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Obama's Court Nominees Are Focus of Speculation

By [NEIL A. LEWIS](#)

WASHINGTON — [President Obama](#) will soon begin naming a small stream of nominees to the federal appeals courts, administration officials said, a step that will provide the first signs of how much he intends to impose any ideological stamp on the nation's judiciary.

White House lawyers have compiled lists of likely candidates for vacancies on several of the 12 regional appeals courts, notably those based in Richmond, Va., and New York.

Lawyers, scholars and political scientists have been watching closely to see whether and how much Mr. Obama will use his power to nominate judges to counterbalance the evident rightward shift of the federal courts under President [George W. Bush](#).

The earliest setting for that question to be played out is likely to be the United States Court of Appeals for the Fourth Circuit, based in Richmond, which appears on the verge of stark change. Retirements on the 15-member court have left it divided with a slim 6-to-5 majority of Republican-appointed judges. That means Mr. Obama has four vacancies to fill and the potential to drastically reshape the court, which covers Maryland, Virginia, West Virginia, North Carolina and South Carolina.

In recent years, the Fourth Circuit had become the most assertively conservative court in the nation. Its judges have taken the lead in trying to reduce federal power in several areas, even once trying to lead the way in undoing the Miranda rule that criminal suspects must be apprised of their rights before they answer questions. The court's conservative majority also tried to roll back affirmative action policies and was reliably supportive of Bush administration efforts to widen presidential authority in detaining terrorism suspects without trial or charges without Congressional input.

To fill a seat that traditionally goes to someone from Maryland, officials said the White House was considering nominating Andre Davis, a District Court judge based in Baltimore.

There are several candidates for the Virginia seat, including Elizabeth Magill, a law professor at the [University of Virginia](#) and daughter of a former federal appeals court judge.

For the United States Court of Appeals for the Second Circuit, based in New York, officials said the White House had settled on elevating Judge [Gerard E. Lynch](#), a Columbia law professor, from the District Court.

The officials spoke on the condition of anonymity because naming judges involves a delicate political process involving senators, among others.

Shaping the appeals courts, the level just below the [Supreme Court](#), was at the heart of the strategy first put in place by conservatives during the Reagan presidency. They saw to it that President [Ronald Reagan](#) put at least one forceful and articulate conservative, usually an academic, on each of the circuit courts.

At least so far, the candidates being considered by the Obama White House for early nomination do not appear to have especially ideological profiles.

Because Republicans have controlled the White House for all of the last 28 years except the eight years of the Clinton presidency, more than 60 percent of the judiciary is made up of Republican-nominated judges.

The result is Republican control of eight of the regional appeals courts; Democrats have a majority in two circuits, the Second and the Ninth, based in San Francisco. The Third Circuit, based in Philadelphia, is split 6 to 6, with two vacancies.

Arthur Hellman, a professor at the [University of Pittsburgh](#) law school who is an authority on the circuit courts, said reliable studies regularly demonstrated that the Republican-appointed judges had moved the nation's courts in a more conservative direction in several areas.

They tend to be more restrictive of abortion rights, less accommodating to criminal defendants and sharply skeptical of expanding federal authority at the expense of the states.

The Fourth Circuit, Professor Hellman said, was the most aggressive of those and was also where Mr. Obama "has the greatest opportunity to turn around the jurisprudence pretty quickly."

The effort to move rapidly to select appeals court judges has been coordinated by Gregory S. Craig, the White House counsel, whose expanded office took the lead on the issue from the Justice Department, which has yet to have many of its senior officials confirmed.

In a closed meeting on Capitol Hill two weeks ago, Mr. Craig told Democratic senators that the White House would rely on their recommendations to fill the district courts. But he said that while Mr. Obama would welcome their advice, he warned that filling the appeals courts was largely a presidential prerogative, participants said.

One senior aide briefed on the meeting said that such an effort to limit Democratic senators' role could create friction. But the aide said that every White House tried to impose such an understanding at the beginning only to become flexible when it needed a senator's vote on some unrelated issue.

Mr. Obama also faces a different threat from Senate Republicans, who earlier this month threatened, though in vague terms, to block his judicial nominees by [filibuster](#) if they were not consulted on vacancies from their home states.

Underlying all the maneuvering is an awareness that much of it may serve as a dress rehearsal for the spring, when many expect Mr. Obama will have a Supreme Court vacancy to fill.

Benjamin Weiser contributed reporting from New York.

