

Joy, Sheila

From: Joy, Sheila
Sent: Thursday, September 12, 2002 10:40 AM
To: Dinh, Viet; Charnes, Adam; Willett, Don; Keefer, Wendy J; Remington, Kristi L; Benedi, Lizette D; Sales, Nathan; Benczkowski, Brian A; Loughlin, Ann L (OLP); Hall, William; Koebele, Steve; Sutton, Jason; Coehins, Bridget C; 'H._Christopher_Bartolomuci@who.eop.gov'; 'Bradford_A.Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Kyle_Sampson@who.eop.gov'; Scottfinan, Nancy
Subject: Judicial Hearing Prep Session and Hearing notice

Judicial hearing prep session is scheduled for Tuesday, 9/17, at 2:00 pm in OLP Conference Room, 4237, in connection with the noticed hearing for 9/18, at 10:00 am in 226 Dirksen for the following nominees:

Michael McConnell	10th Circuit
Jeffrey White	California Northern
Kent Jordan	Delaware
Bill Martini	New Jersey
Tom Phillips	Tennessee, Eastern
Alia Ludlum	Texas, Western

Brad/Brett:

If there are other WH staff members who need to be made aware of the prep session, please let them know. Thanks

Sheila C. Joy
Office of Legal Policy
USDOJ, Rm 4229
202 514-1607

007104-002231

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, September 11, 2002 4:16 PM
To: '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'
Cc: Charnes, Adam; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: FW: Confirmations

I am not against dirty pool at this point.

-----Original Message-----

From:
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
[mailto:/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/]
Sent: Wednesday, September 11, 2002 4:13 PM
To: Dinh, Viet
Cc: Charnes, Adam; Brett_M._Kavanaugh@who.eop.gov
Subject: Re: FW: Confirmations

I talked to Joe Martinez yesterday, and he said that he was told by Senator Graham that Dem leadership wanted to push off his (Martinez's) confirmation to coincide with the period when all the Hispanic groups will be in Washington.

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 09/11/2002 03:59:03 PM
pic32185.pcx)

Record Type: Record

007104-002232

To: H. Christopher Bartolomucci/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Charnes, Adam" <Adam.Charnes@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested)

Subject: FW: Confirmations

(b) (5)

-----Original Message-----

From: Scottfinan, Nancy

Sent: Wednesday, September 11, 2002 3:49 PM

To: Thompson, Larry D; Gambatesa, Donald; Peacock, Claudia; Joy, Sheila;
Higbee, David; Dinh, Viet; Willett, Don; Goodling, Monica; Charnes, Adam;
'kyle_sampson@who.eop.gov'; 'heather_wingate@who.eop.gov'

Cc: Bryant, Dan; O'Brien, Pat; Brown, Jamie E (OLA)

Subject: Confirmations

Importance: High

Denny King - US Marshal for Middle District of Tennessee confirmed today

Debate and roll call vote set for 10 am tomorrow on Timothy Corrigan - US District Judge, Middle District of Florida

007104-002233

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Wednesday, September 11, 2002 10:59 AM
To: Charnes, Adam
Cc: Benczkowski, Brian A; Willett, Don; Sales, Nathan; Koebele, Steve; Dinh, Viet; miguel estrada (e-mail)
Subject: Re: Prep Session for Hearing
Attachments: pic22913.pcx

Ok for me.

(Embedded
image moved "Charnes, Adam" <Adam.Charnes@usdoj.gov>
to file: 09/11/2002 10:35:12 AM
pic22913.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc: "Dinh, Viet" <Viet.Dinh@usdoj.gov>, "Willett, Don" <Don.Willett@usdoj.gov> Subject: Prep Session for Hearing

Assuming this time works for Brett, can we schedule our first prep session for 2 pm on Tuesday, September 17 here at DOJ? We'll schedule the following session for either later that week or early the next week. And, of course, this schedule is contingent on the hearing not being on September 19.

Thanks.

Message Sent To: _____

"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov>

007104-002234

"Sales, Nathan" <Nathan.Sales@usdoj.gov>
"Koebele, Steve" <Steve.Koebele@usdoj.gov>
"Miguel Estrada (E-mail)" <mestrada@gibsondunn.com>
Brett M. Kavanaugh/WHO/EOP@EOP

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, September 11, 2002 10:43 AM
To: Benczkowski, Brian A; Charnes, Adam; 'Miguel Estrada (E-mail)'; 'Brett M. Kavanaugh (E-mail)'; Koebele, Steve
Cc: Dinh, Viet; Willett, Don
Subject: RE: Prep Session for Hearing

[Me too.](#)

-----Original Message-----

From: Benczkowski, Brian A
Sent: Wednesday, September 11, 2002 10:42 AM
To: Charnes, Adam; 'Miguel Estrada (E-mail)'; 'Brett M. Kavanaugh (E-mail)'; Sales, Nathan; Koebele, Steve
Cc: Dinh, Viet; Willett, Don
Subject: RE: Prep Session for Hearing

[Works for me.](#)

-----Original Message-----

From: Charnes, Adam
Sent: Wednesday, September 11, 2002 10:35 AM
To: Miguel Estrada (E-mail); Brett M. Kavanaugh (E-mail); Benczkowski, Brian A; Sales, Nathan; Koebele, Steve
Cc: Dinh, Viet; Willett, Don
Subject: Prep Session for Hearing

Duplicative

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, September 10, 2002 5:22 PM
To: 'Anne_Womack@who.eop.gov'
Cc: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Chuck Lane Handoff

You are so on top of it. Thanks

-----Original Message-----

From: Anne_Womack@who.eop.gov [mailto:Anne_Womack@who.eop.gov]
Sent: Tuesday, September 10, 2002 4:05 PM
To: Dinh, Viet
Cc: Brett_M._Kavanaugh@who.eop.gov
Subject: Re: Chuck Lane Handoff

I have already talked to Chuck. We are trying to get him together with the Judge tomorrow afternoon.

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 09/10/2002 04:00:31 PM
pic15976.pcx)

Record Type: Record

To: Anne Womack/WHO/EOP@EOP, Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Chuck Lane Handoff

I told Chuck Lane of the Wash Post that I would not speak to him re: Hispanic support of Miguel Estrada, but that the Judge would consider it and that you all would get back to him. his number is (b) (6)

(b) (6) did give him one quote re:

from my perspective as an immigrant American, I think that Miguel, having gone through a similar process, would have special appreciation for the institutions of government that safeguards

007104-002237

opportunity and freedom, and has the human perspective to preserve equality and do justice, blah blah blah.

Thanks.

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, September 10, 2002 3:54 PM
To: 'Flanigan, Timothy'; 'Kavanaugh, Brett'; 'Berenson, Brad'
Subject: FW: OpEd
Attachments: tmp.htm; Bush_was_Right_9_-02.doc

FYI

-----Original Message-----

From: Prof. Robert F. Turner [mailto:rturner@law5.law.virginia.edu]
Sent: Tuesday, September 10, 2002 4:20 PM
To: Dinh, Viet
Subject: OpEd

Viet:

Attached (and below) is my latest op-ed, which I am told is tentatively scheduled for publication in Saturday's Washington Times.

Don't distribute it widely, but I would certainly have no problems if you wanted to share it with someone in the WH Counsel's office or others in the Administration who might find it of value.

(I had to cut it by 700 words, but the key stuff survived.)

Warmest regards,

-Bob

CONGRESS, THE CONSTITUTION, AND IRAQ:

Why Bush Got it Right-Both Times

Robert F. Turner

Eyebrows were raised over reports the White House Counsel's office had advised President Bush the Constitution did not require him to obtain approval from Congress before using force to bring about a regime change in Iraq. But the President's lawyers were right.

007104-002239

Perhaps more importantly, the President was also right when he decided to seek a formal resolution of approval.

Article II, Section 3, of the Constitution vests in the President both the power and the duty to "take Care that the Laws be faithfully executed," and Article VI affirms that treaties are part of the "supreme Law of the Land." When Congress overwhelmingly approved the 1945 UN Participation Act (UNPA), the unanimous House report explained that the ratification of the UN Charter "resulted in the vesting in the executive branch of the power and obligation to fulfill the commitments assumed by the United States thereunder."

Quoting the unanimous Senate report urging Charter ratification, the House report added that the use of U.S. armed forces to enforce the Charter "would not be an act of war but would be international action for the preservation of the peace," and thus "the provisions of the Charter do not affect the exclusive power of the Congress to declare war." A UNPA amendment proposed by Senator Burton Wheeler requiring congressional authorization before U.S. troops could be sent into combat to enforce the Charter received fewer than ten votes.

The primary purpose of the United Nations was set forth clearly in Article 1(1) of its Charter: "to take effective collective measures for the prevention and removal of threats to the peace." The Security Council was given "primary responsibility" for maintaining peace, but Senator Arthur Vandenberg—who helped negotiate the Charter—asserted "there would have been no Charter" had the right of individual and collective self-defense not been expressly preserved in Article 51. Vandenberg told the Senate that if the Security Council proved unable to act—for example, because of a veto—individual members could still confront lawbreakers, saving the UN "from final impotence."

Surely no serious person doubts that Saddam remains a threat to the peace. His prior acts of international aggression have resulted in the death or serious injury of perhaps a million people, and he has repeatedly used illegal Weapons of Mass Destruction against both his neighbors and his own people. The reason the Security Council conditioned the 1991 cease-fire upon the destruction of all Iraqi WMD programs was because they knew Saddam would remain a threat to the peace if his claws were not pulled. To emphasize the importance of this requirement, after the cease-fire the Security Council repeatedly emphasized that Resolution 678, which authorized the use of force "to restore peace and security to the area," remains in force.

Without American leadership, few world leaders have the stomach to risk upsetting Saddam Hussein or other international terrorists he has been supporting. The behavior of Congress since Vietnam (where, by passing a law in May 1973 making it illegal for the President to use military force to resist Communist aggression, Congress virtually snatched defeat from the jaws of victory and set the stage for the slaughter of millions and the enslavement of tens of millions in Stalinist tyranny) provides little assurance that America will not bail once again if the going gets rough.

As a constitutional matter, the President in my view does not need

formal authorization from Congress. But few understand these esoteric constitutional issues, and by bypassing Congress the President would have risked distracting the nation from the solemn business at hand with a procedural quarrel in which he would be widely perceived as a lawbreaker. Equally importantly, the President is unlikely to be able to win this conflict without additional funds, forces, or equipment that must come from Congress.

The fear, based upon other post-Vietnam experiences, is that congressional cowardice and partisanship might lead to a divisive debate and perhaps conditions on any resolution of approval that could undermine any chance of deterrence, endanger U.S. forces, and impede operational success. By section 2(c) of the War Powers Resolution, Congress even today pretends to deny the President his clear constitutional power to protect American civilians abroad from terrorist attack. Even former Senate Majority Leader George Mitchell acknowledged that the 1973 statute is unconstitutional and undermines America's ability "to effectively defend our national security," but Congress remains unwilling to repeal it and indeed referenced it repeatedly in last September's authorization of the war on terrorism. The highly partisan 1983 war powers debate over American peacekeepers in Beirut convinced Syria's foreign minister that the Americans were "short of breath." Although that deployment was extended 18 months, only two Senate Democrats supported President Reagan and a shift in four votes could have terminated the deployment. After the vote, even Republican lawmakers remarked that the issue could be "reconsidered" if there were further U.S. casualties, and shortly thereafter U.S. intelligence intercepted a message between Muslim terrorist units that if they could kill 15 more marines "the rest will leave." Days later, 241 marines were murdered in their sleep by a terrorist bomb, and the rest did leave. Why not kill Americans when Congress virtually places a bounty on them by suggesting that is the easiest way to get America to withdraw?

When Saddam Hussein invaded Kuwait in 1990, many Democrats argued we should "give sanctions a chance" and implied President Bush was a warmonger. The following January 85 percent of Senate Democrats voted to deny the President any authority to resist Saddam. The President was finally permitted to use force, but the resolution was carefully crafted to exclude authority to go beyond expelling Iraqi forces from Kuwait-and a shift of three votes in the Senate could have denied Bush even that limited authority. Specifically excluded, for example, was the power to use force to "implement" Security Council Resolution 678, which authorized the use of force not just to expel Iraqi troops from Kuwait but also "to restore international peace and security in the area." With such a narrow margin of support by a Congress infamous for cutting off funds when crises got serious in places like Indochina, Angola, and Central America, Saddam would have been a fool not to gamble that the arrival of a few body bags back in America would provoke a new legislative debate and another cutoff of funds.

The President's best bet now would be to ask for an immediate

congressional debate and a record vote by the middle of October, so the American people will have an opportunity to pass judgment on the behavior of their representatives in the November elections. The polls strongly suggest that the American people understand the serious stakes involved. Legislators who lack the courage to stand united with our President, or attempt to place their own partisan ambitions above the welfare of the nation, will not have a cost-free out. Those who refuse to stand firm in the war against terrorism may well find themselves looking for a new line of employment when Congress reconvenes in January.

Professor Turner co-founded the Center for National Security Law at the University of Virginia Law School in 1981 and worked for many years in the Senate, State, and Defense departments. His many books include two volumes on the War Powers Resolution and the recently published *The Real Lessons of the Vietnam War*, which he coedited with John Norton Moore.

--
Prof. Robert F. Turner
Center for National Security Law
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903-1789
[REDACTED]
<http://www.virginia.edu/cnsl/>

CONGRESS, THE CONSTITUTION, AND IRAQ:

Why Bush Got it Right—Both Times

Robert F. Turner

Eyebrows were raised over reports the White House Counsel's office had advised President Bush the Constitution did not require him to obtain approval from Congress before using force to bring about a regime change in Iraq. But the President's lawyers were right. Perhaps more importantly, the President was also right when he decided to seek a formal resolution of approval.

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As a constitutional matter, the President in my view does not need formal authorization from Congress. But few understand these esoteric constitutional issues, and by bypassing Congress the President would have risked distracting the nation from the solemn business at hand with a procedural quarrel in which he would be widely perceived as a lawbreaker. Equally importantly, the President is unlikely to be able to win this conflict without additional funds, forces, or equipment that must come from Congress.

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undermines America's ability "to effectively defend our national security," but Congress remains unwilling to repeal it and indeed referenced it repeatedly in last September's authorization of the war on terrorism.

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attempt to place their own partisan ambitions above the welfare of the nation, will not have a cost-free out. Those who refuse to stand firm in the war against terrorism may well find themselves looking for a new line of employment when Congress reconvenes in January.

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Sales, Nathan

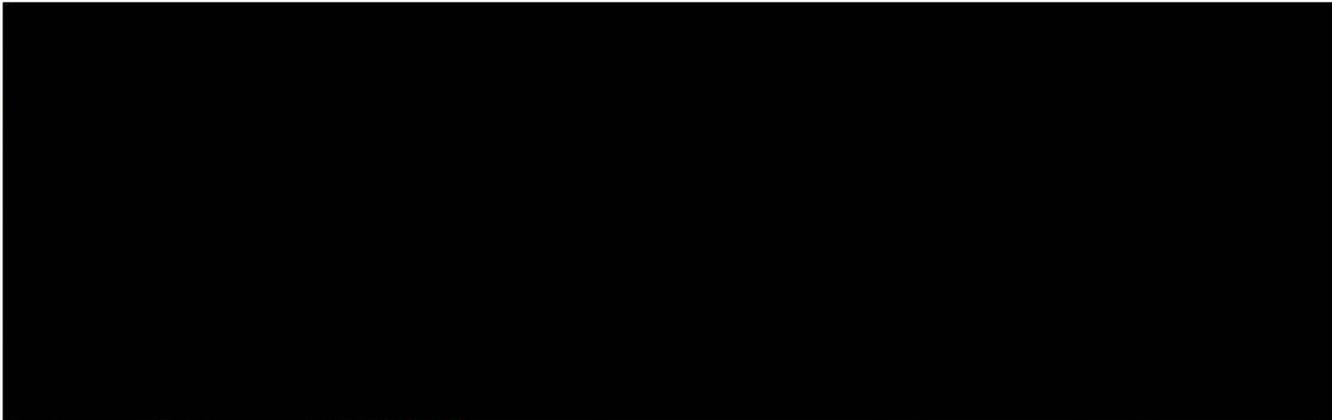
From: Sales, Nathan
Sent: Monday, September 9, 2002 11:18 PM
Cc: Charnes, Adam; 'Brett_M._Kavanaugh@who.eop.gov'; Benczkowski, Brian A; Koebele, Steve
Subject: Re: Some thoughts on tonight's moot

As you might guess from my previous, (b) (5) It was attended by boyden gray, todd gaziano, roger pilon, and matthew berry. (b) (5)

(b) (5)

Sales, Nathan

From: Sales, Nathan
Sent: Monday, September 9, 2002 11:08 PM
To: 'mestrada@gibsondunn.com'
Cc: Charnes, Adam; 'Brett_M._Kavanaugh@who.eop.gov'; Benczkowski, Brian A; Koebele, Steve
Subject: Re: Some thoughts on tonight's moot



Anyhow, this is just my \$0.02. (b) (5)

(b) (5)

Best,
Nathan

007104-002248

Sales, Nathan

From: Sales, Nathan
Sent: Monday, September 9, 2002 10:45 PM
To: 'mestrada@gibsondunn.com'
Cc: Charnes, Adam; 'Brett_M._Kavanaugh@who.eop.gov'; Benczkowski, Brian A; Koebele, Steve
Subject: Some thoughts on tonight's moot

Miguel,

Thanks for the chance to participate in tonight's prep session. In general, I thought (b) (5)

(b) (5)

(b) (5)

More to follow.

007104-002249

Washington, Tracy T

From: Washington, Tracy T
Sent: Monday, September 9, 2002 10:43 AM
To: Adam Charnes; Andrew Schauder; Anne_Womack@who.eop.gov;
Bradford_A._Berenson@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Brian Benczkowski; Dan Bryant; Don Willett;
H._Christopher_Bartolomucci@who.eop.gov; Heather_Wingate@who.eop.gov;
joschal@att.net; Kristi Remington; Kyle_Sampson@who.eop.gov; Lizette Benedi;
Lori SharpeDay; Matthew_E._Smith@who.eop.gov; Monica Goodling; Nathan
Sales; Pat O'Brien; Sheila Joy; Steve Koebele; Tim_Goeglein@who.eop.gov; Viet
Dinh; Wendy Keefer; William Hall
Subject: Reminder -- 4:00pm Judicial Conference Call today -- Agenda is attached...
Attachments: JCWG - agenda (9-9-02).doc
Importance: High

Dial In:
Passco

(b) (5)

Tracy Washington
U.S. Department of Justice
Office of Legal Policy
Room 4640
(202) 514 2737

**Agenda – Weekly Conference Call
Judicial Confirmation Working Group
9-9-02**

Dial-in:
Passcode:

(b) (6)

1. Nominees Still Pending After Hearings

Pending in Committee:

Dennis Shedd (4th Cir.)
Larry Block (Fed. Claims) held over on Sept. 5
Ron Clark (ED TX) held over on Sept. 5

Pending on the Floor:

Reena Raggi (2nd Cir.) approved 19-0 on Sept. 5
John Rogers (6th Cir.) approved by SJC (uc) on July 11
James Gardner(ED PA) approved 17-2 on Sept. 5
Arthur Schwab (WD PA) approved 19-0 on July 31
Tim Corrigan (MD FL) approved 19-0 on July 31
Jose Martinez (SD FL) approved 19-0 on July 31
Ken Marra (SD FL) *floor vote set for 1 p.m. today*

*** Terry McVerry (WD PA) was confirmed 88-0 on Sept. 3.

2. Priscilla Owen – Post-Mortem

3. Miguel Estrada Update

- Member Strategy
- Media Strategy
- Substantive Materials
- Grassroots
- Hearing

4. Mike McConnell Update

- Member Strategy
- Media Strategy
- Substantive Materials
- Grassroots
- Hearing

5. PFA Activity

6. WH and DoJ Press Activity

7. WH and DoJ Legislative Affairs Activity

Dinh, Viet

From: Dinh, Viet
Sent: Friday, September 6, 2002 9:09 AM
To: Bybee, Jay; Collins, Dan; Clement, Paul D; 'Kavanaugh, Brett'
Cc: Stephens, Jay B; Keisler, Peter D
Bcc: Benedi, Lizette D; Gibson, Joseph
Subject: V (b) (5) Possible Solutio (b) (5)

I do not want to jinx it, but I think we may have a happy solution for all on the 180 days issue. Senators Kyl and Feinstein have to confer (b) (5) on a way I proposed to accomodate the Department's view. If not, I have a revised draft letter that synthesizes both Jay Bybee's and Dan Collins' views. Thanks for your patience.

Willett, Don

From: Willett, Don
Sent: Thursday, September 5, 2002 7:26 PM
To: Dinh, Viet; Brett Kavanaugh (E-mail); Tim Goeglein (E-mail)
Subject: recap of the final Owen conf. call tonight

I've already talked to Goeglein by phone re. this.

Bottom-line: (b) (5)

Kay Daly, Leonard Le (b) (5)



DRW

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, September 5, 2002 4:25 PM
To: 'Kavanaugh, Brett'; 'Flanigan, Timothy'
Subject: FW: New York City Bar Association Interview of Tim Stanceu
Attachments: tmp.htm

(b) (5)

-----Original Message-----

From: Stanceu, Timothy C. [mailto:TCStanceu@HHLAW.com]
Sent: Thursday, September 05, 2002 4:03 PM
To: Joy, Sheila; Dinh, Viet
Subject: New York City Bar Association Interview of Tim Stanceu

Viet and Sheila:

The New York City Bar Association has requested the opportunity to interview me concerning their possible endorsement of my nomination to the CIT. The request comes from Rufus Jarman, who is of counsel to Barnes, Richardson & Colburn, a well known customs and international trade firm headquartered in New York, NY. Mr. Jarman chairs the association's judicial nomination committee. He is a former president of the Customs and International Trade Bar Association, which, as you know, submitted to the Judiciary Committee a very good letter in support of my nomination.

Page Hall, a customs and international trade practitioner with Dorsey & Whitney's DC office, relayed the request to me this afternoon. According to Page Hall, the New York City Bar Association is in favor of my nomination and would like to give me a positive endorsement.

(b) (5)

(b) (5)

Thank you sincerely, and best regards.

Tim Stanceu
202 637 5844

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007104-002254

If you have received this electronic transmission in error, please notify us by telephone (202-637-5600) or by electronic mail (PostMaster@HHLAW.COM) immediately.

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, September 5, 2002 3:48 PM
To: 'brett_m._kavanaugh@who.eop.gov'; Willett, Don
Subject: Owen

Pls get potus statement on owen out far and wide. Has he commented?

Sales, Nathan

From: Sales, Nathan
Sent: Tuesday, September 3, 2002 7:19 PM
To: Charnes, Adam; Willett, Don; Brett Kavanaugh (E-mail); Benczkowski, Brian A; Koebele, Steve
Subject: FW: Loitering

Does anyone have a copy of Miguel's brief in the Annapolis loitering case? He reports that he sent it to someone at OLP.

Thanks,
Nathan

-----Original Message-----

From: Estrada, Miguel A. [mailto:MEstrada@gibsondunn.com]
Sent: Tuesday, September 03, 2002 6:51 PM
To: Sales, Nathan
Subject: Re: Loitering

I am in Chicago for the next two days, so I don't have access to the draft. I did email it to your OLP colleagues before I left for Europe, though.

