominees of President Bush: Judge Louis Guirola to the Southern District of Mississippi and Neil Wake to the District of Arizona. With these confirmations, the Senate has now confirmed 173 judicial nominees of this President. That is more than during the entire four years of the first term of President Reagan, from 1981 through 1984, and just two fewer than were confirmed in all 4 years of President Clinton's second term in office from 1997 through 2000. We have reduced the number of vacancies in the Federal courts to 43, the lowest number in more than 13 years.

These two confirmations bring to four the number of judicial nominees confirmed in the first few weeks in session this year. The American people should remember that the Republican Senate leadership in 1996 allowed only 17 judicial nominees of President Clinton to be confirmed all year. I remain confident that with the cooperation of the administration, the Senate this year will be able to match the total from that Presidential election year, the last year of President Clinton's first term. We are well ahead of the pace Republicans achieved in 1996. The four judges confirmed so far this year is four more than were confirmed on this date in 1996.

The two nominees confirmed last night had their hearings this year but two others, J. Leon Holmes and Judge Dora Irizarry, had hearings last year, were reported by the Judiciary Committee last year, and still have not been scheduled for a vote by the Republican leadership. Democrats have been ready to debate and vote on these nominees for many months. They have generated some controversy and will need to be debated before the vote, but there is no Democratic ''hold'' on either nomination of which I am aware and no Democratic objection to a full and fair debate on each as far as I know.

TERRORIST ATTACKS

Mr. GRAHAM of Florida. Mr. President, yesterday, March 11, 2004, was a solemn day.

Two and a half years ago to the day, 19 terrorists hijacked four airliners and crashed them into the World Trade Center, the Pentagon, and a field in rural Pennsylvania.

It is fitting that we pause today to remember the nearly 3,000 innocent people who lost their lives that day. It is also fitting that we take a moment to remember the responsibilities that we undertook in the aftermath of those horrible events. We in public office undertook a particularly important obligation, as we vowed to take action to prevent terrorist attacks of that magnitude from happening again.

In his speech delivered before a joint session of Congress on September 20, 2001, President Bush put it this way: ''Americans are asking, How will we fight and win this war? We will direct every resource at our command—every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence, and every necessary weapon of war—to the disruption and to the defeat of the global terror network.

Unfortunately, we have not met that commitment.

We now know that the terrorist attacks of September 11 were the result of a sophisticated plot that developed over many months and required coordination among a number of individuals. If our national intelligence agencies had been better organized and more focused on the problem of international terrorism, this tragedy would have been avoided.

Incredibly, it is now 30 months later, and the basic problems in our national intelligence community that contributed to our vulnerability on 9/11 have not yet been seriously considered, much less resolved.

These problems are not a mystery, they are known weaknesses that simply have yet to be fixed. If we in the Congress do not take action to remedy these weaknesses, we will not be able to avoid accountability for the next attack.

A series of independent commissions and the Joint Inquiry conducted by the House and Senate Intelligence Committees in 2002 have identified a variety of issues that we must address. They fall into four categories:

One, setting priority targets for intelligence collection and analysis.

Director of Central Intelligence George Tenet declared war on al-Qaida in 1998, but few in the CIA—and almost no one in the other agencies that make up our Intelligence Community—responded to his clarion call.

Our national intelligence agencies continued to focus on states, such as Russia, China, Iran and Iraq. Despite Mr. Tenet's call for action, Osama bin Laden al-Qaida was not even near the top of our intelligence priority list on September 11, 2001. It was not until September 12 that they moved to the top of the list.

Part of the problem was that our intelligence community had no formal process for regularly reviewing and updating intelligence priorities to ensure that they accurately reflected the current security environment.

Furthermore, it does not appear that the heads of other intelligence agencies looked to the Director of Central Intelligence for leadership and priority-setting.

Even though George Tenet may have realized that non-state actors like al-Qaida needed more attention, the importance of these groups was not clear to other members of the intelligence community. The head of the National Security Agency, our Nation's electronic eavesdropping agency, was asked if he knew about Mr. Tenet's declaration of war with al-Qaida.

The director of the NSA said that yes, he was aware of Mr. Tenet's statement, but he did not think it applied to him or his organization.

Two, providing strong new leadership for the intelligence community.

Examples like this make it clear that we need to provide strong new leadership for the intelligence community. 9/11 exposed historic tensions within the Intelligence Community, and between intelligence agencies and law enforcement.

We need to empower a Cabinet-level official with the authority to end bureaucratic in-fighting and competition