

Senator questions Nussbaum's role in gay-ban case

By Rowan Scarborough
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A senior Republican senator has asked the White House to disclose former White House Counsel Bernard W. Nussbaum's role in a Justice Department decision not to appeal a court ruling favorable to homosexual-rights groups.

Mr. Nussbaum's New York City law firm, to which he is returning this month, had a major stake in the ruling. It represents the plaintiff in the case, ex-Navy Midshipman Joseph Steffan, in his high-profile, five-year challenge to the Pentagon ban on homosexuals.

Some congressional Republicans and pro-ban activists say Mr. Nussbaum faces ethical questions if he recommended to the Justice Department that it not appeal the November ruling from a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit.

Federal standards of conduct for executive branch employees

could be interpreted to bar Mr. Nussbaum from taking part in the Steffan case because the issue arose less than a year after Mr. Nussbaum joined the administration and left the law firm of Wachtell, Lipton, Rosen and Katz.

Enforced by the Office of Government Ethics, the standards include rules that federal employees should avoid the appearance of a conflict of interest.

Linda Tripp, Mr. Nussbaum's executive assistant, could not say immediately yesterday if the former counsel had participated in Mr. Steffan's case.

She said Mr. Nussbaum, who quit under fire in March, intends to return this month to Wachtell, Lipton, Rosen and Katz, where he had worked for 30 years and was a senior partner.

Ms. Tripp said he "severed all ties" with the firm while in Washington.

On Friday, Sen. Strom Thurmond of South Carolina, ranking



Bernard Nussbaum's law firm represents the plaintiff in the case.

Republican on the Senate Armed Services Committee, dispatched a letter to White House Counsel Lloyd Cutler. Mr. Thurmond asked

Mr. Cutler to disclose any role Mr. Nussbaum played in planning strategy in the Steffan lawsuit.

Mr. Thurmond's office declined to release a copy of the letter.

Mr. Nussbaum has said in several newspaper interviews that he oversaw the White House effort to lift the ban on homosexuals in the military. He was a key player in President Clinton's compromise policy, known as "don't ask, don't tell," which went into effect this year.

Pentagon officials have said the White House counsel's office was directly involved in Justice Department decisions on how to defend the old ban, as well as court challenges to the new policy.

In November, three liberal judges of the U.S. Court of Appeals ruled the old policy unconstitutional, delivering a major victory to Mr. Steffan and his attorneys.

Backers of the ban, including Sen. Sam Nunn, Georgia Democrat and chairman of the Senate

Armed Services Committee, urged the Clinton administration to appeal to the full court.

The remaining nine judges were appointed by Presidents Reagan and Bush and are presumed to be more sympathetic to pro-ban legal arguments.

Mr. Nunn and other senators argued that leaving the panel's anti-ban language unchallenged would hurt the government's efforts to defend a new law on homosexuals in the military that contains many of the tenets of the old prohibition.

But the Justice Department announced Dec. 30 it would let the ruling stand. A spokesman said the department wanted to spend its resources defending the new law, which was principally written by Mr. Nunn.

The department's position, however, lasted only a week.

The court's conservative members ordered the department to seek a rehearing before the full court.