(b) (5)

-----Original Message-----

From: Sales, Nathan <Nathan.Sales@usdoj.gov>
To: Estrada, Miguel A. <MEstrada@gibsondunn.com>
Sent: Tue Sep 03 17:22:44 2002
Subject: Loitering

Miguel,

I hope you enjoyed your trip to Europe--the calm before the storm. I was wondering if you could email me your brief in the Annapolis loitering case; unlike your Chicago brief, it doesn't appear to be on Westlaw. If you don't have an electronic copy, my fax is 616-4592.

BTW, you may be interested to know that Mayor Daley has made some rather intemperate public statements in support of Chicago's anti-gang loitering law. Here's the best: "I tell you one thing, those drug dealers and gang-bangers are terrorists, too." **(b) (5)**

(b) (5)

Best,
Nathan

INVALID

=====

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

=====

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, September 3, 2002 12:10 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Klain

thx man.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, September 03, 2002 12:05 PM
To: Benczkowski, Brian A
Cc: Dinh, Viet
Subject: Klain

The story referencing a Klain letter is contained a June 10, 2002, Weekly Standard article.

Sales, Nathan

From: Sales, Nathan
Sent: Saturday, August 31, 2002 2:55 PM
To: 'Heather_Wingate@who.eop.gov'; Willett, Don; Goodling, Monica; 'Anne_Womack@who.eop.gov'
Cc: Remington, Kristi L; Koebele, Steve; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Re: Crossfire

Someone at the transcription service has a sense of humor:

CARVILLE: I've been in the White House, I've been (UNINTELLIGIBLE) --

-----Original Message-----

From: Heather_Wingate@who.eop.gov <Heather_Wingate@who.eop.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>; Goodling, Monica <Monica.Goodling@USDOJ.gov>; Anne_Womack@who.eop.gov <Anne_Womack@who.eop.gov>
CC: Remington, Kristi L <Kristi.L.Remington@USDOJ.gov>; Sales, Nathan <Nathan.Sales@USDOJ.gov>; Koebele, Steve <Steve.Koebele@USDOJ.gov>; Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
Sent: Sat Aug 31 13:07:35 2002
Subject: Re: Crossfire

(b) (5)

----- Original Message -----

From:<Don.Willett@usdoj.gov>
To:<Monica.Goodling@usdoj.gov>,
Anne Womack/WHO/EOP@EOP
Cc:<Kristi.L.Remington@usdoj.gov>,
<Steve.Koebele@usdoj.gov>,
<Nathan.Sales@usdoj.gov>,
Brett M. Kavanaugh/WHO/EOP@EOP,
Heather Wingate/WHO/EOP@EOP
Date: 08/31/2002 12:05:46 PM
Subject: Fw: Crossfire

(b) (5)

The actual transcript is below.

Have a GREAT weekend.

DRW

--- Sent from my BlackBerry.

...

-----Original Message-----

From: Priscilla R. Owen <(b)(6) Priscilla Owen Email>

To: Willett, Don <Don.Willett@USDOJ.gov>

Sent: Sat Aug 31 09:41:54 2002

Subject: Crossfire

Don,

My mother completely misunderstood what was said on Crossfire. The exchange was about the snippet in yesterday's Wall Street Journal. (b) (5)

(b) (5)) According to CNN's website, here is what was said:

CARVILLE: There's nothing wrong with a little bare-knuckle hardball politics as long as it's for the right cause. But the White House aides are talking about going all out for Appeals Court nominee Priscilla Owen, whose nomination is in trouble in the Senate Judiciary Committee. According to the "Wall Street Journal," committee Democrats who'll vote against Owen's nomination may find themselves barred from riding with the president in Air Force One and their constituents won't get tours of the White House. Heck, I'd take it as a point of pride to refuse to let me into the Bush White House or aboard the state jet. Why don't they have such dedication for such important problems like prescription drugs, for Medicare and Social Security reform?

CARLSON: But wait a second, you're calling the Republicans frivolous, but it's the Democrats who can be bought with a ride on the president's plane.
Have you been on the president's plane, by the way?

CARVILLE: I've been on the president's plane.

(CROSSTALK)

CARVILLE: I've been in the White House, I've been (UNINTELLIGIBLE) -- you know what, Democrats, it's not worth sacrificing your principles...

CARLSON: You know, but they will.

CARVILLE: ... to keep this woman...

(CROSSTALK)

CARVILLE: I think these guys on the Judiciary Committee are going to do the right thing and not going to be bought off.

CARLSON: They'll be bought off.

Sorry that I conveyed misinformation.
Have a great weekend.

PRO

Sales, Nathan

From: Sales, Nathan
Sent: Friday, August 30, 2002 5:27 PM
To: (b)(6) Priscilla Owen Email
Cc: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: President's comments today in Oklahoma at Sen. Inhofe event

Justice Owen,

I don't know if you've seen this yet, but here's another link in the increasingly lengthy chain of Presidential statements on your behalf.

Enjoy your Labor Day!
Nathan

And finally, we need to get him back up there so he'll support some judges that I nominated. (Applause.) I found fine people to serve on our bench; good, honorable, honest people. We named one, Priscilla Owen, recently. She's smart, she's capable, one of the top students when she was in law school at Baylor. She got elected twice -- I think twice, but I know she got elected at least twice statewide in Texas, with overwhelming numbers. She's a very, very smart and capable woman. But somehow, some of them up there don't like her. I guess maybe they don't like the fact that I nominated her. But this isn't right for the judicial system, for them to be playing politics with a fine, smart, capable woman. And we need people like Jim Inhofe up there to defend my judicial nominees in Washington, D.C. (Applause.)

007104-002262

Sales, Nathan

From: Sales, Nathan
Sent: Friday, August 30, 2002 3:25 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Jipping on Owen and Biden

The Senate Judiciary Committee's vote on Priscilla Owen's appeals court nomination will reveal the health of the judicial confirmation process.

Qualifications really mattered once. On June 24, 1986, Judiciary Committee member Joseph Biden (D-DE) explained that he would vote for judicial nominees with "the earmarks of excellence, intellectual capability, high achievement, and demonstrated excellence in the law and the requisite judicial temperament." A member of the Texas Supreme Court since 1994, Justice Owen received a unanimous "Well Qualified" rating from the American Bar Association, once praised by Democrats as the "gold standard."

Democrats once opposed partisanship. On March 19, 1997, Judiciary Committee member Edward Kennedy (D-MA) said it is "time to end the excessive partisanship over judicial nominations." On June 16, 1997, Judiciary Committee Chairman Patrick Leahy (D-VT) said that "if there is one area where partisan politics should not be allowed, it is in the area of the federal judiciary."

Democrats once opposed litmus tests. On April 14, 1994, then-Chairman Biden condemned as "inappropriate" the fact that some critics of a female appeals court nominee "object to some of her decisions and therefore her confirmation on ideological grounds." On March 19, 1997, he said if judicial nominees "will be [persons] of their word and follow [precedent], it does not matter to me what their ideology is." On July 10, 1997, Sen. Leahy said he hoped "that no senator is imposing an ideological litmus test on judicial nominations." On March 17, 1998, he warned the Senate not to head "down a road toward an ideological litmus test."

Democrats once said that judicial nominees deserve a vote by the full Senate. On March 19, 1997, Sen. Biden said that "everyone who is nominated is entitled to ... have a hearing and to have ... a vote on the [Senate] floor.... We in the Judiciary Committee have the right to give advice to the Senate, but it is the Senate that gives its advice and consent on judicial nominations." On September 28, 1998, Judiciary Committee member Richard Durbin (D-IL) said that 150 days was too long for a nominee to wait without a full Senate vote (Justice Owen was nominated 476 days ago). In fact, in the past 60 years, the Senate Judiciary Committee has voted to prevent a judicial nominee from reaching the full Senate just five times.

That was then, this is now. Despite Justice Owen's qualifications, community service, and widespread support in Texas, far-left political interest groups have ordered Democrat senators to oppose her on purely ideological grounds. Abortion extremists, for example, say Justice Owen has a "strong personal bias against the right to choose" based on a few votes in parental notification cases. Yet Justice Owen was in the majority in nine of those 12 cases, dissenting only three times to uphold the decision of two lower courts requiring notification. The liberal Washington Post said on July 24 that these three votes were not "beyond the range of reasonable judicial disagreement." Will senators once opposed to litmus tests vote against a qualified nominee because of three votes that even a liberal editorial page says are reasonable?

Says are reasonable:

Sen. Biden has outlined the better course. On April 19, 1994, he said he would support nominees who have "the capacity, competence, and temperament," who are "of good character" and "free of conflict of interest," and who will "faithfully apply the Constitution and the precedents of the Supreme Court." According to the ABA, its "well qualified" rating means that Justice Owen is "at the top of the legal profession" and has "outstanding legal ability, breadth of experience," and "the highest reputation for integrity."

As if he were speaking today about the Owen nomination, Sen. Biden said on June 24, 1986, that a judicial confirmation "is not about right to life, it is not about conservative or liberal, it is not about Democrat or Republican. It is about intellectual and professional competence to serve as a member of the third coequal branch of the government." And so it should be today.

Will senators capitulate to the far-left groups that want them to ignore qualifications and impose ideological litmus tests? Will they vote against Justice Owen because they disagree about the outcome of some cases? Or will they instead use the standard Sen. Biden outlined on September 17, 1986: "[T]he fact that I may disagree with the nominee about the outcome of one or another matter within the legitimate parameters of debate is not enough" to oppose a nominee?

The Judiciary Committee's vote will speak volumes.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, August 30, 2002 2:42 PM
To: Sales, Nathan
Subject: Re: Jipping on Owen and Biden

Please send in text. Thanks.

Sent from my BlackBerry Handheld.

Sales, Nathan

From: Sales, Nathan
Sent: Friday, August 30, 2002 3:24 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: President's comments today in Oklahoma at Sen. Inhofe event

Say, do you have Justice Owen's email? I misplaced it.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, August 30, 2002 3:10 PM
To: Sales, Nathan
Subject: Re: President's comments today in Oklahoma at Sen. Inhofe event

Can you forward these remarks to judge owen. I do not have them and I am traveling.

Sent from my BlackBerry Handheld.

007104-002265

Sales, Nathan

From: Sales, Nathan
Sent: Friday, August 30, 2002 3:13 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: President's comments today in Oklahoma at Sen. Inhofe event

Sure thing.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, August 30, 2002 3:10 PM
To: Sales, Nathan
Subject: Re: President's comments today in Oklahoma at Sen. Inhofe event

Duplicative

007104-002266

Charnes, Adam

From: Charnes, Adam
Sent: Monday, August 26, 2002 1:22 PM
To: Schauder, Andrew; 'Anne_Womack@who.eop.gov';
'Bradford_A_Berenson@who.eop.gov'; 'Brett_M_Kavanaugh@who.eop.gov';
Benczkowski, Brian A; Bryant, Dan; Willett, Don;
'H_Christopher_Bartolomucci@who.eop.gov';
'Heather_Wingate@who.eop.gov' (b)(6) Jennifer Oschal email Remington, Kristi L;
Benedi, Lizette D; Day, Lori Sharpe; 'Matthew_E_Smith@who.eop.gov';
Goodling, Monica; Sales, Nathan; O'Brien, Pat; Joy, Sheila; Koebele, Steve;
'Tim_Googlein@who.eop.gov'; Dinh, Viet; Keefer, Wendy J; Hall, William
Subject: Judicial WG Conference Call -- CANCELLED
Attachments: Owen-McConnell.wpd; Estrada action plan8-26-02.doc

The judges call for today has been cancelled. In lieu of the call, attached are (1) a summary of the outstanding action items for the Owen and McConnell nominations and (2) an action plan for Estrada. An Estrada-specific call will be scheduled shortly.

For everyone's information, below are the primary OLP personnel (and telephone number) working on the Estrada and McConnell nominations:

Estrada: Adam Charnes (616-0038), Brian Benczkowski (616-2004), Nathan Sales (514-2253), Steve Koebele (307-3024)

McConnell: Don Willett (305-0180), Wendy Keefer (616-2643), Kristi Remington (514-8356), Lizette Benedi (514-3824)

-----Original Message-----

From: Washington, Tracy T
Sent: Monday, August 26, 2002 11:49 AM
To: Andrew Schauder; Anne_Womack@who.eop.gov; Bradford A. Berenson@who.eop.gov;
Brett M. Kavanaugh@who.eop.gov; Brian Benczkowski; Dan Bryant; Don Willett;
H. Christopher Bartolomucci@who.eop.gov; Heather Wingate@who.eop.gov (b)(6) Jennifer Oschal email Kristi
Remington; Lizette Benedi; Lori Sharpe; Day, Matthew E. Smith@who.eop.gov; Monica Goodling; Nathan Sales;
Pat O'Brien; Sheila Joy; Steve Koebele; Tim_Googlein@who.eop.gov; Viet Dinh; Wendy Keefer; William Hall
Subject: Reminder -- Monday, August 26 @ 4:00pm Judicial WG Conference Call
Importance: High

Dial In: (b) (6)
Passc (b) (6)

Tracy Washington
U.S. Department of Justice
Office of Legal Policy
Room 4640
(202) 514 2737

Sales, Nathan

From: Sales, Nathan
Sent: Monday, August 12, 2002 11:02 AM
To: Willett, Don; 'Brett Kavanaugh (E-mail)'
Subject: RE: either of you have anything on the latest Leahy & Feingold reponses?

[Nothing here.](#)

-----Original Message-----

From: Willett, Don
Sent: Monday, August 12, 2002 10:44 AM
To: Sales, Nathan; Brett Kavanaugh (E-mail)
Subject: either of you have anything on the latest Leahy & Feingold reponses?

Krist, Steve, and I found several nits, which I've fixed.

We're ready to pull the trigger on delivery once Sheila returns tomorrow.

going once ...

going twice ...

DRW

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, July 31, 2002 5:04 PM
To: Bryant, Dan; O'Brien, Pat
Cc: 'Kavanaugh, Brett'
Subject: RE: 3:30 Leahy with Miguel tomorrow.

I agree, unless Heather wants to do it. Can you as (b) (5) . thanks

-----Original Message-----

From: Bryant, Dan
Sent: Wednesday, July 31, 2002 2:22 PM
To: Dinh, Viet; O'Brien, Pat
Cc: 'Kavanaugh, Brett'
Subject: RE: 3:30 Leahy with Miguel tomorrow.

Pat will
scribe: (b) (5)

(b) (5)

-----Original Message-----

From: Dinh, Viet
Sent: Wednesday, July 31, 2002 10:40 AM
To: Bryant, Dan; O'Brien, Pat
Cc: 'Kavanaugh, Brett'
Subject: 3:30 Leahy with Miguel tomorrow.

Pat, can/will you accompany the hero from honduras?

O'Brien, Pat

From: O'Brien, Pat
Sent: Wednesday, July 31, 2002 12:26 PM
To: Dinh, Viet; Bryant, Dan
Cc: 'Kavanaugh, Brett'
Subject: RE: 3:30 Leahy with Miguel tomorrow.

I am in NYC to cover interviews conducted by the Intelligence Committees' Joint Inquiry into 9/11. Dan is making arrangements for someone to cover

-----Original Message-----

From: Dinh, Viet
Sent: Wednesday, July 31, 2002 10:40 AM
To: Bryant, Dan; O'Brien, Pat
Cc: 'Kavanaugh, Brett'
Subject: 3:30 Leahy with Miguel tomorrow.

Pat, can/will you accompany the hero from honduras?

007104-002270

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, July 30, 2002 5:24 PM
To: Sales, Nathan; Willett, Don; Charnes, Adam; Keefer, Wendy J; O'Brien, Pat; 'Brett Kavanaugh (E-mail)'; 'Heather Wingate (E-mail)'; 'Anne Womack (E-mail)'; Goodling, Monica; Remington, Kristi L; Koebele, Steve; Joy, Sheila
Subject: RE: The New Republic on Owen

(b) (5) thx

-----Original Message-----

From: Sales, Nathan
Sent: Tuesday, July 30, 2002 4:56 PM
To: Willett, Don; Dinh, Viet; Charnes, Adam; Keefer, Wendy J; O'Brien, Pat; 'Brett Kavanaugh (E-mail)'; 'Heather Wingate (E-mail)'; 'Anne Womack (E-mail)'; Goodling, Monica; Remington, Kristi L; Koebele, Steve; Joy, Sheila
Subject: RE: The New Republic on Owen

(b) (5)

-----Original Message-----

From: Sales, Nathan
Sent: Tuesday, July 30, 2002 4:40 PM
To: Willett, Don; Dinh, Viet; Charnes, Adam; Keefer, Wendy J; O'Brien, Pat; 'Brett Kavanaugh (E-mail)'; 'Heather Wingate (E-mail)'; 'Anne Womack (E-mail)'; Goodling, Monica; Remington, Kristi L; Koebele, Steve; Joy, Sheila
Subject: The New Republic on Owen

(b) (5)

<http://www.tnr.com/docprint.mhtml?i=20020805&s=zengerle080502>

007104-002271

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Monday, July 29, 2002 8:42 PM
To: Benczkowski, Brian A
Cc: Dinh, Viet; Tim_Goeglein@who.eop.gov; Matthew_E._Smith@who.eop.gov
Subject: Re: FW: NRA/Raggi

I talked Friday to Chuck Cunningham at NRA. I explained the case fully (including affirmance on appeal), and he said that one of their counsel would call me. That has not occurred yet. I am cc'ing Tim Goeglein and Matt Smith (b) (5)

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 29, 2002 12:03 PM
To: Sales, Nathan; Charnes, Adam; 'Brett Kavanaugh (E-mail)'
Cc: Willett, Don
Subject: RE: John Hill op-ed

(b) (5)

-----Original Message-----

From: Sales, Nathan
Sent: Monday, July 29, 2002 11:57 AM
To: Dinh, Viet; Charnes, Adam; Brett Kavanaugh (E-mail)
Cc: Willett, Don
Subject: John Hill op-ed

Don and I have put our heads together and come up with the attached op-ed for John Hill's signature.

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 29, 2002 8:48 AM
To: Joy, Sheila; Keefer, Wendy J; Charnes, Adam; Willett, Don
Cc: 'Kavanaugh, Brett'
Subject: RE: Judicial nominations this week

(b) (5)

-----Original Message-----

From: Joy, Sheila
Sent: Monday, July 29, 2002 8:37 AM
To: Dinh, Viet; Keefer, Wendy J; Charnes, Adam; Willett, Don
Subject: FW: Judicial nominations this week

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Sunday, July 28, 2002 8:27 PM
To: Brett_M._Kavanaugh@who.eop.gov
Cc: Joy, Sheila; Brent_D._Greenfield@who.eop.gov;
Allison_L._Riepenhoff@who.eop.gov
Subject: Re: Judicial nominations this week

As a follow up, my understanding is that we have 11 possible nominations this week (with John Adams deferred):

(b) (6)

Freda Wolfson [Tim has ok'ed]
Jose Linares
Mark Fuller
Robert Kugler
Ralph Erickson
Richard Holwell
William Quarles
Maurice Hicks
Gregory Frost
Rosemary Collyer

007104-002274

Brett M. Kavanaugh
07/28/2002 08:22:48 PM

Record Type: Record

To: sheila.joy@usdoj.gov @ inet, Brent D. Greenfield/WHO/EOP@EOP

cc: Allison L. Riepenhoff/WHO/EOP@EOP

Subject: Judicial nominations this week

We need to get all outstanding potential judicial nominations teed up for nomination no later than Thursday. Please let me know Monday morning of the list and status. Thanks.

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, July 25, 2002 8:19 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Re: Keefer

Excellent. Calling right now.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Dinh, Viet <Viet.Dinh@USDOJ.gov>
Sent: Thu Jul 25 19:56:13 2002
Subject: Keefer

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, July 25, 2002 7:55 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Re: President Bush's comments in North Carolina on judges 7/25/02

Nice.

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, July 25, 2002 9:12 AM
To: Goodling, Monica; Koebele, Steve; Willett, Don; Remington, Kristi L; Joy, Sheila; 'Anne Womack (E-mail)'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Heather_Wingate@who.eop.gov'
Subject: RE: Justice Owen clarification

Wait. (b) (6) Thanks Monica.

-----Original Message-----

From: Goodling, Monica
Sent: Wednesday, July 24, 2002 6:26 PM
To: Dinh, Viet; Koebele, Steve; Willett, Don; Remington, Kristi L; Joy, Sheila; Anne Womack (E-mail); 'Brett M. Kavanaugh@who.eop.gov'; 'Heather Wingate@who.eop.gov'
Subject: Justice Owen clarification

Just a note - the Texas bar exam was administered twice in 1977 - Justice Owen received the highest score on the bar exam she took in December of 1977; another individual scored the highest in July of that year. This individual's family has inquired of the Texas Board of Law Examiners in light of the reports that Owen scored the highest that year. The Board will be sending him a letter tomorrow noting that they both scored the highest on their respective administrations, and will fax us a copy. (b) (5)

[REDACTED]
[REDACTED]
[REDACTED]."

Thanks!

Sales, Nathan

From: Sales, Nathan
Sent: Tuesday, July 23, 2002 9:17 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Willett, Don; Remington, Kristi L; Koebele, Steve
Subject: Re: Fifth Circuit Stats

We'll check.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Sales, Nathan <Nathan.Sales@USDOJ.gov>
CC: Willett, Don <Don.Willett@USDOJ.gov>; Remington, Kristi L <Kristi.L.Remington@USDOJ.gov>;
Koebele, Steve <Steve.Koebele@USDOJ.gov>
Sent: Tue Jul 23 00:09:28 2002
Subject: Re: Fifth Circuit Stats

this is great although it does not cover comparative reversal rates for last 5 years; any OLP resources that can dig those stats up Tuesday morning?
Note that I think the first edition of the Harvard Law Review each year has stats summarizing the previous Term that may include these kinds of stats.

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 07/22/2002 07:12:53 PM
pic32309.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Fifth Circuit Stats

Per this morning's meeting, here's a one-pager on 5th Cir. stats.

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 22, 2002 9:49 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Willett, Don
Subject: Re:

Thx. Don can you loop in with joe and make sure her statement is solid? Thx

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>; Dinh, Viet <Viet.Dinh@USDOJ.gov>
Sent: Mon Jul 22 21:40:41 2002
Subject: Re:

fyi

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/22/2002 09:40 PM -----

Heather Wingate
07/22/2002 09:39:46 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Re:

She's flying in on the earliest flight tomorrow. It doesn't get her to dc until 10:30 or so. She has already spoken to feinstein about it. As soon as she gets to the hearing, feinstein is going to allow her to speak.

It irritates me but kbh talked to owen about it.

----- Original Message -----

From: Brett M. Kavanaugh/WHO/EOP
To: Heather Wingate/WHO/EOP@EOP
Cc:
Date: 07/22/2002 08:57:24 PM
Subject: Re:

(b) (5)

007104-002281

(b) (5)

Sent from my BlackBerry Handheld.

