

# Democrats to Hold 'Forum' on Supreme Court Nominee

With Senate Republicans holding to their vow that no hearings or votes will be taken on President Barack Obama's Supreme Court nominee, Chief Judge Merrick Garland, Democrats were scheduled to hold a "forum" Wednesday.

The forum, which was structured like a committee hearing, but won't have any Republican involvement, was meant to apply pressure on GOP senators to approve Garland's appointment to the high court. But thanks to the inclusion of one key "witness," their plan backfired.

The meeting, which was scheduled to begin at 11:30 a.m. EDT Wednesday, was billed as a meeting to discuss Garland's qualifications for the Supreme Court. Among those who were expected to testify were:

- Donna Bucella, a former prosecutor in the Oklahoma City bombing case;
- Justin Driver, one of Garland's former law clerks, who is now a law professor at University of Chicago Law School;
- Former Secretary of Transportation Rodney Slater;
- Judge Timothy Lewis, formerly of the Third Circuit Court of Appeals; and
- Chief Judge Abner Mikva, formerly of the D.C. Court of Appeals.

Mikva, the Republicans quickly pointed out, wrote an op-ed for the *Washington Post* in 2002—less than one year into President George W. Bush's first term in office—in which he recommended Democrats not take any action on any Supreme Court nominations until after the 2004 election. The former Illinois congressman who also served as White House Counsel to President Bill Clinton was very blunt about why:

*Changes in the existing delicate balance could put the very legitimacy of the court as an institution at risk. Other than the black robes and the high bench, that legitimacy is all that the court has going for it.*

Mikva then went on to destroy the rest of President Obama's narrative—14 years before he made it—about the duty of the Senate regarding Supreme Court nominations. He correctly pointed out there is no constitutional requirement for nine justices, and senators are under no obligation to give a “rubber stamp” to any president's nominee:

*There is nothing magic about the number nine for the size of the Supreme Court. The Constitution does not suggest a number, and the first court was authorized to have six members ...*

*The appointment of Supreme Court justices is a shared responsibility. The Senate has a plenary power to advise and consent. This has never been perceived to be some kind of rubber-stamp function, and it has been used with substantive results on less compelling occasions.*

Many of these same arguments have been presented by Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa) over the past few months. Once President Obama took office, however, Mikva suddenly changed his tune.

In 2010, he and Lewis wrote a joint op-ed for *Politico* in which they derided the “excessive politicization of the confirmation process.” As judges appointed by presidents from different parties, they called for a bipartisan effort to end obstructionism in the Senate:

*This obstruction and the way it undermines our democratic process would be outrageous at any time. But it is especially shameful now, because many of these qualified nominees received bipartisan support when nominated and were then approved by the Senate Judiciary Committee with broad*

*support. Yet they have waited more than a year to be confirmed because the Senate never put their nomination to a vote.*

Under Republican leadership, Grassley pointed out earlier this week, more Obama nominees have been confirmed by the Senate than in all eight years of the Bush presidency.

A little over an hour after the Republican's press office pulled out the quotes from Mikva's 2002 op-ed, a revised press release was sent out by the Democratic Policy and Communications Center that no longer included the judge's name as a witness. A few minutes later, Grassley's communications chief, Beth Levine, issued a brief comment:

"It appears by the looks of the attached invite that Judge Mikva was disinvited from the forum."