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**ON "AMERICA AND THE COURTS," EARNEST EXCHANGE AMONG
SIX ATTORNEYS GENERAL SINCE THE JOHNSON ADMINISTRATION**

Washington, D.C., November 25, 1992--This Saturday, November 28, at 7:00-9:00 PM (ET), "America and the Courts," C-SPAN's weekly look at the judiciary, will air a **Former Attorneys General Forum** taped earlier this year at the University of California Hastings College of Law in San Francisco.

In a rare two-hour encounter, six former attorneys general meet and talk about their experiences running the Justice Department, their relationships with the presidents they served, Supreme Court nominations, the role of special prosecutors. Special attention is devoted to the Clarence Thomas nomination.

Participants are: Nicholas Katzenbach, attorney general during the Johnson Administration; Elliot Richardson, Nixon Administration; Edward Levi, Ford Administration; Benjamini Civiletti, Carter Administration; Edwin Meese, Reagan Administration; and Richard Thornburgh, Reagan and Bush Administrations. The forum is moderated by Harvard Law Professor Arthur Miller.

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November 18, 1992

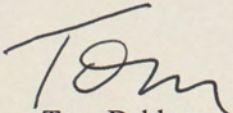
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Dear Virginia:

Here are the Los Angeles Times and AP clippings I said I would send along with regard to the Attorneys General Forum. I hope they are helpful in promoting advance notice in television listings.

Thanks again for your help.

Regards,


Tom Debley

Justices' Nominations Topic of Candid Talks

■ **Court:** Ex-attorneys
general lament focus on
politics and abortion.

By PHILIP HAGER
TIMES LEGAL AFFAIRS WRITER

SAN FRANCISCO—Two Republican former attorneys general denied Saturday that the Bush and Reagan administrations used an ideological "litmus test" to select Supreme Court justices—and one assailed Democratic presidential nominee Bill Clinton for pledging to appoint only jurists who support abortion rights.

The remarks by the two former high officials—Dick Thornburgh and Edwin Meese III—came during a rare and free-wheeling panel meeting of attorneys general from the last six presidential administrations.

The former top legal officers convened at Hastings College of the Law in a two-hour program videotaped for telecast on C-SPAN and Court TV. In lively exchanges, the current high court nomination process came in for criticism as too politicized and too focused on the abortion issue. And a rapt audience of law students, faculty and alumni got an unusual look behind the scenes of past court nominations.

Meese, responding to questions from the moderator, Harvard law professor Arthur R. Miller, cited last June's high court decision upholding the right to abortion as evidence that nominees by Republican administrations had not been screened for their views on the issue.

In a 5-4 decision, Justices Sandra Day O'Connor and Anthony M. Kennedy—both nominated by former President Ronald Reagan—and Justice David H. Souter, a Bush appointee, unexpectedly provided key votes preserving *Roe vs. Wade*, the 1973 landmark abortion ruling.

"We were surprised [by the votes of the three] and that shows there was no litmus test," said Meese, who served from

1985 to 1988 under Reagan.

Thornburgh, Bush's attorney general from 1988 to 1991, did not mention Clinton by name but said he found it "highly offensive" that a presidential candidate would vow to ask potential court nominees how they would decide a particular case. Clinton has promised that in selecting nominees he would protect "the right to choose."

Nicholas Katzenbach, attorney general under President Lyndon B. Johnson, a Democrat, responded that he would "bet my wallet" that other candidates besides Clinton had done the same thing.

Bush's nomination of Justice Clarence Thomas drew fire from Elliot Richardson, a Republican who served in the Nixon Administration. Thomas, said Richardson, must have been "plucked from a very long list" of potential nominees. Bush's description of the relatively inexperienced Thomas as the "most qualified" for the job was unsupportable, Richardson said. "The transparency of it became all too obvious," he said.

Recalling past nominations, Katzenbach told how as a Justice Department official he had been told by then-Deputy Atty. Gen. Byron R. White to prepare a list of prospective nominees for President John F. Kennedy. Katzenbach dutifully came up with 15 names, all of which the President rejected. Next, Katzenbach suggested to then-Atty. Gen. Robert F. Kennedy that the president name White—which he did.

Benjamin Civiletti said he put together for President Jimmy Carter a list of 18 candidates for the high court—six of them women. But in his four-year term, Carter, a Democrat, never got the chance to fill a vacancy. Reagan named O'Connor as the court's first woman member.

Harvard law professor Paul Freund, long mentioned as a court nominee, lost his chance when he turned down President Kennedy's offer to become solicitor general, a post viewed as a steppingstone to the court, Katzenbach said.

Six Former AGs Swap Their Stories

■ The government's former top lawyers debate the special prosecutors law and Clarence Thomas.

By Bob Egelko
Associated Press

A bipartisan panel of attorneys general from the last six presidents denounced the soon-to-expire law creating special prosecutors Saturday and sparred over Clarence Thomas and other Supreme Court appointees.