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 22, 2002 7:09 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Willett, Don; 'Heather_Wingate@who.eop.gov'; 'Tim_Goeglein@who.eop.gov'; 'Anne_Womack@who.eop.gov'; Koebele, Steve; Sales, Nathan; Remington, Kristi L
Cc: 'Ziad_S._Ojakli@who.eop.gov'
Subject: OWEN Flnaql Statement
Attachments: Owen Opening statement 7 22 02 at 6 pm.wpd

As transmitted to SJC tonight.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, July 22, 2002 3:28 PM
To: Willett, Don; Dinh, Viet; Heather_Wingate@who.eop.gov;
Tim_Goeglein@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Anne_Womack@who.eop.gov
Cc: Ziad_S._Ojakli@who.eop.gov
Subject: Re: URGENT re: Owen

I had a similar conversation with Lynn Grefe of the coalition Thursday where I asked her to review the materials that Gay Westbrook had sent them as well as other materials I then sent. She said they would. She was cordial. Standard conversation.

Sent from my BlackBerry Handheld.

007104-002283

Statement of Justice Priscilla Owen
Committee on the Judiciary
United States Senate
July 23, 2002

Madam Chair, Chairman Leahy, Members of the Committee. I first want to thank you for the opportunity to appear before you today. I also want to thank the President for the honor of nominating me to the United States Court of Appeals for the Fifth Circuit. I want to thank Senator Gramm and Congresswoman Kay Granger for introducing me, and for their support of my nomination. I understand that Senator Hutchison will be here later this morning, and I want to thank her for her support and for her friendship. I also want to thank the Counsel to the President and my former colleague, Justice Alberto Gonzales, for his assistance and support during this process.

If you would indulge me, I would like to introduce my sister Nancy Lacy and my pastor Jeff Black who are here with me today. I would be remiss if I did not also recognize and thank former Chief Justice and Texas Attorney General John Hill for all that he has done.

Some of my other friends who are here are

I also want to thank all of the people in Texas who have expressed their support for my nomination. In particular, I would like to thank:

- Justice Raul Gonzalez and Justice Jack Hightower, also a former Congressman;
- The 15 past Presidents of the State Bar of Texas -- Republicans and Democrats -- who have written a letter of support to the Committee; and
- All who have taken the time to come to Washington to meet with Senators and your staffs.

Madam Chair, Mr. Chairman, and Members of the Committee, I appreciate the opportunity to give an opening statement today. I know that it is unusual to do so, but in this case it is necessary. The picture that some special interest groups have painted of me is wrong. And I want to set the record straight.

I have been very honored to serve as a judge on the Supreme Court of Texas, and I am extremely humbled to be the President's nominee to the Fifth Circuit. But I have never forgotten where I came from. After my father died of polio when I was ten months old, my mother and I lived with her parents and brother on a farm in South Texas. My family worked very hard to

make a living then, as they do now. My mother eventually remarried a wonderful man, and we moved to what was to me a big city, Waco. For those of you who don't know where that is, it's near Crawford. But I still spent my summers in South Texas, working on the farm alongside people from a variety of backgrounds. I learned a lot, particularly that all of us have so much in common, no matter where we come from or what we do for a living, and that we must all respect one another.

I was fortunate enough to attend Baylor University and Baylor Law School. I started practicing law twenty-four years ago, when there weren't many women in the profession. The practice of law was very good to me, but an opportunity arose for me to run for the Supreme Court of Texas, and I decided to pursue that opportunity.

I concluded that people like me -- who were experienced, and had the academic qualifications, and didn't have an ax to grind -- should be willing to step out of private practice and serve the public as judges. So I ran for a seat on the Supreme Court of Texas, and the people of Texas elected me in 1994. They re-elected me in 2000.

Although I am a judge, I think it is important to try to serve people in other ways. I have worked to increase legal aid to the poor and to improve their access to the courts. I also helped form a group known as Family Law 2000 that seeks to lessen the adversarial nature of divorces. I have served on the board of Texas Hearing & Service Dogs, which is a charitable organization that trains and provides service dogs to quadriplegics and paraplegics and those whose hearing is impaired. I am a member of St. Barnabas Episcopal Mission, where I teach Sunday School and serve as head of the altar guild.

As a judge, I have worked very hard to carry out the responsibilities that the people of Texas have given me. I believe I have fulfilled those responsibilities.

Four basic principles have guided my work as a judge.

First, I always remember that the cases that come before my court involve real people with real disputes and real problems. And I know that our decisions will affect a lot of other real people because of the precedent they set. So when I decide a case, I must do so based on a fair and consistent application of the law. My decisions cannot be based, and are not based, on whether a party is rich or poor or who their lawyer is. My decisions are based on the law -- whether that is a statute, a decision from the United States Supreme Court, or a prior decision from my Court.

Second, when a statute is before me, I must enforce it as you in Congress or as the state legislature, as the case may be, have written it unless that law is unconstitutional. I believe my decisions demonstrate that I respect the division between the Legislative and Judicial Branches of the government. And if I am confirmed, I will do my utmost to apply statutes as you have written them, not as I or others might have written them.

Third, I must strictly follow precedent of the United States Supreme Court. I have taken a solemn oath to do so. I have upheld that oath in the past, and if confirmed, I will continue to do so as a Fifth Circuit judge.

Fourth, judges must be independent -- both from public opinion and from parties and lawyers who appear before them. Texas has a system of partisan elections for judges. That means that judges necessarily will preside over cases in which people who have contributed to their campaigns may appear as a lawyer or a party. This is the same system that some other States employ, but I do not believe it is the best system. I have long advocated that Texas adopt a system in which judges are appointed and then stand for retention elections. I have also led efforts to improve judicial campaign financing. I voluntarily imposed limits on contributions during my first campaign, when no limits were imposed by any laws. And I returned 35% of my campaign contributions when I ran in 2000 and didn't draw a major-party opponent.

In closing, Madam Chair and Members of the Committee, I recognize the tremendous responsibility that judges have. For more than seven years, I have tried very hard to carry out that responsibility fairly and impartially. Those who know my record best have informed the Committee of their judgment that I have been a fair and impartial judge on the Supreme Court of Texas.

I thank you for allowing me to make this statement and to appear before you today. I welcome the opportunity to answer any questions that you have.

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 22, 2002 2:34 PM
To: 'Anne_Womack@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Britt Hume

(b) (5)

John Attanasio
SMU Law School
3315 Daniel Ave.
Dallas TX 75275-0116
jba@mail.smu.edu
(214) 768-2621

(b) (5)

-----Original Message-----

From: Anne_Womack@who.eop.gov [mailto:Anne_Womack@who.eop.gov]
Sent: Monday, July 22, 2002 2:19 PM
To: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov
Subject: Britt Hume

is looking for a guest to talk about Owen. They want someone who can be perceived as neutral - an academic type. do we have anyone to suggest. They would like someone who is familiar with Owen's record and the criticism surrounding her.
any thoughts?

007104-002288

Sales, Nathan

From: Sales, Nathan
Sent: Monday, July 22, 2002 9:46 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Willett, Don; Remington, Kristi L; Koebele, Steve
Subject: RE: Information for Senator Snow

Look good to me. And thank you for converting to Word format. WordPerfect is a dinosaur.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, July 22, 2002 9:30 AM
To: Sales, Nathan
Cc: Willett, Don; Remington, Kristi L; Koebele, Steve
Subject: RE: Information for Senator Snow

I made some minor additional edits and just sent back to Don. See attached.

(See attached file: owen Snowe Doe3.doc)(See attached file: owen SnowRescue.doc)

007104-002289

Sales, Nathan

From: Sales, Nathan
Sent: Monday, July 22, 2002 9:23 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Willett, Don; Remington, Kristi L; Koebele, Steve; 'Heather_Wingate@who.eop.gov'
Subject: RE: Information for Senator Snow
Attachments: SnowDoe3.wpd; SnowRescue.wpd

I saved the comments in redline form. Try using WordPerfect's Tools-->Review function.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, July 22, 2002 8:42 AM
To: Sales, Nathan
Cc: Willett, Don; Remington, Kristi L; Koebele, Steve;
Heather_Wingate@who.eop.gov
Subject: RE: Information for Senator Snow

I am not sure I understand where the 2 cents are. I did not see any comments?

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 07/21/2002 03:15:27 PM
pic04109.pcx)

Record Type: Record

To: "Willett, Don" <Don.Willett@usdoj.gov>

cc: "Remington, Kristi L" <Kristi.L.Remington@usdoj.gov>, "Koebele, Steve" <Steve.Koebele@usdoj.gov>, Brett M. Kavanaugh/WHO/EOP, Heather Wingate/WHO/EOP

Subject: RE: Information for Senator Snow

My \$0.02:

-----Original Message-----

From: Willett, Don
Sent: Sunday, July 21, 2002 2:00 PM
To: Sales, Nathan
Cc: Remington, Kristi L; Koebele, Steve
Subject: Fw: Information for Senator Snow

See below.

--- Sent from my BlackBerry.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>; Heather_Wingate@who.eop.gov
<Heather_Wingate@who.eop.gov>
Sent: Sun Jul 21 13:32:43 2002
Subject: Information for Senator Snow

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 07/21/2002 01:32 PM -----

(Embedded
image moved "Priscilla R. Owen" <(b)(6) Priscilla Owen email to file: 07/21/2002 09:37:35
AM pic05222.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Information for Senator Snow

Brett,

Attached are drafts regarding Doe 3 and Operation Rescue in response to Senator Snow's questions

007104-002291

Attached are drafts regarding DOE's and Operation Rescue in response to Senator Snow's questions, as I understand them.

Any thoughts or comments are always appreciated.

Thank you.

Priscilla Owen

Sales, Nathan

From: Sales, Nathan
Sent: Sunday, July 21, 2002 10:45 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Willett, Don; Koebele, Steve
Subject: Re: Owen's opening statement

Sure thing. I'll take a look first thing in the am.

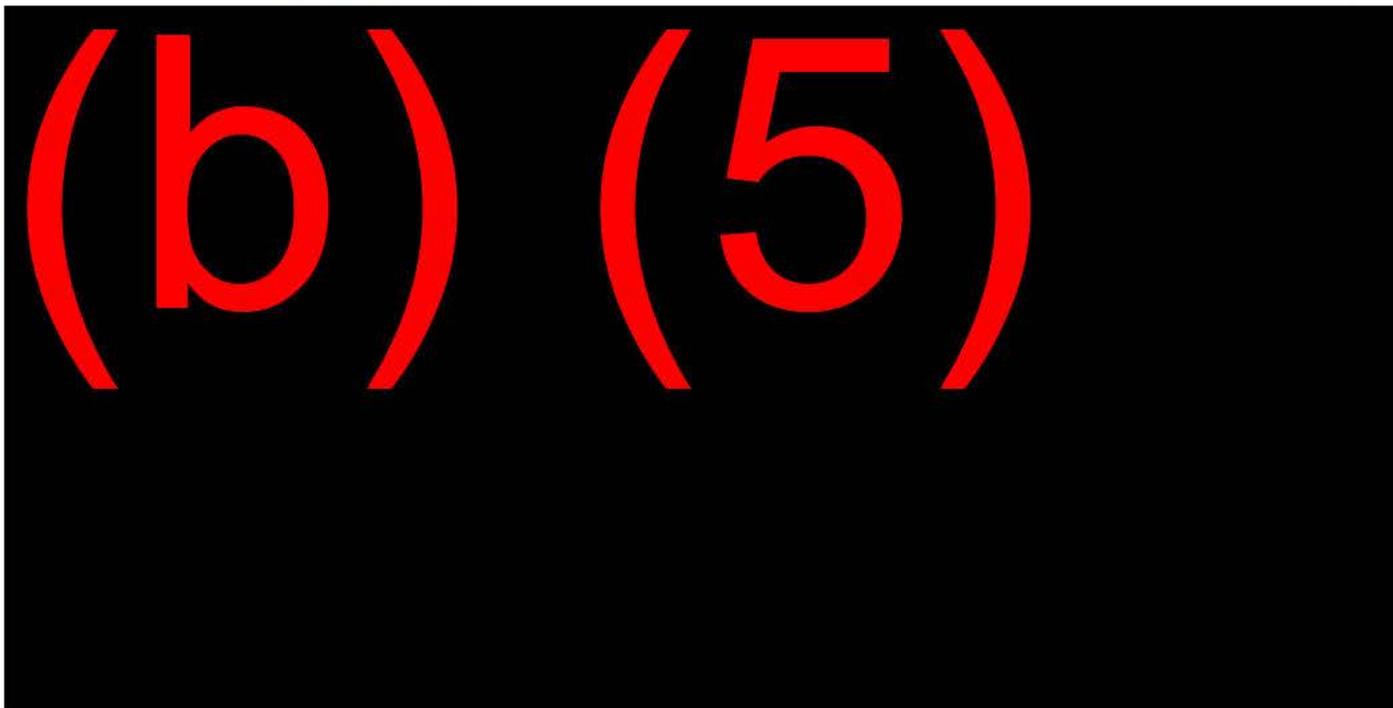
-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Sales, Nathan <Nathan.Sales@USDOJ.gov>
CC: Willett, Don <Don.Willett@USDOJ.gov>; Koebele, Steve <Steve.Koebele@USDOJ.gov>
Sent: Sun Jul 21 22:37:35 2002
Subject: Owen's opening statement

Can you all let me know in morning what you think of this? Thanks.
(See attached file: owen opening statement 7 21 02 #2.doc)

8:00 p.m.

Opening Statement
Priscilla Owen



Koebele, Steve

From: Koebele, Steve
Sent: Sunday, July 21, 2002 2:45 PM
To: Willett, Don
Cc: 'brett_m._kavanaugh@who.eop.gov'; Remington, Kristi L; Sales, Nathan; Dinh, Viet; Charnes, Adam; Keefer, Wendy J
Subject: Estab. Cl. Case

Don - (b) (5)

(b) (5)

(b) (5)

(b) (5)

is Williams v. Huff, 52 S.W.3d 171 (Tex. 2001), an opinion delivered by Justice Hankinson for the Court.

A Sheriff and county-employed Chaplain ran a voluntary program, the Chaplain's Education Unit (CEU) within the Tarrant County Corections Center. The program corresponded with the Chaplain and Sheriff's personal Christian religious beliefs. Two former inmates and a county resident sued. The issue was whether the program violated the First Amendment, applied to Texas and its political subdivisions via the Fourteenth Amendment.

The Supreme Court of Texas upheld the standing of the plaintiffs and "conclude[d] as a matter of law that based on the record in this case, the County's operation of the CEU is an unconstitutional establishment of religion." Id. at 176. While the Court did acknowledge that 'religious instruction [in prisons] can comport with the Constitution (US Sup. Ct. precedent), the Sherriff's promotion of his personal religious views resulted in the Court concluding "as a matter of law that the CEU had not legitimate secular purpose." Id. at 191. However, the Court subjected the program to further scrutiny and stated, "the County cannot ... convey a message that endorses the personal religious beliefs of county officials in attempting to rehabilitate criminal offenders. Such an endorsement of religion is ... unconstitutional." Id. at 192.

Thank you, Steve.

Sales, Nathan

From: Sales, Nathan
Sent: Friday, July 19, 2002 2:14 PM
To: Brett Kavanaugh (E-mail); Anne Womack (E-mail); Heather Wingate (E-mail)
Cc: Willett, Don; Remington, Kristi L; Koebele, Steve; Charnes, Adam; Keefer, Wendy J
Subject: Owen's opening statement
Attachments: Owen opening statement 2.doc

All,

Here's a proposed draft for Owen's opening statement. This has been through the ringer here at OLP, and we'd love to hear what you White House folks have to say. (Once we get your comments, we'll incorporate them and send the revised draft to a few friends on the Hill, like Manny and Alex.)

Thanks,
Nathan

Goodling, Monica

From: Goodling, Monica
Sent: Friday, July 19, 2002 10:26 AM
To: Willett, Don; Dinh, Viet; 'Brett Kavanaugh (E-mail)'; 'Anne Womack (E-mail)'
Subject: RE: FYI- The WSJ editorial on Owen is planned to run Monday...

[Don't think so, I offered Tuesday and again today.](#)

-----Original Message-----

From: Willett, Don
Sent: Friday, July 19, 2002 10:18 AM
To: Goodling, Monica; Dinh, Viet; 'Brett Kavanaugh (E-mail)'; 'Anne Womack (E-mail)'
Subject: RE: FYI- The WSJ editorial on Owen is planned to run Monday...

[Terrific. Anything else Melanie needs from us as they wordsmith?](#)

-----Original Message-----

From: Goodling, Monica
Sent: Friday, July 19, 2002 9:22 AM
To: Willett, Don; Dinh, Viet; 'Brett Kavanaugh (E-mail)'; 'Anne Womack (E-mail)'
Subject: FYI- The WSJ editorial on Owen is planned to run Monday...

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, July 18, 2002 2:56 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Willett, Don; Remington, Kristi L; Sales, Nathan; Koebele, Steve; 'Anne_Womack@who.eop.gov'; 'Heather_Wingate@who.eop.gov'
Subject: RE: Letter to Leahy about Justice Owen's record on tort law

agreed. Don, please circulate PDF version of signed letter so we can make secondary use of it.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, July 18, 2002 1:59 PM
To: Dinh, Viet
Cc: Willett, Don; Remington, Kristi L; Sales, Nathan; Koebele, Steve; Anne_Womack@who.eop.gov; Heather_Wingate@who.eop.gov
Subject: RE: Letter to Leahy about Justice Owen's record on tort law

(b) (5)

[NOTE: I did not include Senate folks on this e-mail.]

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 07/18/2002 10:08:05 AM
pic21229.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: RE: Letter to Leahy about Justice Owen's record on tort law

007104-002297

i defer to you and heather

-----Original Message-----

From: Willett, Don

Sent: Thursday, July 18, 2002 10:06 AM

To: Brett Kavanaugh (E-mail); Manuel Miranda (E-mail); Alex Dahl (E-mail); Dinh, Viet; Remington, Kristi L; Koebele, Steve; Sales, Nathan; Heather Wingate (E-mail)

Subject: FW: Letter to Leahy about Justice Owen's record on tort law

Duplicate

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Thursday, July 18, 2002 2:09 PM
To: Willett, Don
Cc: /DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
Subject: Re: FW: Hispanic Caucus
Attachments: pic06246.pcx

his wife, who also is DOJ OLA.

(Embedded
image moved "Willett, Don" <Don.Willett@usdoj.gov>
to file: 07/18/2002 10:32:18 AM
pic06246.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, H. Christopher Bartolomucci/WHO/EOP@EOP

cc:
Subject: FW: Hispanic Caucus

Did Miguel have any WH or DoJ Leg. Affairs folks w/ him when he spoke to Hispanic Caucus members?

(b) (5)

-----Original Message-----

From: Joy, Sheila
Sent: Thursday, July 18, 2002 10:15 AM
To: Willett, Don; Keefer, Wendy J
Subject: RE: Hispanic Caucus

(b) (5)

007104-002300

(b) (5)

-----Original Message-----

From: Willett, Don

Sent: Thursday, July 18, 2002 9:49 AM

To: 'Jose E. Martinez';

'/DDV=h._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV

+DOJ/A=TELEMAIL/C=US/'

Cc: Joy, Sheila

Subject: RE: Hispanic Caucus

(b) (5)

Plus, it cannot interfere with DoJ prep time.

BTW, Chris is (b) (6) so I'm not sure if he's in the office (in case you haven't heard anything back).

DRW

-----Original Message-----

From: Jose E. Martinez (b)(6) Jose Martinez email

Sent: Wednesday, July 17, 2002 4:39 PM

To: Willett, Don;

/DDV=h._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+

DOJ/A=TELEMAIL/C=US/

Subject: Hispanic Caucus

I just got a call from Adrian, from Congressman Charlie Gonzalez's office

(b) (5)

(b) (5)

Willett, Don

From: Willett, Don
Sent: Thursday, July 18, 2002 9:19 AM
To: Anne Womack (E-mail); Goodling, Monica
Cc: Brett Kavanaugh (E-mail); Dinh, Viet
Subject: FW: Senate filed a cloture motion on the Richard Clifton nomination (9th) this evening, 7/17
Importance: High

Anne and Monica --

[new 9th Cir. judge likely being confirmed tomorrow a.m.](#)

(b) (5)

-----Original Message-----

From: Scottfinan, Nancy
Sent: Thursday, July 18, 2002 9:15 AM
To: Joy, Sheila; Charnes, Adam; Willett, Don; Keefer, Wendy J; Sales, Nathan; Benczkowski, Brian A; Benedi, Lizette D; Goodling, Monica; 'kyle_sampson@who.eop.gov'; 'heather_wingate@who.eop.gov'; 'ann_womack@who.eop.gov'
Cc: Bryant, Dan; O'Brien, Pat; Williams, Paula
Subject: RE: Senate filed a cloture motion on the Richard Clifton nomination (9th) this evening, 7/17
Importance: High

[The anticipated vote is one hour after the Senate convenes on Friday, July 19.](#)

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, July 17, 2002 12:20 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Koebele, Steve
Cc: Charnes, Adam; Remington, Kristi L; Sales, Nathan; 'Heather_Wingate@who.eop.gov'; Willett, Don
Subject: RE: Sen. Feinstein Request - PN Positive Analysis

I agree.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, July 17, 2002 11:46 AM
To: Koebele, Steve
Cc: Charnes, Adam; Remington, Kristi L; Sales, Nathan; Dinh, Viet;
Heather_Wingate@who.eop.gov; Willett, Don
Subject: Re: Sen. Feinstein Request - PN Positive Analysis

(b) (5)

(Embedded
image moved "Koebele, Steve" <Steve.Koebele@usdoj.gov>
to file: 07/17/2002 10:34:41 AM
pic06554.pcx)

Record Type: Record

To: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) , Heather Wingate/WHO/EOP, Brett M. Kavanaugh/WHO/EOP

cc: "Willett, Don" <Don.Willett@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) , "Charnes, Adam" <Adam.Charnes@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) , "Sales, Nathan" <Nathan.Sales@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested) , "Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt

007104-002303

Notification Requested) (IPM Return Requested) Subject: Sen. Feinstein Request - PN Positive Analysis

Viet, Heather, and Brett -- Stating that he is aware that a "binder exists that has favorable arguments on Justice Owen's parental notification cases," Sen. Feinstein's counsel, Tom Oshowitz, has requested that binder from Joe Jaquot, Sen. Hutchisons counsel.



Thank you very much, Steve.

Willett, Don

From: Willett, Don
Sent: Wednesday, July 17, 2002 9:45 AM
To: Dinh, Viet; 'anne_womack@who.eop.gov'; Goodling, Monica
Cc: 'brett_m._kavanaugh@who.eop.gov'
Subject: Re: Response to Texans for Public Justice

(b) (5)

--- Sent from my BlackBerry.

-----Original Message-----

From: Dinh, Viet <Viet.Dinh@USDOJ.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>; 'Anne Womack (E-mail)' <anne_womack@who.eop.gov>; Goodling, Monica <Monica.Goodling@USDOJ.gov>
CC: 'Brett Kavanaugh (E-mail)' <brett_m._kavanaugh@who.eop.gov>
Sent: Wed Jul 17 09:37:52 2002
Subject: RE: Response to Texans for Public Justice

(b) (5)

-----Original Message-----

From: Willett, Don
Sent: Tuesday, July 16, 2002 8:21 PM
To: Anne Womack (E-mail); Goodling, Monica
Cc: Brett Kavanaugh (E-mail); Dinh, Viet
Subject: FW: Response to Texans for Public Justice

(b) (5)

-----Original Message-----

From: **(b)(6) Kay Daly email**
Sent: Tuesday, July 16, 2002 6:51 PM
To: **(b)(6) Kay Daly email**
Subject: Response to Texans for Public Justice

Coalition for a Fair Judiciary is releasing a report in response to the Texans for Public Justice report on Priscilla Owen. Copy of the report is attached in .pdf.

