

Neil Wake is an Arizona native and has practiced law for 29 years in Phoenix as a partner in several law firms and most recently as the sole proprietor of his own firm. Mr. Wake received a bachelor's degree with honors from Arizona State University in 1971 and a law degree, cum laude, from Harvard University, in 1974, where he was a member of the Harvard Civil Liberties Law Review.

His law practice has focused almost entirely on civil litigation. He has handled a wide range of business litigation, administrative and public law litigation, and constitutional litigation under the federal and state constitutions. He has practiced extensively in both state and federal courts, in trial courts and appellate courts, including the Supreme Court of the United States.

Mr. Wake has spoken often at continuing legal education programs on civil procedure, administrative law and judicial review of government action, appellate practice and procedure, and other subjects. He has published articles in the fields of administrative law and appellate procedure.

Mr. Wake has received high recognition from his peers at the bar. Since 1989 he has been listed in *The Best Lawyers in America* for business and appellate litigation upon recommendation of other lawyers so listed. Less than 1 percent of attorneys are so recognized. Since 1993 he has been a Fellow of the American Academy of Appellate Lawyers, a professional society of fewer than 300 members nationwide who are admitted by invitation only and after careful investigation. The American Bar Association's standing committee on Federal Judiciary unanimously gave Mr. Wake its highest evaluation of well qualified for appointment as a Judge of the United States District Court.

He has given many years of service to the bar, to the courts, and to the community. He has served for nearly 20 years on the Arizona State Bar's Committee on Civil Practice and Procedure and for over 20 years on the State Bar's Appellate Handbook Committee. He is a founding member of the State Bar's Indian Law Section and its Appellate Practice Section, of which he is now the Chairman. He has served five times as a judge pro tempore of the Arizona Court of Appeals and is a Member of the National Board of Visitors of The University of Arizona College of Law. He and his wife Shari and other parents founded ICU Care Parents, a support group for parents of critically ill newborns.

Mr. Wake and his wife Shari are the parents of three sons, ages 21, 18, and 10.

Neil Wake will be an outstanding addition to the bench.

#### THE PROBE INTO THE IMPROPER ACCESS OF JUDICIARY COMMITTEE COMPUTER FILES

Mr. LEAHY. Mr. President, yesterday the Judiciary Committee met in public session to discuss how best to proceed with the investigation into the theft and dissemination of confidential Judiciary Committee computer files. Over the last several weeks and months Democratic Senators have shown great patience with the process.

Last week, the chairman of our committee made the report of the Sergeant at Arms into this matter publicly available. For days, Senators have been consulting about the follow-up investigation that is now needed. Over the last few weeks a number of Senators, Republicans and Democrats, have acknowledged that these matters, now documented in the report of the Senate Sergeant at Arms, warrant further consideration by law enforcement officials. Along with other Senators, I have reached across the aisle to urge all Senators to now join us in a request for a special counsel to conduct the investigation necessary to complete action and assure accountability for this unprecedented partisan espionage within the Senate. Yesterday I renewed that invitation to join in our request for the appointment of a special counsel of the highest integrity and independence to follow up on this matter.

I had hoped that we could move forward together, and yesterday we did achieve a bipartisan majority of the Judiciary, which has now joined in requesting a criminal investigation by an independent prosecutor.

On Wednesday, March 10, nine Senators on the committee sent a letter to the Justice Department seeking the appointment of special counsel in this matter. Thursday morning, March 11, nine Republican Senators wrote to Chairman HATCH and noted:

[We are now certain that only a determination by a professional prosecutor as to whether any laws were violated will bring this matter to a just and timely resolution.

Yesterday all members on the Judiciary Committee endorsed having a professional prosecutor free from politics consider these matters without regard to partisanship.

Last night Republicans and Democrats joined in another letter to the Justice Department to request "appointment of 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 report by the Senate Sergeant at Arms.

Someone who is removed from politics is essential. As we outline in our March 10 letter, many of us are concerned that it be special counsel and that the Attorney General recuse himself from the process for a number of reasons. In the March 12 letter from Senators SCHUMER, GRAHAM, DURBIN, CHAMBLISS, KENNEDY and DEWINE, they likewise note that the prosecutor han-

dling the matter must be "free from all conflicts and appearances of conflict." They suggest that Patrick Fitzgerald, who has been given responsibility for the investigation of the lead of CIA operative Valerie Plame's identity, would be an "ideal candidate" and that his mandate is a good model for that of the prosecutor to whom is assigned responsibility for investigation of the matter of the Judiciary Committee computer files.

With respect to the Sergeant at Arms' report, I, again, thank him and his staff for operating in a nonpartisan way and in the best tradition of the Senate. The report shows, without question, that the secret surveillance and stealing of confidential computer files was calculated, systematic and sweeping in its scope. After reading the report, there is a lot more that we do know: We know that more than 4,000 computer files were stolen. We know that the stealing of Democratic computer files occurred over an extended period of time, from at least 2001 into 2003. We know that numerous staff members of Republican Senators and Republican Senate leadership were aware of this activity. We know that what was done was improper, unethical and likely criminal.

However, after reading the report, there is still a lot that we do not know. We do not know how the computer files and the information contained therein were exploited. We do not know whether the stolen computer files or the information in them were shared with the Department of Justice directly or indirectly. We do not know whether they were shared with the White House directly or indirectly. We do not know whether they were shared with any of the nominees. We do not know what stolen files or information contained therein was shared with partisan advocacy groups on the right. Those are among the questions that a special counsel with the tools to conduct a criminal investigation and compel testimony and information may discern. Indeed, the Sergeant-at-Arms report acknowledges many of its limitations and those on the authority of that office to get all the facts.

I hope Senators who care about accountability and the rule of law, and those interested in repairing the damage by this unprecedented spying campaign will support our request for the prompt appointment of a special prosecutor to conduct the criminal investigation into the theft of our computer files that is still needed. I hope the Justice Department will move quickly, properly assign this matter, and conduct an investigation to get to the bottom of the unprecedented wrongdoing that we have suffered.

I ask unanimous consent that copies of the letters of March 10, March 11 and March 12 be printed in the RECORD.

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

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 investiga-

tion 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