Law students and teachers from Hastings College of the Law sat riveted for two hours as the government's former top lawyers swapped historical nuggets — how Elliot Richardson hoped to get President Gerald Ford to avoid pardoning Richard Nixon, how Nicholas deB. Katzenbach suggested the appointment of Justice Byron White — and debated politics and the law.

A prime target was the post-Watergate law allowing Congress to demand appointment of an independent prosecutor to investigate high-level wrongdoing. The law is scheduled to expire this year, and it is uncertain whether President Bush will approve its renewal.

Richard Thornburgh, who resigned last year as Bush's attorney general, called the independent prosecutor "a mischievous institution" and particularly criticized some prosecutors' practice of accusing an official of wrongdoing while deciding not to seek an indictment.

He noted that the most celebrated special prosecutor, Archibald Cox, was appointed by Richardson to investigate Watergate under a separate, older law that made Cox Richardson's subordinate subject to being fired.

Richardson resigned in 1973 rather than follow Nixon's order to fire Cox for seeking White House tapes. Richardson said Saturday he had been given "undue credit" for a courageous decision, and had simply kept a promise to Congress to fire Cox only in extraordinary circumstances.

A similar approach to a renewed special prosecutor law was suggested by Benjamin Civiletti, attorney general under President Jimmy Carter from 1979 to 1981.

Civiletti called current independent prosecutors "a loose cannon on the decks" and said he had argued unsuccessfully for Carter to veto the law. But he said government credibility might be served by a revised law that would limit such investigations to the highest levels of the executive branch, and make prosecutors subject to firing by the attorney general

under specific circumstances.

Edwin Meese III, attorney general under President Ronald Reagan from 1985 to 1988 and himself the subject of a special prosecutor's investigation that found no lawbreaking, said the independent prosecutor law "short-circuits the Constitution."

Katzenbach, attorney general under President Lyndon Johnson from 1965 to 1967, said the law "destroys the credibility and independence of the attorney general," who ought to be able to prosecute lawbreakers of either party.

When Thornburgh observed that an attorney general's decision not to prosecute a fellow party member was often viewed by the public as a cover-up, Katzenbach said some of the responsibility belonged to Nixon, who "really did not believe that the law applied to him."

"I think there's something in that," Richardson chimed in, noting that Nixon had taken a broad view of a president's inherent powers.

After Nixon resigned in 1974, Richardson said, Ford might have used a special prosecutor to avoid pardoning him. Richardson said he had planned to meet with Ford to urge appointment of a prosecutor to set forth the charges that could have been filed against Nixon, with the expectation that Ford's attorney general would then recommend no prosecution.

"Because there is evidence sufficient to establish a crime, it does not follow that it should be prosecuted," Richardson said. "... I think if I had gotten to Ford in time, he might have refrained from the pardon," which was issued a few days before their planned meeting.

Richardson's description of one of the attorney general's roles — giving the president legal advice he may not want to hear — prompted examples from Civiletti and Thornburgh.

When Carter and his staff wanted to prosecute Iranian students in the United States who were demonstrating during the hostage crisis in 1980, Civiletti said, he had to tell them it couldn't be done legally, making him "to say the least, persona non grata." Thornburgh said he gave similar advice when some administration officials wanted Bush to use a line-item veto on the budget.

The subject of Supreme Court appointments drew a reminiscence from Katzenbach, who served in the Kennedy and Johnson administrations.

After his first list of possible high court appointees for President John F. Kennedy was rejected, Katzenbach said, he suggested his own boss, then-Deputy Attorney General Byron White.

"I saw this as a means of getting pro-



DIANA M. SMITH

BENJAMIN CIVILETTI — Attorney general in the Carter administration called independent prosecutors "a loose cannon on the decks."

moted," he said. Attorney General Robert Kennedy expressed interest in naming White, he recalled, and the clincher was when Katzenbach told him, "I didn't think you could do without him."

Several panelists were critical of the current court confirmation process. Edward Levi, attorney general under Ford from 1975 to 1977, called "just outrageous" the Senate's practice of asking nominees their views on specific cases or issues such as abortion.

Meese and Thornburgh denied the frequent accusations that Reagan and Bush had imposed litmus tests on court nominees or asked them their views on legal cases.

Katzenbach was skeptical. "I'd be willing to bet what's in my wallet at the moment and more that that's exactly what they've been doing," he said.

"That's not what was done with President Bush, because I was privy to those conversations," replied Thornburgh.

Richardson said Bush was responsible for the furor that surrounded the Thomas nomination.

Bush "stuck it to the Senate with the Thomas nomination," Richardson said. "He invited the very reaction he got," making a political choice and then trying to "disguise it by representing him as the most highly qualified person in the United States."

Meese protested that except for the sexual harassment allegations by law professor Anita Hill, every criticism by opponents of Thomas' qualifications and experience would have applied equally to the late liberal Justice William O. Douglas. Katzenbach called that claim "appalling."

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