KRD

Dinh, Viet

From: Dinh, Viet
Sent: Monday, July 15, 2002 9:49 PM
To: 'Heather_Wingate@who.eop.gov'; Willett, Don; 'Prowen@att.net'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Anne_Womack@who.eop.gov'
Cc: 'Elizabeth_N._Camp@who.eop.gov'; 'Alberto_R._Gonzales@who.eop.gov'
Subject: Re: Important re: Owen

(b) (5)

-----Original Message-----

From: Heather_Wingate@who.eop.gov <Heather_Wingate@who.eop.gov>
To: Willett, Don <Don.Willett@USDOJ.gov>; Dinh, Viet <Viet.Dinh@USDOJ.gov>; (b)(6) Priscilla Owen Email <(b)(6) Priscilla Owen Email>; Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>; Anne_Womack@who.eop.gov <Anne_Womack@who.eop.gov>
CC: Elizabeth_N._Camp@who.eop.gov <Elizabeth_N._Camp@who.eop.gov>; Alberto_R._Gonzales@who.eop.gov <Alberto_R._Gonzales@who.eop.gov>
Sent: Mon Jul 15 20:25:23 2002
Subject: Important re: Owen

Specter is really geared up to support Justice Owen. He spoke out strongly on her behalf in the GOP Senate leadership meeting. (b) (5)

(b) (5)

(b) (5)

(b) (5) I checked w/Hatch's folks on this and there's nothing that prevents her from doing this as far as the committee is concerned.

(b) (5)

There's one other issue: (b) (5)

(b) (5)

(b) (5)

Heather

fyi: Sen. KBH has secured commitments from Snowe and Collins to meet w/Owen tomorrow (this is

007104-002306

very good, b/c they aren't on board yet).

Sales, Nathan

From: Sales, Nathan
Sent: Monday, July 15, 2002 4:37 PM
To: Willett, Don; Remington, Kristi L; Koebele, Steve
Cc: 'Brett Kavanaugh (E-mail)'; 'Anne Womack (E-mail)'; 'Heather Wingate (E-mail)'
Subject: RE: WH press if getting some inquiries re. the Searcy/quadruple case (Ford Motor Co. v. Miles)
Attachments: Ford case.doc

[Here you go.](#) This set of talkers will be included in our comprehensive rebuttal of the TPJ report.

-----Original Message-----

From: Willett, Don
Sent: Monday, July 15, 2002 4:35 PM
To: Sales, Nathan; Remington, Kristi L; Koebele, Steve
Cc: Brett Kavanaugh (E-mail); Anne Womack (E-mail); Heather Wingate (E-mail)
Subject: WH press if getting some inquiries re. the Searcy/quadruple case (Ford Motor Co. v. Miles)

Can someone pls. e-mail the relevant TPs and other materials re. that case to Anne Womack and Heather Wingate (w/ a "cc" to Kavanaugh)?

Nathan, I know your TPJ rebuttal doc. has a couple of paragraphs re. this case, too.

Thanks.

DRW

Dinh, Viet

From: Dinh, Viet
Sent: Friday, July 12, 2002 9:31 AM
To: Willett, Don; Sales, Nathan; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L; 'Brett Kavanaugh (E-mail)'
Subject: RE: Owen restraint paper

Please put (b) (5) on my call list. Nathan, how are you coming with (b) (5)

(b) (5)

-----Original Message-----

From: Willett, Don
Sent: Thursday, July 11, 2002 8:08 PM
To: Dinh, Viet; Sales, Nathan; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L; 'Brett Kavanaugh (E-mail)'
Subject: RE: Owen restraint paper

That's exactly who Leonard is thinking of.

-----Original Message-----

From: Dinh, Viet
Sent: Thursday, July 11, 2002 7:23 PM
To: Willett, Don; Sales, Nathan; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L; 'Brett Kavanaugh (E-mail)'
Subject: RE: Owen restraint paper

Or perhaps the newly created (b) (5)

-----Original Message-----

From: Willett, Don
Sent: Thursday, July 11, 2002 2:56 PM
To: Sales, Nathan; Dinh, Viet; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L; Brett Kavanaugh (E-mail)
Subject: RE: Owen restraint paper

Leonard Leo is finding a helpful conduit (b) (5) and has promised to have it widely distributed as quickly as possible.

DRW

-----Original Message-----

From: Sales, Nathan
Sent: Wednesday, July 10, 2002 9:29 PM

007104-002310

Sent: Wednesday, July 10, 2002 3:23 PM

To: Dinh, Viet; Willett, Don; 'Brett Kavanaugh (E-mail)'; Koebele, Steve; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L
Subject: Owen restraint paper

All,

Brett just emailed me to say (b) (5)

(b) (5)

Speaking of which, (b) (5)

(b) (5)

Nathan

Sales, Nathan

From: Sales, Nathan
Sent: Thursday, July 11, 2002 5:18 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Charnes, Adam; Willett, Don; Remington, Kristi L; Koebele, Steve; Dinh, Viet; Keefer, Wendy J
Subject: RE: Owen PN talkers
Attachments: Owen parental notification TPs.wpd

New version, which incorporates Brett's recommendations.

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, July 11, 2002 3:23 PM
To: Sales, Nathan
Cc: Charnes, Adam; Willett, Don; Remington, Kristi L; Koebele, Steve; Dinh, Viet; Keefer, Wendy J
Subject: RE: Owen PN talkers

few quick comments:

(b) (5)

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 07/11/2002 01:24:29 PM
pic13842.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: RE: Owen PN talkers

New version, in response to Kristi's recommendations. There are no substantive changes.

Willett, Don

From: Willett, Don
Sent: Thursday, July 11, 2002 2:54 PM
To: Sales, Nathan; Dinh, Viet; Charnes, Adam; Keefer, Wendy J; Remington, Kristi L; Koebele, Steve; 'Brett Kavanaugh (E-mail)'
Subject: RE: Owen PN talkers

Everyone ok with these going out into the wider world? I am.

DRW

-----Original Message-----

From: Sales, Nathan
Sent: Thursday, July 11, 2002 1:24 PM
To: Dinh, Viet; Charnes, Adam; Willett, Don; Keefer, Wendy J; Remington, Kristi L; Koebele, Steve; 'Brett Kavanaugh (E-mail)'
Subject: RE: Owen PN talkers

New version, in response to Kristi's recommendations. There are no substantive changes.

007104-002314

Sales, Nathan

From: Sales, Nathan
Sent: Thursday, July 11, 2002 10:34 AM
To: Dinh, Viet; Charnes, Adam; Willett, Don; Keefer, Wendy J; Remington, Kristi L; Koebele, Steve; 'Brett Kavanaugh (E-mail)'
Subject: FW: Owen PN talkers
Attachments: Owen parental notification TPs.wpd

All,

Brett says he's fine with the case-specific PN talkers I forwarded last night (and again this morning). Steve and Kristi, (b) (5)

(b) (5) I expect that (b) (5)

(b) (5)

Nathan

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, July 11, 2002 10:20 AM
To: Sales, Nathan
Subject: RE: Owen PN talkers

Very good, but (b) (5)

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 07/11/2002 09:40:00 AM
pic11854.pcx)

007104-002315

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: RE: Owen PN talkers

Here's an updated set of TPs. A couple of new ideas occurred to me after leaving the office last night.

-----Original Message-----

From: Sales, Nathan

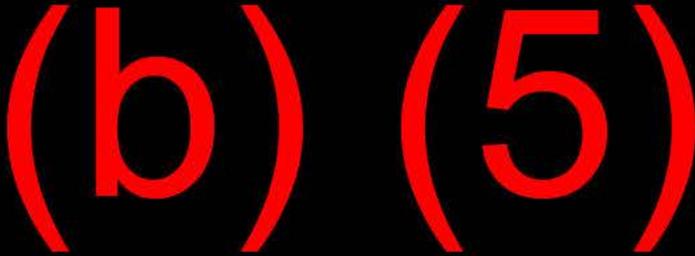
Sent: Wednesday, July 10, 2002 9:14 PM

To: Charnes, Adam; Willett, Don; Keefer, Wendy J; Remington, Kristi L; Koebele, Steve; Brett Kavanaugh (E-mail)

Subject: Owen PN talkers

All,

Here's a reworked draft of the case-specific parental-notification TPs. Let me draw your attention in

A large black rectangular redaction box covers the main body of the email. In the center of this box, the text "(b) (5)" is written in a large, bold, red font. The parentheses are also red and appear to be part of the redaction code.

Thanks,
Nathan

<< File: Owen parental notification TPs.wpd >>

Sales, Nathan

From: Sales, Nathan
Sent: Thursday, July 11, 2002 10:27 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Owen PN talkers

I absolutely agree. These are just the case-specific TPs. (b) (5)

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, July 11, 2002 10:20 AM
To: Sales, Nathan
Subject: RE: Owen PN talkers

Duplicative records

007104-002317

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, July 10, 2002 10:44 PM
To: Sales, Nathan; Charnes, Adam; Willett, Don; Keefer, Wendy J; Remington, Kristi L; Benczkowski, Brian A; Koebele, Steve; Loughlin, Ann L (OLP); Benedi, Lizette D; 'Brett_M._Kavanaugh@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; Goodling, Monica; O'Brien, Pat
Subject: Re: Stats on delays in the D.C. Circuit

Nathan,

Pls turn this into an (b) (5)
(b) (5) hanks mcuh

-----Original Message-----

From: Sales, Nathan <Nathan.Sales@USDOJ.gov>
To: Dinh, Viet <Viet.Dinh@USDOJ.gov>; Charnes, Adam <Adam.Charnes@USDOJ.gov>; Willett, Don <Don.Willett@USDOJ.gov>; Keefer, Wendy J <Wendy.J.Keefer@USDOJ.gov>; Remington, Kristi L <Kristi.L.Remington@USDOJ.gov>; Benczkowski, Brian A <Brian.A.Benczkowski@USDOJ.gov>; Koebele, Steve <Steve.Koebele@USDOJ.gov>; Loughlin, Ann L (OLP) <Ann.L.Loughlin@USDOJ.gov>; Benedi, Lizette D <Lizette.D.Benedi@USDOJ.gov>; Brett Kavanaugh (E-mail) <Brett_M._Kavanaugh@who.eop.gov>; Brad Berenson (E-mail) <Bradford_A._Berenson@who.eop.gov>; Goodling, Monica <Monica.Goodling@USDOJ.gov>; O'Brien, Pat <Pat.O'Brien@USDOJ.gov>
Sent: Wed Jul 10 21:21:43 2002
Subject: Stats on delays in the D.C. Circuit

Judges folks,

Attached please find a draft one-pager on how the vacancy crisis is impacting cases in the D.C. Circuit. (The TPs are drawn from D.H. Ginsburg's address at the recent D.C. Circuit Judicial Conference.) I'd be grateful for any input on how to improve them.

Thanks,
Nathan

007104-002318

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, July 10, 2002 10:41 PM
To: Willett, Don; Sales, Nathan; 'brett_m._kavanaugh@who.eop.gov'; Koebele, Steve; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L
Subject: Re: Owen restraint paper

(b) (5) Thx

-----Original Message-----

From: Willett, Don <Don.Willett@USDOJ.gov>
To: Sales, Nathan <Nathan.Sales@USDOJ.gov>; Dinh, Viet <Viet.Dinh@USDOJ.gov>; 'Brett Kavanaugh (E-mail)' <brett_m._kavanaugh@who.eop.gov>; Koebele, Steve <Steve.Koebele@USDOJ.gov>; Keefer, Wendy J <Wendy.J.Keefer@USDOJ.gov>; Charnes, Adam <Adam.Charnes@USDOJ.gov>; Remington, Kristi L <Kristi.L.Remington@USDOJ.gov>
Sent: Wed Jul 10 21:42:07 2002
Subject: RE: Owen restraint paper

(b) (5) and Oschal is looking for (b) (5)

Viet, any heartburn with (b) (5)

DWR

-----Original Message-----

From: Sales, Nathan
Sent: Wednesday, July 10, 2002 9:29 PM
To: Dinh, Viet; Willett, Don; 'Brett Kavanaugh (E-mail)'; Koebele, Steve; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L
Subject: Owen restraint paper

All,

Brett just emailed me to say that he's fine with the Owen paper, so it's ready for distribution to whatever lucky surrogate we settle on.

Speaking of which, (b) (5)

(b) (5)

Nathan

007104-002319

PRISCILLA OWEN: A RESTRAINED, PRINCIPLED JURIST

The Ninth Circuit's recent decision to hold the pledge of allegiance unconstitutional¹ serves as a vivid reminder that the federal bench must be staffed by jurists who are committed to deciding cases according to the law, not their personal policy preferences. Judges are neither legislators nor constitutional drafters, and it is an abuse of power to use the judicial office to impose one's political views in the guise of legal interpretation.

Though startling, and inconsistent with America's constitutional traditions, the Ninth Circuit's ruling has provoked a nationwide civics lesson. The pledge decision presents an opportunity for the American people to reconsider what sort of judges should be confirmed to the federal bench. And at a more general level, it is an occasion to revisit the issues of the judiciary's proper role in a democratic system of government, and what is meant by "judicial activism" and "judicial restraint."

Ultimately, judicial restraint is an appreciation for the judiciary's limited powers, and a reluctance to usurp prerogatives that the Constitution assigns or reserves to the other branches of government. In particular, restrained judges:

- adhere faithfully to binding precedent issued by higher courts, especially the United States Supreme Court;
- defer to the policy choices the legislature enacts into positive law, and refrain from substituting their views for those of the legislature;
- interpret the Constitution and laws enacted by the legislature as intended by those who wrote them;
- respect the traditional authority of trial courts, which are in the best position to assess the credibility and demeanor of witnesses, to make factual findings;
- uphold the right of individuals to take actions which the law permits them to take; and
- approach each case without any preconceived notions, or reflexively siding with any one litigant.

Judged by any of these criteria, Justice Priscilla Owen of the Texas Supreme Court, whom the President has nominated to a vacancy on the U.S. Court of Appeals for the Fifth Circuit, undoubtedly is a restrained and principled jurist. Time and again, in her opinions Justice Owen has stressed that the function of a court in interpreting legal text is to give effect to the intent of the lawgiver. Justice Owen consistently has interpreted Texas statutes in light of the binding precedents of the United States Supreme Court. She has deferred to the enactments of the Texas Legislature, denying that judges legitimately can interpret statutory language to reflect their own political or ideological commitments. And she has declined, as an appellate judge, to meddle with the traditional prerogative of the trial courts to make findings of fact.

The discussion below demonstrates Justice Owen's fidelity to these and other jurisprudential pillars, a fidelity that earned her a unanimous "well-qualified" rating from the

¹ See *Newdow v. U.S. Congress*, No. 00 16423 (9th Cir. June 26, 2002).

American Bar Association, the highest rating a judicial nominee can possibly achieve. We agree that Justice Owen is superlatively well suited to occupy a seat on the Fifth Circuit, and we urge the Senate to approve her nomination as soon as possible.

I. Balancing the Rights of Protesters and Patients: *Operation Rescue v. Planned Parenthood*

Judges often are faced with difficult cases where the rights of individual parties collide. The judge is left with the delicate task of balancing the rights of both parties in accordance with the law. Justice Owen’s decision to join the majority in *Operation Rescue-National v. Planned Parenthood of Houston and Southeast Texas, Inc.*² is compelling evidence of her commitment to decide cases according to the governing law. Consistent with the rule of law, the majority neutrally balanced the competing interests of two mutually antagonistic sets of litigants: abortion providers and pro-life activists. According to the Court, “[a]ccommodating interests like property and privacy rights along with free expression often necessitates limitations on all of them.”³

In *Operation Rescue*, the Court upheld the vast majority of restrictions the trial judge imposed on the pro-life protesters. Although the majority made several modifications to the trial court’s order—for example, reducing the size of buffer zones surrounding abortion clinics—it ultimately approved an injunction that (1) established buffer zones around certain abortion clinics and providers’ homes, where active protests were taking place; (2) prohibited more than two activists from entering a protest zone at any given time; (3) prohibited protesters from shouting or yelling; (4) prohibited more than a single demonstrator from approaching patients to offer “sidewalk counseling”; (5) prohibited demonstrators from approaching a given patient more than once when she enters the clinic and once when she leaves; and (6) required demonstrators to stop talking to patients when they indicated a desire to be left alone. According to the Court, the modified injunction “protects the demonstrators’ right to engage in peaceful speech. At the same time, the provision ensures that the demonstrators will not interfere with the significant government interests protected by the buffer zone.”⁴ The majority—including Justice Owen—also upheld the trial court’s decision to assess over \$1 million in punitive damages against the protesters.⁵

At the time it was handed down, the *Operation Rescue* decision was universally regarded as a victory for the abortion providers, even though some groups now claim that the majority’s opinion “displayed unwillingness to protect abortion clinics from harassing protesters.”⁶ For instance, at the time, a Planned Parenthood officer hailed the decision as “a complete and total victory.”⁷ Planned Parenthood’s attorney in the case said of the ruling: “It wasn’t a home run.

² 975 S.W.2d 546 (Tex. 1998).

³ *Id.* at 555.

⁴ *Id.* at 567.

⁵ *See id.* at 569.

⁶ *See National Abortion Federation Report on Priscilla Owen* at 2 (2002) (“NAF Report”).

⁷ Juan B. Elizondo Jr., *Abortion Clinic Buffers Reined in*, AUSTIN AM. STATESMAN, July 4, 1998, at B2 (quoting Judy Reiner, senior vice president for Planned Parenthood of Houston and Southeast Texas).

It was a grand slam.”⁸ Moreover, Justice Owen declined to join Justice Raul Gonzales’s partial dissent, which argued that the injunction offended the protesters’ free speech rights.⁹ The political expediency of the group’s revised interpretation, which distorts the decision beyond all recognition, is apparent.

II. Deference to the United States Supreme Court: *Doe 1(I)* and *Doe 2*

Judicial restraint and indeed the rule of law requires that judges on lower courts commit themselves to following the binding precedents of superior tribunals: “As applied in a hierarchical system of courts, the duty of a subordinate court to follow the laws as announced by superior courts is theoretically absolute.”¹⁰ In both *In re Jane Doe (“Doe 1(I)”)*¹¹ and *In re Jane Doe 2 (“Doe 2”)*,¹² Justice Owen conscientiously applied U.S. Supreme Court precedents dealing with what underage girls must prove before they can have an abortion without telling their parents. Her opinions recognized that the U.S. Supreme Court had interpreted the precise language used in the Texas Parental Notification Act in other cases before the law was enacted. In such a case, canons of judicial construction require that a judge presume that the legislature was aware of the precedent and intended to incorporate it into the legislation. In a word, Justice Owen was reading the Texas statute in light of the pronouncements of the highest court in the land.

Needless to say, Justice Owen’s reading of the statute is not the only reasonable interpretation of what the Legislature intended; other members of the Court could, and certainly did, reach different conclusions about the Legislature’s intent. But Justice Owen’s stated commitment to implement the Legislature’s will belies any claim that she was seeking to substitute her views, whatever they may be, for those of the people’s elected representatives.

Like all of the twelve Parental Notification Act cases the Texas Supreme Court has handed down to date, *Doe 1(I)* and *Doe 2* required the Court to interpret a Texas statute that lays down the general rule that at least one parent of an underage girl must be notified before the girl can have an abortion.¹³ The statute contains three exceptions to that rule: a parent need not be notified if: (1) the girl is “mature and sufficiently well informed”; (2) “notification would not be

⁸ Clay Robinson, *Anti Abortion Protesters Lose ’92 Case Ruling; \$1.2 Million in Damages Upheld*, HOUSTON CHRON., July 4, 1998, at A1 (quoting Neal Manne, attorney for Planned Parenthood of Houston and Southeast Texas).

⁹ See *Operation Rescue*, 975 S.W.2d at 573-84 (Gonzales, J., concurring in part and dissenting in part).

¹⁰ 1B JAMES W. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 0.401, at I 2 (2d ed. 1993).

¹¹ 19 S.W.3d 249 (Tex. 2000). The Texas Supreme Court uses Arabic and Roman numerals to differentiate the multiple parental notification cases it has heard. In a given case, the Arabic numeral refers to the identity of the girl, and the Roman numeral specifies which appearance the girl is making before the Texas Supreme Court. So, for example, “*Doe 1(I)*” signifies the first Jane Doe plaintiff in her first appearance before the Court.

¹² 19 S.W.3d 278 (Tex. 2000).

¹³ See TEX. FAM. CODE § 33.002(1) (2000):

(a) A physician may not perform an abortion on a pregnant unemancipated minor unless:

(1) the physician performing the abortion gives at least 48 hours actual notice, in person or by telephone, of the physician’s intent to perform the abortion to:

(A) a parent of the minor, if the minor has no managing conservator or guardian; or

(B) a court appointed managing conservator or guardian.

in the best interest of the minor”; or (3) “notification may lead to physical, sexual, or emotional abuse of the minor.”¹⁴

None of the parental notification cases involved any dispute over whether the Constitution guarantees the right to an abortion, or even the scope of that right. Instead, the cases dealt with routine legal issues such as the proper method of interpreting a statute, and the degree of deference an appellate court owes to a trial court’s factual findings.¹⁵ As the majority in *Doe 1(I)* emphasized, “[w]e are not called upon to decide the constitutionality or wisdom of abortion. Arguments for or against abortion do not advance the issue of statutory construction presented by this case. Instead, our sole function is to interpret and apply the statute enacted by our Legislature.”¹⁶ It should go without saying that a decision to deny a girl a judicial bypass, pursuant to standards established by the state Legislature, does not prevent her from having an abortion; it only requires that one of her parents know about it before she does so.

In *Doe 1(I)*, the Court interpreted the first exception to the general rule that parents must receive notice that their minor daughter is seeking an abortion: notice is not necessary when the girl is “mature and sufficiently well informed.”¹⁷ Justice Owen while agreeing with the result reached by the Court majority wrote separately to emphasize that by using the language “mature and sufficiently well informed,” the Legislature intended to ensure that girls be exposed to the widest possible range of information when deciding whether to have an abortion without telling their parents. According to Owen, “the Legislature intended to require minors to be informed about the decision to have an abortion to the full extent that the law, as interpreted by the United States Supreme Court, will allow.”¹⁸ Justice Owen simply deferred to and applied the precedent of a superior tribunal. Because the language of the parental notification statute itself

¹⁴ *Id.* § 33.003(i). The complete text of the exceptions reads as follows:

The court shall determine by a preponderance of the evidence whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian, whether notification would not be in the best interest of the minor, or whether notification may lead to physical, sexual, or emotional abuse of the minor. If the court finds that the minor is mature and sufficiently well informed, that notification would not be in the minor's best interest, or that notification may lead to physical, sexual, or emotional abuse of the minor, the court shall enter an order authorizing the minor to consent to the performance of the abortion without notification to either of her parents or a managing conservator or guardian and shall execute the required forms.

¹⁵ In some of these cases, Justice Owen has gone out of her way to express her view that certain statutory restrictions on abortion would violate the Constitution. For instance, the U.S. Supreme Court has held that a parental *consent* statute must contain a judicial bypass provision to be constitutional, *see Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416, 439–42 (1983) (“*Akron I*”), but it has left unsettled whether parental *notification* statutes, like Texas’s, must allow for judicial bypass, *see Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 510 (1990) (“*Akron II*”). Nevertheless, Justice Owen reasoned that “there is reasoning in [Supreme Court precedent] that would suggest that the United States Supreme Court might hold that bypass procedures are necessary in notification statutes.” *Doe 1(I)*, 19 S.W.3d at 262 (Owen, J., concurring). Justice Owen also has expressed her view that “[t]he constitutionality of requiring a minor to notify *both* parents is questionable.” *Doe 2*, 19 S.W.3d at 287 (Owen, J., concurring) (citing *Hodgson v. Minnesota*, 497 U.S. 417, 450–55 (1990)); *see also In re Doe 3*, 19 S.W.3d 300, 320 (Tex. 2000) (Owen, J., concurring).

¹⁶ *Doe 1(I)*, 19 S.W.3d at 251.

¹⁷ TEX. FAM. CODE § 33.003(i).

¹⁸ *Doe 1(I)*, 19 S.W.3d at 262 (Owen, J., concurring).

tracks language from Supreme Court caselaw,¹⁹ Justice Owen reasonably concluded that the Legislature meant to incorporate the full body of Supreme Court parental notification precedent. The majority also recognized that the Legislature intended to incorporate the Supreme Court’s jurisprudence.²⁰

Specifically, Justice Owen argued that the Legislature meant to require that girls be exposed to the “profound philosophic arguments surrounding abortion.”²¹ This requirement derives from the Supreme Court’s decision in *Planned Parenthood v. Casey*,²² where, after reaffirming the validity of *Roe v. Wade*,²³ it held that “the state may enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term and that there are procedures and institutions to allow adoption of unwanted children.”²⁴

Justice Owen never suggested that the Legislature intended for girls to be exposed to any particular viewpoint: they should learn about arguments “surrounding” abortion, not “against” abortion. And Justice Owen expressly denied that courts could coerce girls into following any particular set of views, religious or otherwise: “A court cannot, of course, require a minor to adopt or adhere to any particular philosophy or to profess any religious beliefs.”²⁵ Astonishingly, an interest group’s report on Justice Owen excises this crucial sentence from its quotation of her concurrence, replacing it with an ellipsis.²⁶

¹⁹ Compare *Bellotti v. Baird*, 443 U.S. 622, 643–44 (1979) (plurality opinion) (“*Bellotti II*”) (holding that a minor girl seeking an abortion must be able to show “that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents’ wishes”), with TEX. FAM. CODE § 33.003(i) (“The court shall determine by a preponderance of the evidence whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian.”).

²⁰ *Doe I(I)*, 19 S.W.3d at 254 (“Our Legislature was obviously aware of this jurisprudence when it drafted the statute before us.”).

²¹ *Id.* at 263 (Owen, J., concurring).

²² 505 U.S. 833 (1992).

²³ 410 U.S. 113 (1973).

²⁴ *Casey*, 505 U.S. at 872–73 (plurality opinion); see also *Poelker v. Doe*, 432 U.S. 519, 521 (1977) (per curiam) (“[T]he Constitution does not forbid a State or city, pursuant to democratic processes, from expressing a preference for normal childbirth.”).

²⁵ *Doe I(I)*, 19 S.W.3d at 264 (Owen, J., concurring); see also *id.* at 265 (“I agree with the Court that she should not be required to obtain counseling or other services from a particular provider.”).

²⁶ See *NAF Report* at 10 (quoting *Doe I(I)*, 19 S.W.3d at 264–65 (Owen, J., concurring)):

She should also indicate to the court that she is aware of and has considered that there are philosophic, social, moral, and religious arguments that can be brought to bear when considering abortion. . . . [R]equiring a minor to exhibit an awareness that there are issues, including religious ones, surround [sic; error in *NAF Report*] the abortion decision is not prohibited by the Establishment Clause.

The group is fortunate that its audience is the public at large, not the federal judiciary; a number of courts have held that attorneys can be sanctioned for using ellipses to mischaracterize the views of their opponents. See, e.g., *Napoli v. Sears, Roebuck & Co.*, 835 F. Supp. 1053, 1063 (N.D. Ill. 1993) (faulting counsel for “the manipulative use of ellipses and omissions,” and emphasizing that “[m]isrepresenting a court’s opinion is unwise; indeed, it clearly provides the basis for sanctions under Fed. R. Civ. P. 11”); *Angelico v. Lehigh Valley Hosp. Ass’n*, No. CIV.A 96 2861, 1996 WL 524112, at *4–*5 (E.D. Pa. Sept. 13, 1996) (stating that “[e]llipses in quotes from opposing parties’ briefs that completely distort the original are inappropriate,” and admonishing the plaintiff’s counsel to refrain from “attempting to gain an advantage in argument by mischaracterizing the positions of opposing parties”).

Nor did Justice Owen “reject Planned Parenthood as a ‘qualified source of information’” about abortion, as an interest group now claims.²⁷ She simply quoted a decision of the U.S. Supreme Court, which specifically acknowledged that abortion clinics are unlikely to provide girls with all of the information they need to make an informed decision about whether to have an abortion: “[i]t seems unlikely that [a girl] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.”²⁸

Justice Owen’s conclusion that the Legislature meant for girls to learn about the impact an abortion will have on the fetus²⁹ likewise derives from the Supreme Court’s decision in *Casey*:

Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.³⁰

Justice Owen’s concurrence in *Doe 2* is equally compelling evidence of her commitment to following the established precedents of the U.S. Supreme Court. In *Doe 2*, the Texas Supreme Court interpreted a second exception to the general rule that a girl’s parents must be notified before she can have an abortion: “whether notification would not be in the best interest of the minor.”³¹ Again agreeing with the judgment issued by the Court’s majority, Justice Owen wrote separately to emphasize that this exception reflects the Legislature’s intent that courts should evaluate two factors: (1) whether notifying the girl’s parents is not in her best interest, and (2) whether the abortion itself is in her best interest.³²

The Legislature’s belief that this exception would be available only to girls who can prove *both* that abortion is in their best interest *and* that notifying a parent is not, derives from the U.S. Supreme Court’s decision in *Lambert v. Wicklund*.³³ In that case, the Court interpreted a Montana statute that, like Texas’s, allowed a girl to have an abortion without notification if “the notification of a parent or guardian is not in the best interests of the [girl].”³⁴ The *Lambert* Court interpreted this language to require the girl to prove that abortion without notification (not just the failure to provide notification) was in her best interest. According to the Court, “a

²⁷ See *NAF Report* at 10.

²⁸ *H.L. v. Matheson*, 450 U.S. 398, 410 (1981) (citation omitted).

²⁹ *Doe I(I)*, 19 S.W.3d at 265 (Owen, J., concurring).

³⁰ *Casey*, 505 U.S. at 882 (plurality opinion).

³¹ See TEX. FAM. CODE § 33.001(i) (2000).

³² See *In re Doe 2*, 19 S.W.3d 278, 285 (Tex. 2000) (Owen, J., concurring) (“The inquiry under the ‘best interest’ provision is not simply whether notifying a parent that the minor is pregnant and is seeking an abortion would be in the minor’s best interest. The inquiry is whether *proceeding with an abortion* without notification of a parent is in the minor’s best interest.”).

³³ 520 U.S. 292 (1997) (per curiam).

³⁴ MON. CODE ANN. § 50 20 212(5) (1995), *quoted in Lambert*, 520 U.S. at 294.

judicial bypass procedure requiring a minor to show that *parental notification is not* in her best interests is equivalent to a judicial bypass procedure requiring a minor to show that *abortion without notification* is in her best interest.”³⁵ The *Lambert* Court further reasoned that nothing in Montana’s statute “permits a court to separate the question whether parental notification is not in a minor’s best interest from an inquiry into whether abortion (without notification) is in the minor’s best interest.”³⁶

Ironically, in a later *Jane Doe* case, the members of the *Doe 2* majority themselves came to embrace Justice Owen’s interpretation of the “best interest” exception. In *In re Jane Doe 4 (“Doe 4(II)”)*,³⁷ the Court considered *both* whether the abortion itself was in the girl’s best interest – specifically, whether her medical condition made abortion prohibitively risky³⁸ – and whether notifying her parents was not in her best interest.³⁹ The Court’s implicit conclusion that the health risks of abortion were relevant to whether the girl was entitled to a “best interest” judicial bypass suggests that Justice Owen’s interpretation of that provision has carried the day.

Statements in the legislative history made by members of both parties confirm Justice Owen’s conclusion that the exceptions to the parental notification requirement were intended to be just that: exceptions, not the rule. Representative Phil King predicted that parents would be told that their minor daughter was planning to have an abortion in the “vast, vast, vast majority of cases.”⁴⁰ Representative Dianne White Delisi, the Parental Notification Act’s sponsor, indicated that judges would grant bypasses only “in rare cases.”⁴¹ Representative Patricia Gray called the bypass procedures “exceptional,”⁴² and Senator David Bernsen likewise referred to them as “small exceptions.”⁴³

³⁵ *Lambert*, 520 U.S. at 297.

³⁶ *Id.* at 298. The fact that the *Lambert* Court construed Montana’s statute to require that the girl prove two elements, not just one, is further indicated by Justice Stevens’s separate opinion in that case. Concurring in the judgment, Justice Stevens faulted the majority for concluding that “a young woman must demonstrate both that abortion is in her best interest and that notification is not.” *Id.* at 302 (Stevens, J., concurring in the judgment). There would have been no need for Justice Stevens to write separately if the majority had held that a girl was entitled to the “best interest” exception simply by showing that notification was not in her best interest, with no analysis of whether the abortion itself was in her best interest.

³⁷ 19 S.W.3d 337 (Tex. 2000).

³⁸ *See id.* at 340 (reasoning that “if she does have a current health risk, then her physical needs and the potential dangers may weigh in favor of involving her parents in her decision”).

³⁹ *See id.* (speculating that “notifying her parents could cause harm to their family structure and potentially lead her parents to withdraw support”).

⁴⁰ Hearings on Senate Bill 30 Before the House State Affairs Comm., 76th Leg., tape 3, side B (Tex. Apr. 19, 1999) (statement of Rep. King). The Texas Legislature made audiotape recordings of the proceedings surrounding the adoption of the Parental Notification Act, but apparently did not produce written transcripts. The Texas Supreme Court transcribed a number of the materials at its own expense. *See In re Doe 1(II)*, 19 S.W.2d 346, 373 (Tex. 2000) (Hecht, J., dissenting) (“*Doe 1(II)*”). The materials are extensively quoted in Justice Abbott’s dissent in *Doe 1(II)*. *See id.* at 383–93 (Abbott, J., dissenting).

⁴¹ Hearings on Senate Bill 30 Before the House State Affairs Comm., 76th Leg., tape 1, side A (Tex. Apr. 19, 1999) (statement of Rep. Delisi).

⁴² *Id.* tape 3, side B (Apr. 19, 1999) (statement of Rep. Gray).

⁴³ Hearings on Senate Bill 30 Before the Senate Human Services Comm., 76th Leg., tape 3, at 4 (Mar. 10, 1999) (statement of Sen. Bernsen).

Indeed, the mere fact that the law was passed is evidence that the Texas Legislature intended to make it more difficult for minor girls to have abortions without their parents' knowledge. Before the law was enacted, girls were free to have abortions without telling their parents. If the Legislature meant to "assist minors in their attempt to obtain abortions," as one interest group now claims,⁴⁴ rather than to enable parents to play a part in one of the most important decisions their daughters will ever make, it would have had no need to pass the statute. Justice Owen's willingness to give effect to the Legislature's expressed intent in adopting the Parental Notification Act reveals her to be the sort of restrained jurist who deserves a seat on the federal bench.

III. Deference to the Texas Legislature: Doe 3

One of the most important aspects of judicial restraint is a judge's commitment to interpreting statutes and the Constitution in light of the text, structure, and context, and the judge's corresponding reluctance to cobble together meanings based on nothing more than judicial fiat. *In re Doe 3* ("Doe 3")⁴⁵ reveals that, when called upon to construe statutory language, Justice Owen interprets it consistently with similar language appearing in analogous statutes. She rejects the proposition that judges can interpret a statute to bear a meaning that they would have assigned it had they been members of the legislature.

Doe 3 saw the Texas Supreme Court interpret the final of the three exceptions to the parental notification requirement: "whether notification may lead to physical, sexual, or emotional abuse of the minor."⁴⁶ The majority could not agree on an appropriate definition of "abuse."⁴⁷ For her part, Justice Owen looked to an analogous definition contained in section 261 of the Texas Family Code, located just a few chapters away from the Parental Notification Act, also a part of the Family Code. Under the Legislature's definition, conduct constitutes "abuse" if it produces "mental or emotional injury to a child that results in an *observable and material impairment* in the child's growth, development, or psychological functioning."⁴⁸

The U.S. Supreme Court has long recognized as a "fundamental canon of statutory construction" that judges should construe the words of a statute "in their context and with a view to their place in the overall statutory scheme."⁴⁹ In particular, "[i]dential words used in

⁴⁴ *NAF Report* at 4.

⁴⁵ 19 S.W.3d 300 (Tex. 2000).

⁴⁶ TEX. FAM. CODE § 33.001(i) (2000).

⁴⁷ One group of judges cited a definition of "abuse" contained in the Texas Human Resources Code, whose relevance to the parental notification context is neither apparent nor explained. *See Doe 3*, 19 S.W.3d at 304 (Gonzales, J., concurring in the judgment) (arguing that "emotional abuse contemplates unreasonable conduct causing serious emotional injury" (citing TEX. HUM. RES. CODE § 48.3002(2) (2000))). Another group of judges declined to identify any sort of statutory tether for their favored definition, and proposed simply that "abuse is abuse." *See id.* at 307 (Enoch, J., concurring and dissenting).

⁴⁸ TEX. FAM. CODE § 261.001(1)(A) (2000) (emphasis added); *see also id.* § 261.001(1)(B) (providing that "abuse" includes "causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning").

⁴⁹ *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989).

different parts of the same act are intended to have the same meaning.”⁵⁰ Relying on the Legislature’s pre-existing statutory definition, Justice Owen argued, was preferable to the Court fabricating an entirely new one: “rather than fashioning its own definition, a Court should apply the Legislature’s definition of ‘abuse’ when interpreting other provisions of the same Code unless there is a good reason for not doing so.”⁵¹ As the Legislature already had defined “abuse” in a related section of the Texas Family Code, the objective standard it had laid out would be the most appropriate to use in these circumstances.⁵²

A number of statements in the legislative history made by members of both parties attest that Justice Owen correctly surmised that the members of the Texas Legislature intended “abuse” to be read in light of section 261. These statements indicate that the Legislature intended the “abuse” exception to be available only to girls who stood to suffer the severest and most traumatic physical and emotional injuries. During a floor debate, Representative Helen Giddings offered an example of a minor who would qualify as having been “abused”:

I know we have provisions in this bill for abused girls when abuse is suspected or detected to get help, but there are cases where the abuse is not known. . . . [W]e had a case where a mother had a Norplant put into the arm of her child so that the father could have sex with that child without fear of pregnancy.⁵³

Two days later, another member cited Representative Giddings’ example as evidence of the need for a judicial bypass provision: “Look, the parent is abusive, the parent, in Ms. Giddings’ case is selling the child, we need a judicial bypass.”⁵⁴ And Senator Mario Gallegos repeatedly expressed concern about parents who would kill their daughters, or injure them so severely that they required hospitalization, after learning that they were pregnant.⁵⁵

Thus Justice Owen’s conclusion that Jane Doe 3 had not established that she could be “abused” hardly reflects “a lack of compassion for victims of abuse.”⁵⁶ In fact, the girl in that case conceded that she had never been abused either physically or emotionally, and that she had no idea how her father would react to the news of her pregnancy.⁵⁷ Justice Owen therefore

⁵⁰ *Stenberg v. Carhart*, 530 U.S. 914, 944 (2000) (citing *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995)).

⁵¹ *Doe 3*, 19 S.W.3d at 319 (Owen, J., dissenting); *see also id.* (urging “[d]eference to the Legislature’s definition of emotional abuse”).

⁵² *Id.* at 320.

⁵³ *See* House Debate on Committee Substitute Senate Bill 30, 76th Leg., tape 147, side A (Tex. May 19, 1999) (statement of Rep. Giddings).

⁵⁴ *See id.* tape 158, side B (May 21, 1999) (statement of Rep. Clark).

⁵⁵ *See, e.g.*, Hearings on Senate Bill 30 Before the Senate Human Services Comm., 76th Leg., tape 1, at 22; tape 2, at 14; tape 2, at 25 (Mar. 10, 1999) (statement of Sen. Gallegos).

⁵⁶ *NAF Report* at 9.

⁵⁷ Jane Doe 3 testified as follows before the trial court:

Q Has your dad ever physically abused you?

A Me, no.

Q Don’t you think he’s going to be even more upset when he finds out that this occurred without his knowledge?

A I guess. I don’t know.

See Doe 3, 19 S.W.3d at 312 (Hecht, J., dissenting).

concluded that the girl’s fears about her father’s temper simply did not rise to the level of severity the Legislature had in mind when it created an exception for girls who may suffer “observable and material” abuse that would “impair the child’s growth, development, or psychological functioning.”⁵⁸

IV. Upholding the Prerogatives of Trial Courts: *Doe I(II)*

Justice Owen’s dissent in *In re Jane Doe (“Doe I(II)”)*⁵⁹ indicates that she not only respects the institutional prerogatives of the legislature and of superior courts. She also refuses to interfere with the unique fact-finding function of trial courts. Unlike courts of appeals, which typically resolve pure questions of law, trial courts have the additional responsibility of determining what took place as a factual matter. Appellate courts are loath to interfere with this fact-finding function, because trial judges are better equipped to observe the girl’s maturity and assess the demeanor and credibility of witnesses than are appellate judges, who merely review a paper record.⁶⁰ In *Doe I(II)*, the majority held that Jane Doe 1 whose case had returned to the Court after the initial remand had established that she was “mature and sufficiently well informed” to have an abortion without telling her parents. Justice Owen dissented, criticizing the majority for itself evaluating the evidence before the trial court, rather than following the customary practice of deferring to that court’s factual findings.

According to Justice Owen, the majority “has usurped the role of the trial court, reweighed the evidence, and drawn its own conclusion” a practice that was contrary to “more than fifty years of precedent regarding appellate review of a trial court’s factual findings.”⁶¹ According to well-settled Texas law, the Texas Supreme Court may disregard a trial court’s factual findings only if there is “no evidence” in the record to support them. In making that determination, the Court is “required to determine whether the proffered evidence as a whole rises to the level that would enable reasonable and fair-minded people to differ in their conclusions.”⁶² Ultimately, the Court cannot disturb a trial judge’s findings unless *no reasonable person* could have reached the same conclusion.⁶³ Justice Owen’s commitment to upholding the powers of the trial courts and not any hostility to the rights of minors is what informs her decisions.

Although Justice Owen acknowledged that it was “a close case,”⁶⁴ she concluded that the appellate record contained enough evidence to support the trial court’s finding that Jane Doe 1

⁵⁸ See TEX. FAM. CODE § 261.001(1)(A) (2000).

⁵⁹ 19 S.W.3d 346 (Tex. 2000).

⁶⁰ See, e.g., *Taylor v. Meek*, 276 S.W.2d 787, 790 (Tex. 1955).

⁶¹ *Doe I(II)*, 19 S.W.3d at 376, 377 (Owen, J., dissenting); see also *id.* at 383 (“Longstanding principles of appellate review and our Texas Constitution do not permit this Court to substitute its judgment for that of the trial court and or [sic] to ignore the evidence, as it has done.”).

⁶² *Transportation Ins. Co. v. Moriel*, 879 S.W.2d 10, 24 (Tex. 1994); see also *Harbin v. Seale*, 461 S.W.2d 591, 592 (Tex.1970); *Burt v. Lochausen*, 249 S.W.2d 194, 199 (1952).

⁶³ See, e.g., *Moriel*, 879 S.W.2d at 25 (“[T]he court must be persuaded that reasonable minds could not differ on the matter . . .” (citation omitted)); *id.* (“The rule as generally stated is that if reasonable minds cannot differ from the conclusion that the evidence lacks probative force it will be held to be the legal equivalent of no evidence.” (citation omitted)).

⁶⁴ *Doe I(II)*, 19 S.W.3d at 381 (Owen, J., dissenting).

was not well enough informed to have an abortion without involving one of her parents in the decision. For instance, the girl gave little indication that she had considered the alternatives to abortion, such as giving the infant up for adoption or keeping it. Jane Doe 1 did not know that adoptive parents are thoroughly screened before and after a child is placed with them, and had not considered whether her parents would help, financially or otherwise, raise the child.⁶⁵ It must be stressed that Justice Owen did not *herself* conclude that the girl was not sufficiently well informed; rather, Justice Owen concluded that *evidence supported the trial court's finding* that the girl was not sufficiently well informed:

The question in this case is not whether this Court would have ruled differently when confronted with all the evidence that the trial court heard. The question is whether legally sufficient evidence supports the trial court's judgment. The answer to this latter question is yes.⁶⁶

Justice Owen further faulted the majority for failing to defer to the trial court's implicit factual finding that the girl was not sufficiently "mature" to have an abortion without telling her parents the other element a girl must prove before she can invoke the "mature and sufficiently well informed" exception. Although the trial court found, as a factual matter, that the girl was not "well informed," it made no explicit finding as to whether she was "mature." The majority therefore held that it could presume that the minor was mature enough to have an abortion without parental involvement.⁶⁷

In fact, under well-settled Texas law, when a trial court issues factual findings, appellate courts are required to presume that there is evidence to support "not only the express findings . . . but also any omitted findings which are necessary to support the judgment."⁶⁸ As such, the Supreme Court could not presume that the girl was mature unless, based on the evidence before the trial court, *no reasonable person* could have reached the opposite conclusion.

As was the case with the "well informed" prong, Justice Owen concluded that the record contained enough evidence to support the trial judge's failure to find that the girl was mature. In particular, there was evidence that the girl's reason for not wanting her parents to know about her intent to have an abortion was her fear that they would stop paying for her automobile and her car insurance.⁶⁹ Again, Justice Owen did not *herself* make a finding that the girl was not mature, nor did she suggest that the girl's attempt to obtain a judicial bypass was itself evidence of a lack of maturity.⁷⁰ She simply deferred to the trial court's implicit finding for which the record contained some supporting evidence that the girl was not mature: given the evidence in the

⁶⁵ See *id.* at 382-83.

⁶⁶ *Id.* at 383.

⁶⁷ See *id.* at 357-58.

⁶⁸ *Wisdom v. Smith*, 209 S.W.2d 164, 166-67 (Tex. 1948); see also *Cates v. Clark*, 33 S.W.2d 1065, 1066 (Tex. 1931) (invoking the "well recognized rule of law" that appellate courts must presume that all facts were found in support of a trial court's judgment, when the trial court has issued findings of fact and evidence in the record supports the judgment).

⁶⁹ *Doe I(II)*, 19 S.W.3d at 381 (Owen, J., dissenting).

⁷⁰ *NAF Report* at 6.

record, “[t]he trial court could reasonably find that Doe was not mature enough to make the abortion decision without telling one of her parents.”⁷¹

Justice Owen also criticized the procedurally irregular manner in which the majority decided the case. After the initial remand of February 25, 2000 in which Justice Owen concurred Jane Doe 1’s application for a judicial bypass was denied by the trial and appellate courts. On March 10, 2000, the Supreme Court issued an order, without opinion, approving the girl’s request to have an abortion without telling her parents.⁷² The Court did not explain its reasons for denying parental notification until June 22, 2000, over three months later. Justice Owen rejected the majority’s claim that an expedited ruling would enable the girl to have a “vacuum aspiration” or “suction curettage” abortion, a less intrusive procedure that, according to Planned Parenthood, can be performed until the end of the thirteenth week of pregnancy.⁷³ On the date the Court issued its opinionless order, Jane Doe 1 was already into her fifteenth week of pregnancy. The thirteen-week deadline had passed some two weeks prior, and the girl was no longer eligible for a vacuum aspiration or suction curettage abortion.⁷⁴

Nor was there any indication that the girl sought an immediate ruling from the Supreme Court. She never indicated to the Court that a delay would prevent her from undergoing a particular type of abortion procedure, or otherwise would risk damaging her health. In fact, she requested and was granted a seven-day continuance by the court of appeals.⁷⁵ The girl’s notice of appeal to the Supreme Court did state “ATTENTION CLERK: PLEASE EXPEDITE” but that language appears on the standard notice of appeal form, promulgated by the Supreme Court itself, used in *all* parental notification cases.⁷⁶

V. Respecting the Legal Rights of Parents: Doe 4(I)

Justice Owen’s dissent in *In re Jane Doe 4* (“*Doe 4(I)*”)⁷⁷ demonstrates her respect for parents’ right under the law to decide how to best bring up their children. In *Doe 4(I)*, the majority concluded that a seventeen-year-old girl was entitled to another opportunity to attempt to prove that having an abortion without telling her parents was in her “best interest.” Some evidence in the record indicated that the girl’s parents might stop supporting her financially if they learned that she had become pregnant. As the majority recognized, however, the girl’s testimony “largely consisted of monosyllabic responses to leading questions.”⁷⁸

⁷¹ *Doe 1(II)*, 19 S.W.3d at 381 (Owen, J., dissenting).

⁷² See *In re Jane Doe 1*, 19 S.W.3d 300 (Tex. 2000).

⁷³ According to the Planned Parenthood pamphlet submitted to the Supreme Court as part of the record, vacuum aspiration or suction curettage is available “through the end of the 13th week of pregnancy.” *Quoted in Doe 1(II)*, 19 S.W.3d at 378 (Owen, J., dissenting).

⁷⁴ The girl testified that a February 19 sonogram revealed that she had been pregnant for eleven weeks and one day. See *id.* As such, she completed her thirteenth week of pregnancy and hence her eligibility for vacuum aspiration or suction curettage on March 3. By March 10, the date of the Court’s opinionless decision, the girl had been pregnant for fully fourteen weeks, and had entered her fifteenth week.

⁷⁵ See *id.*

⁷⁶ See *id.* at 377; see also *id.* at 370 & n.24 (Hecht, J., dissenting) (citing PARENTAL NOTIFICATION R., Forms 3A & 4A (Tex. 2000)).

⁷⁷ 19 S.W.3d 322 (Tex. 2000).

⁷⁸ *Id.* at 323-24.

In dissent, Justice Owen denied that “this Court has the authority, statutory or otherwise, to decide that parents will not be permitted to exercise their right to withhold support from their children when those children become adults in the eyes of the law.”⁷⁹ She repeatedly expressed her “fervent hope that no matter what the transgressions of the child have been, no parent would sever all contact with an adult child.”⁸⁰ But parents have no legal obligation under Texas law to support their children once they turn 18 and graduate from high school⁸¹ which the girl would soon do. Justice Owen therefore concluded that the girl would not be entitled to a “best interest” exception if her parents would withhold financial support after she reached the age of majority. (By negative implication, Justice Owen would hold that a girl is entitled to an abortion without notification if her parents would stop supporting her before she turned 18.) According to Justice Owen, “it is not the business of courts to interject their own values into the lives of the citizens of this State.”⁸² Instead, “[w]hether parents do or do not provide support for their children who are considered adults in the eyes of the law is a parental call, not a call for the courts in determining the best interests of a child.”⁸³

Nor is it the case, as an interest group now claims, that in a later stage of the same litigation Justice Owen concluded that the girl’s medical condition was not relevant to whether she was entitled to have an abortion without notifying her parents. In *In re Jane Doe 4* (“*Doe 4(II)*”),⁸⁴ the Court unanimously held that the girl had not proven that she was “mature and sufficiently well informed,” principally because she could not explain how her medical condition made abortion a riskier option for her. Because of the girl’s lack of understanding, the Court concluded, it was best to involve her parents in the decision.⁸⁵ Justice Owen joined an opinion concurring in the judgment, which argued that the girl should be required to tell her parents that she wanted an abortion, not because she did not understand the health risks in particular, but because as a general matter she had shown “no depth of understanding that a minor should be expected to have before making the ‘grave and indelible’ decision to have an abortion.”⁸⁶

This is hardly evidence of “Owen’s apparent stance that even health risks should not be taken as seriously by the courts.”⁸⁷ On the contrary, the majority opinion concluded that the girl was not entitled to a judicial bypass on the ground that she lacked knowledge about how her medical condition would affect her abortion.⁸⁸ The concurrence Justice Owen joined quite expressly *denied* that the girl’s apparent confusion about her medical condition was the reason she was not entitled to keep the abortion secret from her parents: “the deficit in Doe’s testimony

⁷⁹ *Id.* at 334 (Owen, J., dissenting).

⁸⁰ *Id.*; see also *id.* at 335 (“I would hope that parents continue to provide love and support to their children beyond the age of eighteen and to provide funds for an education beyond high school if the parents are able to do so . . .”).

⁸¹ See TEX. FAM. CODE § 151.003(b) (2000).

⁸² *Doe 4(I)*, 19 S.W.3d at 334 (Owen, J., dissenting).

⁸³ *Id.* at 335.

⁸⁴ 19 S.W.3d 337 (Tex. 2000).

⁸⁵ See *id.* at 339.

⁸⁶ *Id.* at 342 (Hecht, J., concurring) (quoting *Bellotti v. Baird*, 443 U.S. 622, 642 (1979) (“*Bellotti II*”).

⁸⁷ *NAF Report* at 9.

⁸⁸ See *Doe 4(II)*, 19 S.W.3d at 340 (reasoning that “if she does have a current health risk, then her physical needs and the potential dangers may way in favor of involving her parents in her decision”).

is not that she could not explain whether and how her prior treatment for a medical condition would affect her having an abortion.”⁸⁹

VI. A Final Note on “Unconscionable Judicial Activism”

The members of the Texas legal community know Justice Owen to be a jurist of the highest integrity, one who is committed to following the law no matter where it leads, and subordinating her personal policy preferences, whatever they may be, to the expressed intent of the legislature. In fact, every major newspaper in Texas endorsed Justice Owen during her reelection campaign in 2000. With respect to her nomination to the Fifth Circuit, the *Dallas Morning News* editorialized that “Justice Owen’s lifelong record is one of accomplishment and integrity. She is one of the few judicial nominees to receive a unanimous ‘well qualified’ rating from the American Bar Association.”⁹⁰ Likewise, Texas Chief Justice Tom Phillips agreed that Justice Owen “tries to follow the legislative will in every case and apply the law, not invent it.”⁹¹ Baylor University President Herbert Reynolds—who formerly served as Chairman of the Texas Commission on Judicial Efficiency—wrote: “Based on my knowledge of Justice Owen for the past 30 years, I believe that you simply cannot make a more solid choice for the 5th U.S. Circuit Court of Appeals.”⁹²

Despite these testimonials to Justice Owen’s temperance, interest groups have seized on a single sentence from Justice Gonzales’s concurrence in *Doe I(II)* in an effort to disparage her commitment to practicing judicial restraint. Justice Gonzales’s concurrence must be read in the context of Justice Hecht’s dissent in that same case (a dissent that Justice Owen did not join). The Hecht dissent expressly accused the members in the majority—including Justice Gonzales, whom the dissent individually names—of reading their policy preferences into the Parental Notification Act.⁹³ Justice Gonzales wrote separately to deny Justice Hecht’s allegation; that is, to dispute the “suggest[ion] that the Court’s decisions are motivated by personal ideology. *See* 19 S.W.3d 367 (Hecht, J., dissenting).”⁹⁴ Justice Gonzales further explained that he disputed “Justice Hecht[’s] charge[] that our decision demonstrates the Court’s determination to construe the Parental Notification Act as the Court believes the Act should be construed and not as the Legislature intended.”⁹⁵

⁸⁹ *Id.* at 342 (Hecht, J., concurring).

⁹⁰ Editorial, *Stop the Payback: Senate Needs to Move on Judicial Nominees*, DALLAS MORNING NEWS, Feb. 10, 2002, at 2J.

⁹¹ Mary Flood, *Judicial Nominee Takes Issue with Conservative Label*, HOUSTON CHRON., May 10, 2001, at A37.

⁹² Letter from Herbert H. Reynolds, Baylor University President and Chancellor Emeritus, to All Members of the Senate Judiciary Committee (March 25, 2002).

⁹³ *See In re Jane Doe*, 19 S.W.3d 346, 367 (Tex. 2000) (Hecht, J., dissenting) (“*Doe I(II)*”):

The Court adamantly refuses to listen to all reason, and the only plausible explanation is that the Justices who comprise the majority—Chief Justice Phillips, Justice Enoch, Justice Baker, Justice Hankinson, Justice O’Neill, and Justice Gonzales—have resolved to impair the Legislature’s purposes in passing the Parental Notification Act, which were to reduce teenage abortions and increase parental involvement in their children’s decisions.

⁹⁴ *Id.* at 365 (Gonzales, J., dissenting).

⁹⁵ *Id.* at 366.

According to Justice Gonzales, the dispute among the Justices reflected no more than disagreement over the proper way to interpret a statute. He explained that “every member of this Court agrees that the duty of a judge is to follow the law as written by the Legislature. This case is no different.”⁹⁶ Justice Gonzales then explained that it was his duty to follow the law as he interpreted it, regardless of what his policy views may or may not have been, and regardless of how other Justices interpreted the Act:

[T]o construe the Parental Notification Act so narrowly as to eliminate bypasses, or to create hurdles that simply are not to be found in the words of the statute, would be an unconscionable act of judicial activism. As a judge, I hold the rights of parents to protect and guide the education, safety, health, and development of their children as one of the most important rights in our society. But I cannot rewrite the statute to make parental rights absolute, or virtually absolute, particularly when, as here, the Legislature has elected not to do so. . . .

While the ramifications of such a law and the results of the Court’s decision here may be *personally troubling to me* as a parent, it is *my obligation* as a judge impartially to apply the laws of this state without imposing *my moral view* on the decisions of the Legislature. Justice Hecht charges that our decision demonstrates the Court’s determination to construe the Parental Notification Act as the Court believes the Act should be construed and not as the Legislature intended. I respectfully disagree. This decision demonstrates the Court’s determination to see to it that we discharge our responsibilities as judges, and that personal ideology is subordinated to the public will that is reflected in the words of the Parental Notification Act, including the provisions allowing a judicial bypass.⁹⁷

The interest groups wrongly interpret the first sentence quoted above to mean that Justice Gonzales was charging other members of the Court with engaging in inappropriate judicial activism. But that reading ignores the subsequent sentences, as well as the broader context of Justice Hecht’s accusations against the majority of the Court for engaging in judicial activism. Rightly read, Justice Gonzales’s concurrence does not charge any other Justice with being judicial activists; it simply denies Justice Hecht’s allegations that the majority was interpreting the Parental Notification Act in light of their political or ideological commitments.

Justice Owen’s voting record and opinions in the parental notification cases defy easy categorization. Justice Owen voted to allow abortions without notification more than some of her colleagues, and less than others.⁹⁸ The record therefore belies any assertion that she

⁹⁶ *Id.* at 365.

⁹⁷ *Id.* at 366 (emphasis added).

⁹⁸ In the twelve rulings the Texas Supreme Court has issued as of July 9, 2002, Justice Owen was with the majority nine times, and recorded a dissent just three times. (By way of contrast, Justice Hecht joined the majority in seven cases, and recorded a dissent in five.) Justice Owen joined the majority in *Doe 1(I)*, *Doe 2*, *Doe 4(II)*, *Doe 5*, *Doe 6*, *Doe 7*, *Doe 8*, *Doe 9*, and *Doe 10*. She dissented in *Doe 1(II)*, *Doe 3*, and *Doe 4(I)*. In three cases, Justice Owen joined or authored an opinion that facilitated a girl’s attempt to procure an abortion without telling her parents. In nine cases, she joined or authored an opinion that required (or, in the case of a dissent, would have required) a girl to notify her parents before having an abortion. (The numbers for Justice Hecht, by contrast, are one and eleven,

reflexively adopts any one position in parental notification cases. But more fundamentally, a Justice's "batting average" in parental notification cases is a poor indicator of his or her views on the frequency with which judicial bypasses should be granted.⁹⁹ Under Texas law, parental notification cases can be appealed to the Texas Supreme Court only when a trial court has denied a girl's request to have an abortion without telling one of her parents, and an appellate court has affirmed that denial. There is no appeal if the lower courts approve the bypass.¹⁰⁰ Thus, the only opportunities the Supreme Court has to consider whether to grant judicial bypass are in cases where two lower courts have already determined that the girl's parents must be notified before she can have an abortion. Put another way, the cases that reach the Texas Supreme Court are disproportionately likely to present a situation where the statute requires a girl to inform her parents that she plans to have an abortion.

VII. Conclusion

As long ago as 1835, Alexis de Tocqueville recognized the close interrelationship between American law and American politics. "Scarcely any political question arises in the United States," he wrote, "that is not resolved, sooner or later, into a judicial question."¹⁰¹ But the fact that judges decide politically charged issues does not mean that they should decide them politically. Instead, consistent with the rule of law and the limited role of the judiciary in a democratic system of government, judges must refrain from reading their personal beliefs into the law, and instead must give effect to the intent of the lawgiver.

Justice Pricilla Owen's demonstrated commitment to doing just that reveals her to be the sort of jurist the American people have come to expect should occupy the federal bench. She has balanced the competing interests of pro-life activists and abortion providers, refusing to side reflexively with either group of litigants, and rejecting the proposition that the First Amendment is an excuse for unlawful protests. She has interpreted the Texas Parental Notification Act consistently with the U.S. Supreme Court's pronouncements on whether an underage girl is "mature" and "well informed," and whether a girl's plan to have an abortion without telling her parents is in her "best interest." She has interpreted "abuse" in the Parental Notification Act consistently with that term's definition in a similar Texas statute, refusing to manufacture a definition herself. She has deferred to the factual findings of the trial courts, which are in a unique position to assess the demeanor and credibility of witnesses, and has denied that appellate courts can reweigh the evidence themselves.

Any one of these rulings, standing alone, would be compelling evidence of the author's understanding of the modest powers of the judiciary. And any one of these jurisprudential pillars—dedication to Supreme Court precedent, deference to the legislature, respect for the trial

respectively.) Justice Owen voted to facilitate abortion without notification in *Doe 1(I)*, *Doe 2*, and *Doe 10*. She voted to require notification in *Doe 1(II)*, *Doe 3*, *Doe 4(I)*, *Doe 4(II)*, *Doe 5*, *Doe 6*, *Doe 7*, *Doe 8*, and *Doe 9*.

⁹⁹ It goes without saying that the "batting average" is even worse evidence of members' views about abortion generally, since the parental notification cases involve no question about whether the Constitution guarantees the right to abortion, or the scope of that right.

¹⁰⁰ See TEX. FAM. CODE § 33.004 (2000).

¹⁰¹ 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 280 (Phillips Bradley trans., Alfred A. Knopf 1994) (1835).

courts' factual findings would qualify the author for a seat on the federal bench. Fortunately for the people of the Fifth Circuit, Justice Owen is committed to them all. We enthusiastically support Justice Owen's nomination to the Fifth Circuit, and urge the Senate to consider and approve her without additional delay.

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, July 10, 2002 9:27 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Owen paper

Great. Thanks.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, July 10, 2002 9:24 PM
To: Sales, Nathan
Subject: Re: Owen paper

good by me

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 07/10/2002 06:22:14 PM
pic14926.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: Owen paper

Brett,

I don't mean to be a pest, and I don't know whether you received my earlier voicemail message, but could you let us know if you're okay with the final draft of the Owen restraint paper? We'd like to get it to a surrogate group ASAP, so they can publish it ASAP.

Here's another copy

007104-002337

here's another copy:

Thanks,
Nathan

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, July 10, 2002 9:13 PM
To: Willett, Don; 'Brett Kavanaugh (E-mail)'; Koebele, Steve; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L
Subject: RE: Good point from T. Jipping re: Owen & ABA

That's good stuff. I'll work it in (b) (5)

-----Original Message-----

From: Willett, Don
Sent: Wednesday, July 10, 2002 9:12 PM
To: Sales, Nathan; Brett Kavanaugh (E-mail); Koebele, Steve; Keefer, Wendy J; Charnes, Adam; Remington, Kristi L
Subject: FW: Good point from T. Jipping re: Owen & ABA

Nathan, these seem like good points to think about massaging and weaving into your NAF response.

-----Original Message-----

From: (b)(6) Kay Daly email
Sent: Wednesday, July 10, 2002 8:10 PM
To: (b)(6) Kay Daly email
Subject: Good point from T. Jipping re: Owen & ABA

Something to circulate:

The ABA gave Justice Owen a unanimous "well qualified" rating. (b) (5)

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, July 10, 2002 1:02 PM
To: Koebele, Steve; Willett, Don; Keefer, Wendy J; Sales, Nathan; Remington, Kristi L; Loughlin, Ann L (OLP); 'H._Christopher_Bartolomucci@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Sitting With Owen at the Hearing

This is a call for leg affairs and OLA because it is not traditionally done. Please loop them in.

-----Original Message-----

From: Koebele, Steve
Sent: Wednesday, July 10, 2002 10:09 AM
To: Dinh, Viet; Willett, Don; Keefer, Wendy J; Sales, Nathan; Remington, Kristi L; Loughlin, Ann L (OLP); 'H. Christopher Bartolomucci@who.eop.gov'; 'Bradford A. Berenson@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'
Subject: Sitting With Owen at the Hearing

Judge Owen would like to have her sister and Pastor with her, and then any others that we collectively think appropriate. Don, we shoul (b) (5)

Thank you.

007104-002340

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, July 10, 2002 10:25 AM
To: Koebele, Steve; 'brett_m._kavanaugh@who.eop.gov'
Cc: Willett, Don; Keefer, Wendy J; Remington, Kristi L
Subject: RE: 11:00 am conference call

All, I just heard from Brett, and he now has to attend a conflicting meeting at 11:00. He suggests that we reschedule the call for tomorrow morning.

-----Original Message-----

From: Koebele, Steve
Sent: Wednesday, July 10, 2002 10:03 AM
To: 'brett m. kavanaugh@who.eop.gov'
Cc: Willett, Don; Keefer, Wendy J; Remington, Kristi L; Sales, Nathan
Subject: 11:00 am conference call

Calendar Reminder: we are all confirmed to conference call this morning (10th) at 11:00 am, r (b) (5)

We will place the call to Brett K. from the DOJ. Thank you.

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, July 10, 2002 10:22 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Final Owen paper

Sounds good to me. (b) (5) I'll let the rest of the group know about your conflict.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, July 10, 2002 10:08 AM
To: Sales, Nathan
Subject: Re: Final Owen paper

Nathan: I need to change the 11:00 because I now have to attend a conflicting meeting. Can we re-schedule for tomorrow morning? In the interim, subject to your guys' thoughts, (b) (5)

Points as a whole:

(b) (5)

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 07/10/2002 09:50:37 AM
pic17694.pcx)

Record Type: Record

007104-002342

record type: record

To: See the distribution list at the bottom of this message

cc:

Subject: Final Owen paper

All,

Please find attached an updated, new and improved, draft of the Owen restraint paper. This draft contains two significant changes from the last version.

First, in response to Brett's ideas and concerns, (b) (5)

(b) (5)

Thanks,
Nathan

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, July 10, 2002 9:39 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: owen paper

Looks good to me. I've incorporated your new section (with a couple of minor, bluebooking changes), into the current draft, which I'm about to circulate to the entire group for final approval.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, July 09, 2002 9:14 PM
To: Sales, Nathan
Subject: Re: owen paper

see what you think. And remember that I need to see again before it is sent out.

(See attached file: owen 7 09 02.doc)

007104-002344

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, July 10, 2002 8:47 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Re: owen paper

Thanks. I'll take a look, and make sure nothing happens until you okay the final version.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>
To: Sales, Nathan <Nathan.Sales@USDOJ.gov>
Sent: Tue Jul 09 21:14:27 2002
Subject: Re: owen paper

see what you think. And remember that I need to see again before it is sent out.

(See attached file: owen 7 09 02.doc)

007104-002345

Sales, Nathan

From: Sales, Nathan
Sent: Tuesday, July 9, 2002 7:54 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Willett, Don; Dinh, Viet; 'joschal@att.net'
Subject: RE: help quick

We don't have them at our fingertips (the CRS report on which the statistics are based only lists rejected nominees, not nominees who failed to receive a hearing), but we can pull them together.

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, July 09, 2002 6:31 PM
To: Sales, Nathan
Cc: Willett, Don; Dinh, Viet; (b)(6) Jennifer Oschal email
Subject: RE: help quick

(b) (5)

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 07/09/2002 06:07:05 PM
pic06508.pcx)

Record Type: Record

— [REDACTED]

007104-002346

To: "(b)(6) Jennifer Oschal email"

cc: "Willett, Don" <Don.Willett@usdoj.gov>, "Dinh, Viet" <Viet.Dinh@usdoj.gov>, Brett M. Kavanaugh/WHO/EOP@EOP Subject: RE: help quick

Jennifer,

Here is a list of Bush 43 appellate nominees who have received unanimous WQ ratings, and who are still pending before the Senate Judiciary Committee:

- Reena Raggi (2d Cir.)
- Priscilla Owen (5th Cir.)
- Susan Neilson (6th Cir.)
- Mike McConnell (10th Cir.)
- John Roberts (D.C. Cir.)
- Miguel Estrada (D.C. Cir.)

Here is a list of appellate nominees since 1943 (the earliest date for which data is available) who received unanimous WQ ratings, but who were voted down in the Senate Judiciary Committee (i.e., who received a committee vote but failed to obtain a favorable recommendation):

None.

During the Clinton Administration, no appellate nominee was voted down in committee. During Bush 41, Kenneth Ryskamp (11th Cir.) failed to receive a positive recommendation from the committee, but he received a split WQ/Q rating.

During the Reagan Administration, Bernard Siegan (9th Cir.) failed to receive a positive recommendation, but he had a unanimous Q rating. No appellate nominees were voted down from 1943 through the Reagan Administration.

Sales, Nathan

From: Sales, Nathan
Sent: Tuesday, July 09, 2002 7:50 PM
To: Brett Kavanaugh (E-mail)
Subject: owen paper
Attachments: Owen restraint paper fragment.doc

Brett, here's the revised fragment dealin (b) (5) Please let me know what your thoughts are. I'm at 514-2253.

Thanks,
Nathan

Sales, Nathan

From: Sales, Nathan
Sent: Tuesday, July 9, 2002 3:56 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Willett, Don; Dinh, Viet; (b)(6) Jennifer Oschal email
Subject: RE: help quick

Okay, I'll look at both.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, July 09, 2002 3:48 PM
To: Brett_M._Kavanaugh@who.eop.gov
Cc: Willett, Don; Sales, Nathan; Dinh, Viet; (b)(6) Jennifer Oschal email
Subject: RE: help quick

My answer assumed that the question called for currently pending nominees, not nominees from past Administrations. But the latter would be a good piece of info to know as I am confident it is close to 100% who have been confirmed when receiving unanimous WQ's.

Brett M. Kavanaugh
07/09/2002 03:44:50 PM

Record Type: Record

To: "Willett, Don" <Don.Willett@usdoj.gov> cc: "dinh, viet" <viet.dinh@usdoj.gov> (receipt notification requested),
(b)(6) Jennifer Oschal Email (receipt notification requested)
(ipm return requested), "sales, nathan" <nathan.sales@usdoj.gov> (receipt notification requested) (ipm return requested) bcc: Records Management@EOP Subject: RE: help quick (Document link: Brett M. Kavanaugh)

At least Estrada, Roberts, Owen, and McConnell. Also Raggi but she was more recently nominated. Nathan, please confirm.

(Embedded
image moved "Willett, Don" <Don.Willett@usdoj.gov>
to file: 07/09/2002 03:41:00 PM
pic23013.pcx)

Record Type: Record

To: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested),
(b)(6) Jennifer Oschal Email (Receipt Notification Requested)
(IPM Return Requested), Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Sales, Nathan" <Nathan.Sales@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested)
Subject: RE: help quick

nathan's on it, jennifer, and will get back to you asap!

-----Original Message-----

From: Jennifer Oschal (b)(6) Jennifer Oschal Email
Sent: Tuesday, July 09, 2002 3:38 PM
To: Willett, Don; Dinh, Viet; Brett Kavanaugh
Subject: FW: help quick

help quickcan you help?

-----Original Message-----

From: Todd Olsen [mailto:TO@od-s.com]
Sent: Tuesday, July 09, 2002 3:30 PM
To: Jennifer Oschal
Subject: help quick

has any judge that has the unanimous well qualified rating from aba not been voted out of the senate
committee? this is a question from the ap reporter who is writing.

--

Sales, Nathan

From: Sales, Nathan
Sent: Tuesday, July 9, 2002 3:50 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'; Willett, Don
Cc: Dinh, Viet; (b)(6) Jennifer Oschal Email
Subject: RE: help quick

Jennifer, I could use a clarification. Do you mean, "Historically, has the Senate Judiciary Committee ever refused to report to the full Senate a unanimous WQ nominee?" Or do you mean, "How many of President Bush's unanimous WQ nominees are still stuck in committee?"

-----Original Message-----

Duplicative

007104-002352

Sales, Nathan

From: Sales, Nathan
Sent: Monday, July 8, 2002 2:29 PM
To: Dinh, Viet; (b)(6) Jennifer Oschal Email Willett, Don; Goodling, Monica; 'Brett Kavanaugh'; 'Anne Womack'; 'Tim Goeglein'
Cc: 'Tony Feather'
Subject: RE: O'Reilly Factor
Attachments: Ninth Circus.doc

Jennifer,

As promised, here's a set of talkers on the Ninth Circuit, and Bush nominees to that court. Also, I believe Don Willett was going to send you some detailed stuff on our 9th Cir. nominees last week; please let me know if you need anything else.

Thanks,
Nathan

-----Original Message-----

From: Dinh, Viet
Sent: Monday, July 08, 2002 2:25 PM
To: (b)(6) Jennifer Oschal Email Willett, Don; Goodling, Monica; 'Brett Kavanaugh'; 'Anne Womack'; 'Tim Goeglein'; Sales, Nathan
Cc: 'Tony Feather'
Subject: RE: O'Reilly Factor

I know John well. He's a good guy. Nathan, please forward to JO the materials on pledge and CA9. Jennifer--these are not official DOJ documents, but ly helpful background papers. thanks

-----Original Message-----

From: Jennifer Oschal (b)(6) Jennifer Oschal Email
Sent: Sunday, July 07, 2002 6:21 PM
To: Dinh, Viet; Willett, Don; Goodling, Monica; Brett Kavanaugh; Anne Womack; Tim Goeglein
Cc: Tony Feather
Subject: FW: O'Reilly Factor

i've been working with this guy in CA. let me know if you have specific info you'd like me to get to him prior to his appearance on monday night.

thanks. hope everyone had a good holiday weekend.

-----Original Message-----

From: John C. Eastman [mailto:jeastman@chapman.edu]

Sent: Sunday, July 07, 2002 1:49 AM

Subject: O'Reilly Factor

Dear Friends,

I will be appearing on the O'Reilly Factor show on Fox News Channel Monday evening at 8pm Eastern Time, to discuss the 9th Circuit generally

and its recent Pledge of Allegiance decision in particular. Check your local listings if you are interested.

Best regards,

John Eastman

Assoc. Professor, Chapman University School of Law Director, The Claremont Institute Center for Constitutional Jurisprudence

Willett, Don

From: Willett, Don
Sent: Monday, July 01, 2002 7:09 PM
To: Goodling, Monica; Dinh, Viet; Charnes, Adam; Keefer, Wendy J; Brett Kavanaugh (E-mail); Koebele, Steve; Remington, Kristi L; Anne Womack (E-mail)
Subject: FW: Here's the scanned letter
Attachments: Justice Owen.pdf

below is the signed letter (rec'd today) from the losing counsel in the Enron-related case that critics point to as evidence as Owen's ethical lapses (that campaign donations = preferred rulings); the letter attests strongly to Owen's by-the-book opinion and flatly rejects any accusations of impropriety (b) (5)

-----Original Message-----

From: Washington, Tracy T
Sent: Monday, July 01, 2002 4:29 PM
To: Willett, Don
Subject: Here's the scanned letter

Tracy Washington
U.S. Department of Justice
Office of Legal Policy
Room 4640
(202) 514 2737

007104-002355

PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.

HOWARD PERDUE*
 LARRY BRANDON
 C. DAVID FIELDER
 JAMES O. COLLINS
 ROBERT MOTT
 GEORGE DOWLEN
 KEVIN BRENNEN
 HAROLD LERREW
 GREGG M. McLAUGHLIN
 G. BRUCE MEDLEY
 DONALD B. ROSEMAN
 TERRY G. WISEMAN
 MICHAEL J. DARLOW
 JOSEPH T. LONGORIA
 TERRY ANN WHITE
 TAB BEALL
 *Retired

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 DAVID A. ELLISON
 LAURA J. MONROE
 OWEN M. SONIK
 CARL O. SANDEN
 JASON L. BAILEY
 DAVID S. CRAWFORD
 JEAN MARIE BAER
 ELKE L. DANIEL
 R. GREGORY EAST
 DAVID HUDSON
 KAREN KOECKS
 DEBRA S. MERGEL
 ELIZABETH SANDA
 TRACEY CRITES
 JOHN BANKS
 SANDRA GRIFFIN

July 1, 2002

Hon. Patrick Leahy
 Chairman, Committee on the Judiciary
 United States Senate
 224 Russell Senate Office Building
 Washington, D.C. 20510

RE: Justice Priscilla Owen

Dear Chairman Leahy:

My name is Robert Mott. I was the legal counsel for the Spring Independent School District in the case of *Enron Corporation et al. v. Spring Independent School District*, 922 S.W.2d 931 (Tex. 1996). We were the losing party in this case.

I have been disturbed by the suggestions that Justice Priscilla Owen's decision in this case was influenced by the campaign contributions she received from Enron employees. I personally believe that such suggestions are nonsense. Justice Owen authored the opinion of a unanimous court consisting of both Democrats and Republicans. While my clients and I disagreed with the decision, we were not surprised. The decision of the Court was to uphold an act of the Legislature regarding property valuation. It was based upon United States Supreme Court precedent, of which we were fully aware when we argued the case.

I firmly believe that there is absolutely no reason to question Justice Owen's integrity based upon the decision in this case.

Sincerely,

 Robert Mott

RM/lc

cc: Honorable Orrin Hatch

AUSTIN • AMARILLO • ARLINGTON • LUBBOCK • HOUSTON • WICHITA FALLS • TYLER

Sales, Nathan

From: Sales, Nathan
Sent: Friday, June 28, 2002 11:22 AM
To: Dinh, Viet; Keefer, Wendy J; Willett, Don; 'Bradford_A._Berenson@who.eop.gov'; 'brett_m._kavanaugh@who.eop.gov'
Subject: Re:

Doesn't employment division v. smith settle the issue? (b) (5)

(b) (5)

-----Original Message-----

From: Dinh, Viet <Viet.Dinh@USDOJ.gov>
To: Sales, Nathan <Nathan.Sales@USDOJ.gov>; Keefer, Wendy J <Wendy.J.Keefer@USDOJ.gov>; Willett, Don <Don.Willett@USDOJ.gov>; 'Bradford_A._Berenson@who.eop.gov' <Bradford_A._Berenson@who.eop.gov>; 'brett_m._kavanaugh@who.eop.gov' <brett_m._kavanaugh@who.eop.gov>
Sent: Fri Jun 28 11:13:10 2002
Subject:

(b) (5)

-----Original Message-----

From: DavidEBernstein@aol.com <DavidEBernstein@aol.com>
To: DESTRO@law.edu <DESTRO@law.edu>; VOLOKH@mail.law.ucla.edu <VOLOKH@mail.law.ucla.edu>; Bushcheney-l@bu.edu <Bushcheney-l@bu.edu>
Sent: Fri Jun 28 09:59:55 2002
Subject: Re: Court upholds Ohio voucher program

Here's a case that (b) (5) I can see a case (b) (5)

(b) (5)

Muslim woman to challenge ban on veil in driver's license photo

A judge ruled Thursday that a Muslim woman can pursue her legal fight to wear a veil for a driver's license photo, despite objections from the state that

it jeopardizes public safety.

Judge Ted Coleman denied a state motion to dismiss a lawsuit brought by Sultaana Freeman, whose driver's license was revoked when she refused to replace her photograph with one showing her face unveiled.

Freeman, 34, is suing to get her license back with a photo that hides most of her face, except her eyes, behind a veil known as a niqab.

Freeman wears the veil for religious reasons.

When Freeman applied for a Florida license last year after moving from Illinois, she had no problems getting a license wearing the veil, said her attorney, Howard Marks. It was only after the September 11 attacks that the Florida Department of Motor Vehicles told her to replace the photo, he said.

Jason Vail, an assistant state attorney, argued that having a face visible in a driver's license photo is a matter of public safety since criminals are often identified through such pictures.

"It doesn't target religion," Vail said of the requirement. "It targets everyone."

Sales, Nathan

From: Sales, Nathan
Sent: Thursday, June 27, 2002 6:10 PM
To: Brett Kavanaugh (E-mail)
Subject: Owen

Brett, I understand that the Judge has drafted an op-ed on Owen in general, and "unconscionable judicial activism" in particular. As it happens (b) (5)

. I'd like to be able to respond t (b) (5)

(b) (5)

Thanks much,
Nathan

Sales, Nathan

From: Sales, Nathan
Sent: Thursday, June 27, 2002 5:15 PM
To: Dinh, Viet; Charnes, Adam; Willett, Don; Keefer, Wendy J; Benczkowski, Brian A; Benedi, Lizette D; Koebele, Steve; Remington, Kristi L; Goodling, Monica; 'Brad Berenson (E-mail)'; 'Brett Kavanaugh (E-mail)'; Hall, William; Loughlin, Ann L (OLP)
Subject: Ninth Circus talkers, revised again, in light of OPA comments
Attachments: Ninth Circus.doc

Sales, Nathan

From: Sales, Nathan
Sent: Thursday, June 27, 2002 2:29 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Ninth Circus talkers, revised

It sure does.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, June 27, 2002 1:59 PM
To: Sales, Nathan
Subject: Re: Ninth Circus talkers, revised

Does it mention (b) (5)

Sent from my BlackBerry Handheld.

007104-002361

Sales, Nathan

From: Sales, Nathan
Sent: Thursday, June 27, 2002 1:55 PM
To: Dinh, Viet; Charnes, Adam; Willett, Don; Keefer, Wendy J; Benczkowski, Brian A; Benedi, Lizette D; Koebele, Steve; Remington, Kristi L; Goodling, Monica; 'Brad Berenson (E-mail)'; 'Brett Kavanaugh (E-mail)'; Hall, William; Loughlin, Ann L (OLP)
Subject: Ninth Circus talkers, revised
Attachments: Ninth Circus.doc

All, here's an updated set of talkers on the Ninth. It now includes some statistics comparing its reversal rate to those of the other courts of appeals.

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, June 27, 2002 1:29 PM
To: Willett, Don; 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Sales, Nathan; Koebele, Steve; Keefer, Wendy J; Remington, Kristi L
Subject: Re: from the Thomas dissent in Zelman

Pls draft an op ed (b) (5)
(b) (5) I will pitch it to some folks (b) (5) Thank you so much

-----Original Message-----

From: Willett, Don <Don.Willett@USDOJ.gov>
To: 'Brett_M._Kavanaugh@who.eop.gov' <Brett_M._Kavanaugh@who.eop.gov>
CC: Sales, Nathan <Nathan.Sales@USDOJ.gov>; Dinh, Viet <Viet.Dinh@USDOJ.gov>; Koebele, Steve <Steve.Koebele@USDOJ.gov>; Keefer, Wendy J <Wendy.J.Keefer@USDOJ.gov>; Remington, Kristi L <Kristi.L.Remington@USDOJ.gov>
Sent: Thu Jun 27 13:05:56 2002
Subject: RE: from the Thomas dissent in Zelman

Thank, Brett. We're reviewing now and augmenting our Owen materials. (b) (5)

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Thursday, June 27, 2002 12:32 PM
To: Willett, Don
Cc: Sales, Nathan; Dinh, Viet
Subject: RE: from the Thomas dissent in Zelman

The O'Connor concurrence in Repub Party case has (b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, June 27, 2002 12:58 PM
To: Sales, Nathan; Charnes, Adam; Willett, Don; Keefer, Wendy J; Benczkowski, Brian A; Benedi, Lizette D; Koebele, Steve; Remington, Kristi L; Goodling, Monica; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; Hall, William; Loughlin, Ann L (OLP)
Subject: Re: Ninth Circus talkers

Pls Get s (b) (5) Thank you so much

-----Original Message-----

From: Sales, Nathan <Nathan.Sales@USDOJ.gov>
To: Dinh, Viet <Viet.Dinh@USDOJ.gov>; Charnes, Adam <Adam.Charnes@USDOJ.gov>; Willett, Don <Don.Willett@USDOJ.gov>; Keefer, Wendy J <Wendy.J.Keefer@USDOJ.gov>; Benczkowski, Brian A <Brian.A.Benczkowski@USDOJ.gov>; Benedi, Lizette D <Lizette.D.Benedi@USDOJ.gov>; Koebele, Steve <Steve.Koebele@USDOJ.gov>; Remington, Kristi L <Kristi.L.Remington@USDOJ.gov>; Goodling, Monica <Monica.Goodling@USDOJ.gov>; Brad Berenson (E-mail) <Bradford_A._Berenson@who.eop.gov>; Brett Kavanaugh (E-mail) <Brett_M._Kavanaugh@who.eop.gov>; Hall, William <William.Hall2@USDOJ.gov>; Loughlin, Ann L (OLP) <Ann.L.Loughlin@USDOJ.gov>
Sent: Thu Jun 27 12:21:21 2002
Subject: Ninth Circus talkers

All, here's a set of talkers on the Ninth Circuit. Given the Department's role as a litigant, the talkers

(b) (5)

-----Original Message-----

From: Willett, Don
Sent: Thursday, June 27, 2002 10:00 AM
To: Goodling, Monica; Sales, Nathan; Keefer, Wendy J
Subject: FW: Ninth Circuit reversals

-----Original Message-----

From: (b)(6) Kay Daly email
Sent: Thursday, June 27, 2002 9:51 AM
To: (b)(6) Kay Daly email
Subject: Ninth Circuit reversals

Ninth Circuit decisions reviewed by the Supreme Court have been reversed 80-90% of the time during the last six years. During the same

reversed 60-70% of the time during the last six years. During the same period Ninth Circuit rulings have received an average of between 1.5 and 2.5 votes from the Supreme Court Justices [all info from Akhil Amar Findlaw column]. Judge Stephen Reinhardt alone was reversed 11 times during the 1996-97 term and he holds the record for unanimous reversals in one term: 5. Among other cases, Ninth Circuit panels he sat on were reversed in Ninth Circuit decisions permitting the operation of California cannabis clubs and striking down Washington State's assisted suicide ban. He also sat on the Ninth Circuit panel striking down California's "three strikes" law this spring.

The Nixon appointed (1972) Republican judge that wrote the decision was only able to do it because of the vacancy crisis since he is on senior status.

Sales, Nathan

From: Sales, Nathan
Sent: Thursday, June 27, 2002 12:09 PM
To: Willett, Don; Dinh, Viet; 'Brett Kavanaugh (E-mail)'
Subject: RE: from the Thomas dissent in Zelman

Thank [redacted by the Ninth Circuit] that it was a Thomas concurrence, not a Thomas dissent!

-----Original Message-----

From: Willett, Don
Sent: Thursday, June 27, 2002 12:04 PM
To: Sales, Nathan; Dinh, Viet; Brett Kavanaugh (E-mail)
Subject: from the Thomas dissent in Zelman

While the romanticized ideal of universal public education resonates with the cognoscenti who oppose vouchers, poor urban families just want the best education for their children, who will certainly need it to function in our high-tech and advanced society. ... If society cannot end racial discrimination, at least it can arm minorities with the education to defend themselves from some of discrimination's effects. ... As Frederick Douglass poignantly noted "no greater benefit can be bestowed upon a long benighted people, than giving to them, as we are here earnestly this day endeavoring to do, the means of an education."

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, June 26, 2002 10:50 AM
To: Goodling, Monica; 'Kavanaugh, Brett'; O'Brien, Pat; 'Bartolomucci, Chris'; Benedi, Lizette D; Joy, Sheila; Keefer, Wendy J; Koebele, Steve; Newstead, Jennifer; Sales, Nathan; Willett, Don
Subject: FW: Latest from Ralph Neas & co.
Attachments: tmp.htm

fyi

-----Original Message-----

From: Stephen F. Smith [mailto:sfs3h@virginia.edu]
Sent: Wednesday, June 26, 2002 10:40 AM
To: bushcheney-l@bu.edu
Subject: Fwd: Latest from Ralph Neas & co.

A peek at the enemy's cards. . .

>Date: Tue, 25 Jun 2002 10:20:21 EDT
>Subject: Latest from Ralph Neas & co.
>To: (b)(6) Kay Daly email
>X-Mailer: AOL 7.0 for Windows US sub 119

>
>-----Original Message-----
>From: PFAW Activist Network [mailto:37KZL0ZF@pfaw.inv9.com]
>Sent: Monday, June 24, 2002 12:51 PM
>To:
>Subject: ALERT: Oppose The Confirmation Of Brooks Smith

>
>
>
>ACTIVIST NETWORK -- People For the American Way
>
>
>Alert Date: June 24, 2002 -- Circulate Until: July 8, 2002

>
>
>
>
>BUSH CONTINUES COURT-PACKING PLAN WITH NOMINEE D. BROOKS SMITH

>
>
>
>ACTION:

>
>Call or e-mail Sen. John W. Warner and Sen. George Allen and urge them to
>vote AGAINST the confirmation of D. Brooks Smith to the Third Circuit
>Court of Appeals! Stop President Bush's campaign to pack our courts with
>right-wing ideologues! To e-mail both your senators at once,
><<http://inv9.com/.l/37KZL04TXS>>CLICK HERE.
>>Sen. John W. Warner
>> Capitol Hill Phone: (202) 224-2023 Sen. George Allen >> Capitol Hill Phone: (202) 224-4024

>
>
>ACTION PLAN:

>Federal District Court Judge D. Brooks Smith has been nominated by
>President Bush for a promotion to the U.S. Court of Appeals for the 3rd
>Circuit. His nomination is expected to come to the Senate floor for a vote
>soon.
>Smith's nomination is yet another example of how the actions of the Bush
>administration, Senate Republicans and right-wing activists threaten to
>restrict our liberties by reshaping our courts. Judge Smith's judicial
>philosophy endangers a broad range of important legal and constitutional
>rights and interests affecting consumers, women, minorities, people with
>disabilities, health, safety, and the environment. Smith has also violated
>judicial ethics and has made contradictory statements to tProgressive
>activists like you are the key to ensuring that the Senate rejects
>right-wing nominees like Smith. White House pressure and Senate tradition
>often make stopping judicial nominees an uphill fight - but one we can and
>must win! Urge Sen. Warner and Sen. Allen to vote AGAINST D. Brooks Smith
>on the Senate floor! Talking points are included in the next section and
>through the e-mail link below.
>To e-mail both your senators at once, <<http://inv9.com/.l/37KZL04TXS>>CLICK
>HERE.

>>
>>Sen. John W. Warner
>> Capitol Hill Phone: (202) 224-2023
>>Sen. George Allen
>> Capitol Hill Phone: (202) 224-4024

>
>
>Link not working? Paste this:
><http://capwiz.com/pfaw/issues/alert/?alertid=259161>

>
>*** TALKING POINTS ON THE NOMINATION OF D. BROOKS SMITH ***

>
>
>
>1. Judge Smith violated judicial ethics by remaining a member of a club
>which discriminates against women.

>>
>>In violation of the official Code of Conduct for U.S. Judges and
>>guidelines written by the American Bar Association, Judge Smith
>>maintained his membership through 1999 in a private club that does not
>>admit women as members. Smith himself recognized this improper membership

>>at his district court confirmation hearing in 1988, and promised the
>>Senate Judiciary Committee that he would resign from the club if this
>>discriminatory rule was not changed in a timely fashion. In 1990, the
>>Senate Judiciary Committee

>>2. Judge Smith's record shows a troubling disregard for women's rights
>>and government's efforts to protect women from violence and discrimination.
>>>

>>>In 1993, Smith delivered a speech that sharply criticized the "Violence
>>>Against Women Act," even before the law was enacted, saying "[t]here is
>>>no legitimate constitutional source for this new-found 'civil right' to
>>>be free from physical violence." The National Employment Lawyers
>>>Association found that Smith wrongly applied Supreme Court precedent in
>>>deciding to strike down an affirmative action policy designed to remedy
>>>past discrimination against female firefighters.

>>
>>

>>3. Judge Smith has expressed an extremely narrow view of the Constitution
>>that would overturn many landmark civil rights laws.

>>>

>>>In Smith's view, as set forth in his 1993 speech, Congress cannot pass a
>>>law dealing with an issue unless the Constitution specifically grants
>>>that power to the federal government. If this judicial philosophy
>>>prevailed, laws such as the Americans with Disabilities Act and the
>>>Violence Against Women Act would be overturned.

>>
>>

>>4. Judge Smith has supported a legal theory that would harm government's
>>power to protect our environment.

>>>

>>>Smith has issued decisions that support a right-wing reinterpretation of
>>>the Fifth Amendment which would require taxpayers to pay industry for
>>>government protections, such as anti-pollution measures. The
>>>Earthjustice Legal Defense Fund concluded that Smith would be "a
>>>sympathetic ear" for groups opposed to government enforcement of
>>>environmental protections.

>>
>>

>>5. Judge Smith has been reversed 51 times, often in important cases
>>affecting consumers and employees.

>>>

>>>Smith was unanimously reversed on appeal for failing to follow Supreme
>>>Court precedent by dismissing the claims of employees who alleged that
>>>years of on-the-job exposure to toxic chemicals were making them sick.
>>>Three judges appointed by President Reagan reversed Smith for dismissing
>>>a claim against a toy manufacturer whose product allegedly caused a
>>>15-month-old child to choke to death. Smith was also reversed for
>>>dismissing a claim that a school district's family leave policy
>>>improperly allowed only w

>>>To read our full letter opposing D. Brooks Smith, go to:

>>>>

>>>><<http://inv9.com/.l/3/KZLU4IXI>><http://www.pfaw.org/issues/judiciary/>

>>>

>>>

>>>

>>>*** FEEDBACK ***

>>>

>>>

>>>

>>>Please send comments and suggestions on this alert to

>>><<mailto:webmaster@pfaw.org>>webmaster@pfaw.org.

>>>ABOUT PEOPLE FOR THE AMERICAN WAY / SUBSCRIPTION INFORMATION

>>>

>>>People For the American Way organizes and mobilizes Americans to fight

>>>for fairness, justice, civil rights and the freedoms guaranteed by the

>>>Constitution. PFAW monitors the Religious Right at the local, state and

>>>national levels, lobbies for progressive legislation, and helps build

>>>communities of activists.

>>>>

>>>>To join our email Activist Network, please go to:

>>>> <<http://inv9.com/.l/37KZL04TXV>><http://www.pfaw.org/activist/> >>>>To remove yourself from the
Activist Network, please go to:

>>>>

>>>><<http://inv9.com/.l/37KZL04TXW>><http://www.pfaw.org/activist/unsubscribe.asp>

>>>>

Washington, Tracy T

From: Washington, Tracy T
Sent: Monday, June 24, 2002 10:35 AM
To: Andrew Schauder; Anne_Womack@who.eop.gov;
Bradford_A._Berenson@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Brian Benczkowski; Dan Bryant; Don Willett;
H._Christopher_Bartolomucci@who.eop.gov; Heather_Wingate@who.eop.gov;
(b)(6) Jennifer Oschal Email Kristi Remington; Lizette Benedi; Lori SharpeDay;
Matthew_E._Smith@who.eop.gov; Monica Goodling; Nathan Sales; Pat O'Brien;
Sheila Joy; Steve Koebele; Tim_Goeglein@who.eop.gov; Viet Dinh; Wendy
Keefer; William Hall
Subject: Agenda attached for today, Monday, June 24, 4:00 p.m. JWG Conference Call
Attachments: JCWG - agenda (6-24-02).doc
Importance: High

Dial I (b) (6)
Passcode (b) (6)

Tracy Washington
U.S. Department of Justice
Office of Legal Policy
Room 4640
(202) 514 2737

**Agenda – Weekly Conference Call
Judicial Confirmation Working Group
6-24-02**

1. Last Week's Mark-Up

Lineup:

David Cercone	(WD PA)	roll call:	19-0
Morrison England	(ED CA)	roll call:	19-0
Ken Marra	(SD FL)	roll call:	19-0
John Rogers	(6 th Cir.)	held over	(maybe more follow-up Qs)
Lavenski Smith	(8 th Cir.)	held over	(likely by Kennedy staff)

2. This Thursday's Confirmation Hearing

Lineup:

Dennis Shedd	(4 th Cir.)	(b) (5)
Terry McVerry	(WD PA)	
Arthur Schwab	(WD PA)	(b) (5)

3. Brooks Smith – Update

Mtg. last Friday w/ Specter and R leadership staff re. floor strategy. (Nathan)

Reportedly dozen-plus Dems in play (b) (5)

(b) (5)

4. Priscilla Owen – Update

Target date: July 1 (b) (5)

(b) (5)

WH/OLP mtg. last Tues. with Sen. Hutchison staff

WH/OLP mtg. last Thurs. with Sen. Hatch staff

5. PFA Activity

6. WH and DOJ Press Activity

7. WH and DOJ Legislative Affairs Activity

Update on Lott-Daschle cease-fire talks on judicial and agency nominees (Daschle hoped for deal by today to ensure movement on judges and Adelstein before July 4 recess)

8. Issues re. Other Nominees (Estrada, McConnell, Sutton, Cook, Roberts, Sutton, etc.)

Same Rumors Re. Summer/Fall Hearing Schedule

Estrada: joint letter from all living former SGs

9. New Business

Keefer, Wendy J

From: Keefer, Wendy J
Sent: Sunday, June 23, 2002 5:17 PM
To: Goodling, Monica; 'Anne_Womack@who.eop.gov';
'Bradford_A. Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov';
Dinh, Vie (b)(6) Viet Dinh email
Subject: Shedd Talkers
Attachments (b) (5)

Attached please find talkers o (b) (5) Judge Shedd:

Wendy J. Keefer
Office of Legal Policy
(202) 616-2643

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Thursday, June 20, 2002 6:29 PM
To: Dinh, Viet
Cc: Willett, Don; Anne_Womack@who.eop.gov
Subject: RE: Judicial Hearing & Prep Session
Attachments: pic06121.pcx

(b) (5) possibly could have get some tough questions as well.

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 06/20/2002 05:55:20 PM
pic06121.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: RE: Judicial Hearing & Prep Session

Let's crank this one up. From a trusted Dem staffer: "the groups are going nuts on this one and it may get ugly." (b) (5)

(b) (5)

-----Original Message-----

From: Keefer, Wendy J
Sent: Thursday, June 20, 2002 5:22 PM
To: Joy, Sheila; Dinh, Viet; Willett, Don; Sales, Nathan; Benczkowski, Brian A;
Remington, Kristi L; Loughlin, Ann L (OLP); Benedi, Lizette D; Hall, William;
Scottfinan, Nancy; 'H._Christopher_Bartolomucci@who.eop.gov';
'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Judicial Hearing & Prep Session

007104-002374

For the interest of anyone who wants to be involved, Judge Shedd will be planning to be available all day Wednesday for prep. He has also provided a great deal of information on cases referenced on the Alliance for Justice website and I will fax that to anyone who needs to review it (some hearing transcripts and in the Crosby case the Magistrate's R&R that he adopted).

-----Original Message-----

From: Joy, Sheila

Sent: Thursday, June 20, 2002 4:52 PM

To: Dinh, Viet; Willett, Don; Keefer, Wendy J; Sales, Nathan; Benczkowski, Brian A; Remington, Kristi L; Loughlin, Ann L (OLP); Benedi, Lizette D; Hall, William; Scottfinan, Nancy; 'H._Christopher_Bartolomucci@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Judicial Hearing & Prep Session

Although the Judiciary Committee has not formally noticed a hearing for Thursday, 6/27, they have told me I may call nominees to inform them - the following are scheduled: Dennis Shedd (4th); Terry McVerry (PA,W) and Arthur Schwab (PA,W) there is no plan to add anyone else.

The hearing will be chaired by Senator Kohl, not sure of time 2:00 or 2:30pm, in 226 Dirksen

Prep Session is scheduled for Wednesday, 6/26, at 2:00 pm in OLP conference room, Rm 4260.

Nominees have been notified.

Sheila C. Joy
Office of Legal Policy
USDOJ, Rm 4641
202 514-1607

Message Sent To: _____

"Keefer, Wendy J" <Wendy.J.Keefer@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Joy, Sheila" <Sheila.Joy@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Willett, Don" <Don.Willett@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Sales, Nathan" <Nathan.Sales@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

requested, (IPM Return Requested)

"Benczkowski, Brian A" <Brian.A.Benczkowski@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Remington, Kristi L" <Kristi.L.Remington@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Loughlin, Ann L (OLP)" <Ann.L.Loughlin@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Benedi, Lizette D" <Lizette.D.Benedi@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"Hall, William" <William.Hall2@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

"O'Brien, Pat" <Pat.O'Brien@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

H. Christopher Bartolomucci/WHO/EOP@EOP

Bradford A. Berenson/WHO/EOP@EOP

Brett M. Kavanaugh/WHO/EOP@EOP

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, June 20, 2002 5:34 PM
To: Keefer, Wendy J; Joy, Sheila; Willett, Don; Sales, Nathan; Benczkowski, Brian A; Remington, Kristi L; Loughlin, Ann L (OLP); Benedi, Lizette D; Hall, William; 'H._Christopher_Bartolomucci@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Judicial Hearing & Prep Session

Excellent. That is why you are my chief of staff, or at least will be come Monday.

-----Original Message-----

From: Keefer, Wendy J
Sent: Thursday, June 20, 2002 5:33 PM
To: Dinh, Viet; Joy, Sheila; Willett, Don; Sales, Nathan; Benczkowski, Brian A; Remington, Kristi L; Loughlin, Ann L (OLP); Benedi, Lizette D; Hall, William; 'H. Christopher Bartolomucci@who.eop.gov'; 'Bradford A. Berenson@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'
Subject: RE: Judicial Hearing & Prep Session

That was the plan.

-----Original Message-----

From: Dinh, Viet
Sent: Thursday, June 20, 2002 5:32 PM
To: Keefer, Wendy J; Joy, Sheila; Willett, Don; Sales, Nathan; Benczkowski, Brian A; Remington, Kristi L; Loughlin, Ann L (OLP); Benedi, Lizette D; Hall, William; 'H. Christopher Bartolomucci@who.eop.gov'; 'Bradford A. Berenson@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'
Subject: RE: Judicial Hearing & Prep Session

Excellent. (b) (5) . thanks.

-----Original Message-----

From: Keefer, Wendy J
Sent: Thursday, June 20, 2002 5:22 PM
To: Joy, Sheila; Dinh, Viet; Willett, Don; Sales, Nathan; Benczkowski, Brian A; Remington, Kristi L; Loughlin, Ann L (OLP); Benedi, Lizette D; Hall, William; Scottfinan, Nancy; 'H. Christopher Bartolomucci@who.eop.gov'; 'Bradford A. Berenson@who.eop.gov'; 'Brett M. Kavanaugh@who.eop.gov'
Subject: RE: Judicial Hearing & Prep Session

Duplicative

007104-002377

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Tuesday, June 18, 2002 11:02 AM
To: Willett, Don
Cc: Benczkowski, Brian A; Dinh, Viet; Keefer, Wendy J; Anne_Womack@who.eop.gov
Subject: Re: FW: Judge Dennis Shedd

Great. Send to Anne (and me) whatever info on Shedd you have; I know Anne has a basic draft now and will add any additional good info. I think Shedd is pretty basic. (I have cc'ed Anne on this e-mail.)

Willett, Don

From: Willett, Don
Sent: Tuesday, June 18, 2002 10:36 AM
To: Benczkowski, Brian A
Cc: Brad Berenson (E-mail); Brett Kavanaugh (E-mail); Dinh, Viet; Keefer, Wendy J
Subject: FW: Judge Dennis Shedd

Brian, just confirming that Anne Womack, Tim Goegelin, and Jennifer Oschal have the scrubbed, for-public-distribution TPs from OLP on Dennis Shedd. Let's make sure they're armed with our pro-Shedd materials (NOT any close hold, crown jewel docs., of course).

DRW

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 18, 2002 10:00 AM
To: Bradford_A._Berenson@who.eop.gov
Cc: Willett, Don; Dinh, Viet; Alberto_R._Gonzales@who.eop.gov;
Timothy_E._Flanigan@who.eop.gov; Helgard_C._Walker@who.eop.gov
Subject: Re: Judge Dennis Shedd

Also, the Womack and Goeglein operations will be getting the basic background talkers out and around probably today.

007104-002379

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, June 18, 2002 9:44 AM
To: 'Bradford_A._Berenson@who.eop.gov'; Willett, Don
Cc: 'Alberto_R._Gonzales@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Helgard_C._Walker@who.eop.gov'
Subject: RE: Judge Dennis Shedd

We are picking up same, and discussed it briefly in yesterday's conference call. I will reach out to him, along with our Shedd team (don, can you arrange?). AFJ is making noises, as you know. Thanks much, Brad.

-----Original Message-----

From: Bradford_A._Berenson@who.eop.gov
[mailto:Bradford_A._Berenson@who.eop.gov]
Sent: Tuesday, June 18, 2002 9:37 AM
To: Willett, Don; Dinh, Viet
Cc: Alberto_R._Gonzales@who.eop.gov; Timothy_E._Flanigan@who.eop.gov;
Brett_M._Kavanaugh@who.eop.gov; Helgard_C._Walker@who.eop.gov
Subject: Judge Dennis Shedd

We're getting some strong indications that Judge Shedd will be scheduled for a hearing next week, probably on the 27th. We're also hearing that the civil rights groups plan to come after him. Viet and Don, would you guys please (b) (5)

(b) (5)

007104-002380

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Tuesday, June 18, 2002 9:37 AM
To: Dinh, Viet
Cc: Willett, Don; Dinh, Viet; Keefer, Wendy J; Timothy_E._Flanigan@who.eop.gov
Subject: RE: D.Ct. Status
Attachments: Dct judges status.wpd; ATTACHMENT.TXT; pic16162.pcx

One further point: We have set tentative "nominations days" of Wed. June 26, Wed. July 10, and Wed. July 24 for the tentative nominations of the 22 candidates currently in background. That would mean (b) (5)

(b) (5)

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 06/18/2002 08:45:38 AM
pic16162.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: RE: D.Ct. Status

007104-002381

-----Original Message-----

From: Dinh, Viet

Sent: Tuesday, June 18, 2002 8:45 AM

To: 'Brett_M._Kavanaugh@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov';

Willett, Don; Keefer, Wendy J

Subject: D.Ct. Status

Here is the status report on the d.ct. situation. (b) (5)

(b) (5)

Message Sent To: _____

"Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested)
(IPM Return Requested)
"Willett, Don" <Don.Willett@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)
"Keefer, Wendy J" <Wendy.J.Keefer@usdoj.gov> (Receipt Notification
Requested) (IPM Return Requested)
Brett M. Kavanaugh/WHO/EOP@EOP
Timothy E. Flanigan/WHO/EOP@EOP

STATUS OF SELECTED JUDICIAL NOMINEES/CANDIDATES

Nominees Pending before Judiciary with ABA Rating (no hearing)

Ron Clark - TX, E	WQ/Q
Arthur Schwab - PA,W	Q/WQ
Terry McVerry - PA,W	WQ
Jose Martinez - FL,S	Q
Ronald Leighton - WA,W	WQ/Q
Stanley Chesler - NJ	WQ
Bill Martini - NJ	Q/NQ

Nominees Pending before Judiciary without ABA Rating

Frederick Rohlfig - HI
James Gardner - PA,E
Timothy Corrigan - FL,M
James Dever - NC,E
Tim Stanceu - CIT

Candidates awaiting completion of Background Investigation

FBI Status

(b) (5), (b) (6)

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Tuesday, June 18, 2002 8:57 AM
To: Dinh, Viet
Cc: Willett, Don; Dinh, Viet; Keefer, Wendy J; Timothy_E._Flanigan@who.eop.gov
Subject: RE: D.Ct. Status
Attachments: Dct judges status.wpd; ATTACHMENT.TXT; pic32675.pcx

It seems that we are in very good shape overall from our perspective (b) (5)

(b) (5)

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 06/18/2002 08:45:38 AM
pic32675.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: RE: D.Ct. Status

-----Original Message-----

From: Dinh, Viet
Sent: Tuesday, June 18, 2002 8:45 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov';
Willett, Don; Keefer, Wendy J
Subject: D.Ct. Status

Duplicative

007104-002385

STATUS OF SELECTED JUDICIAL NOMINEES/CANDIDATES

Nominees Pending before Judiciary with ABA Rating (no hearing)

Ron Clark - TX, E	WQ/Q
Arthur Schwab - PA,W	Q/WQ
Terry McVerry - PA,W	WQ
Jose Martinez - FL,S	Q
Ronald Leighton - WA,W	WQ/Q
Stanley Chesler - NJ	WQ
Bill Martini - NJ	Q/NQ

Nominees Pending before Judiciary without ABA Rating

Frederick Rohlfig - HI
James Gardner - PA,E
Timothy Corrigan - FL,M
James Dever - NC,E
Tim Stanceu - CIT

Candidates awaiting completion of Background Investigation

FBI Status

(b) (5), (b) (6)

Keefer, Wendy J

From: Keefer, Wendy J
Sent: Friday, June 7, 2002 5:16 PM
To: Willett, Don; 'Brett Kavanaugh (E-mail)'
Subject: RE: Business and Courts
Attachments: BusinessInterest.doc; BusinessCase Examples.wpd; BusinessCertainty.wpd; BusinessInterestTPs.wpd; BusinessMemofor TG and JO.wpd; BusinessOpEd.wpd

One or two of these are in the materials I prepared also. Tim Goeglein and Jennifer Oschal also had me put some of the materials in layman's terms. Here is what I have.

Hope this is helpful.

-----Original Message-----

From: Willett, Don
Sent: Friday, June 07, 2002 5:03 PM
To: Keefer, Wendy J; Brett Kavanaugh (E-mail)
Subject: FW: Business and Courts

Wendy and Brett, (b) (5), (b) (6)
(b) (5), (b) (6)

Brett, maybe (b) (5)

DRW

-----Original Message-----

From: Leonard A. Leo [mailto:lleo@fed-soc.org]
Sent: Friday, June 07, 2002 3:50 PM
To: Willett, Don
Subject: Business and Courts

007104-002387

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Thursday, June 06, 2002 9:05 AM
To: Willett, Don; Dinh, Viet

can you FAX me final Estrada letter as well as the original Leahy letter to DOJ.

Bryant, Dan

From: Bryant, Dan
Sent: Wednesday, June 5, 2002 10:19 AM
To: Dinh, Viet; 'Brett_M._Kavanaugh@who.eop.gov'; O'Brien, Pat
Cc: Goodling, Monica
Subject: RE: Estrada letter.

Done. Pat: Let's let this thing fly. Please coordinate with Monica. Tx.

-----Original Message-----

From: Dinh, Viet
Sent: Wednesday, June 05, 2002 7:25 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Bryant, Dan; Goodling, Monica
Subject: RE: Estrada letter.

Dan, you have pen. Can we finalize and release today? thanks much.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 04, 2002 12:46 PM
To: Dinh, Viet
Cc: Bryant, Dan
Subject: Re: Estrada letter.

As I noted to Dan, we have a few additional suggestions. First, (b) (5)

(b) (5)

(b) (5)

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 06/03/2002 02:06:34 PM
pic17800.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Estrada letter.

As we discussed last Friday, enclosed please find a slightly revised letter from dan bryant to chairman leahy. We would like to get this out ASAP this afternoon. Please comment by 3:00 if possible.

Willett, Don

From: Willett, Don
Sent: Wednesday, June 05, 2002 9:48 AM
To: Dinh,
Viet; 'Brett_M._Kavanaugh@who.eop.gov'; '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'
Cc: 'Bradford_A._Berenson@who.eop.gov'; Goodling, Monica
Subject: RE: Miguel Estrada

(b) (5)

DRW

-----Original Message-----

From: Dinh, Viet
Sent: Wednesday, June 05, 2002 7:30 AM
To: 'Brett_M._Kavanaugh@who.eop.gov';
'/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'
Cc: 'Bradford_A._Berenson@who.eop.gov'; Willett, Don
Subject: RE: Miguel Estrada

I did not hear of such a request. Don, can you track it down.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 04, 2002 8:44 PM
To:
'/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'
Cc: Dinh, Viet; Bradford_A._Berenson@who.eop.gov
Subject: Re: Miguel Estrada

probably a mistake.

H. Christopher Bartolomucci
06/04/2002 08:42:49 PM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Bradford A. Berenson/WHO/EOP@EOP,
<Viet.Dinh@usdoj.gov>

cc:
Subject: Miguel Estrada

The new Weekly Standard says that Leahy has asked Miguel for "all internal memos he wrote at Gibson." Is this true or bad fact-checking by the usually reliable Standard?

.

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, June 5, 2002 7:32 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: 'Helgard_C._Walker@who.eop.gov'; '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; 'Rachel_L._Brand@who.eop.gov'; 'Kyle_Sampson@who.eop.gov'; 'Jennifer_G._Newstead@who.eop.gov'
Subject: RE: FYI: NRA opposes Raggi

I agree that (b) (5) . You should loop in Ken Mehlman and Matt Schlapp.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, June 04, 2002 8:19 PM
To: Dinh, Viet
Cc: Helgard_C._Walker@who.eop.gov;
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/; Rachel_L._Brand@who.eop.gov;
Kyle_Sampson@who.eop.gov; Jennifer_G._Newstead@who.eop.gov
Subject: Re: FYI: NRA opposes Raggi

This is Courtney's now Jen's, but let me throw in 2 cents. I just read the decision. (b) (5)



(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>

007104-002393

to file: 06/03/2002 05:06:57 PM
pic26467.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: FYI: NRA opposes Raggi

Willett, Don

From: Willett, Don
Sent: Tuesday, June 04, 2002 1:38 PM
To: Dinh, Viet
Cc: Keefer, Wendy J; Benczkowski, Brian A; Brett Kavanaugh (E-mail)
Subject: latino support for miguel

FYI, roughly 750 Hispanic pastors came to D.C. for the recent Nat'l Hispanic Prayer Breakfast (where the President spoke). The report is that 400+ went to the Hill for about 75 meetings with Members and staff in the House and Senate. And many of the pastors stressed Miguel's nomination in meetings with Dem. Senators.

DRW

007104-002395

Keefer, Wendy J

From: Keefer, Wendy J
Sent: Monday, June 3, 2002 6:02 PM
To: Dinh, Viet; 'joschal@att.net'
Cc: 'Tim Goeglein'; 'Brett Kavanaugh'; 'Tony Feather'; 'Heather_Wingate@who.eop.gov'
Subject: RE: Business Community & Judges
Attachments: BusinessInterest.wpd; BusinessCase Examples.wpd; BusinessCertainty.wpd; BusinessOpEd.wpd

Here are documents prepared with regard to (b) (5) Let me know if I can provide any additional information or assistance.

Wendy

-----Original Message-----

From: Dinh, Viet
Sent: Monday, June 03, 2002 5:49 PM
To: (b)(6) Jennifer Oschal Email
Cc: 'Tim Goeglein'; 'Brett Kavanaugh'; 'Tony Feather'; Keefer, Wendy J; 'Heather_Wingate@who.eop.gov'
Subject: RE: Business Community & Judges

We had prepared similar materials for a meeting that Heather and Ziad set up with various folks. Wendy, can you forward? Heather, perhaps you can coordinate with Jennifer and Tim on this? thanks so much.

-----Original Message-----

From: Jennifer Oschal (b)(6) Jennifer Oschal Email
Sent: Monday, June 03, 2002 5:14 PM
To: Dinh, Viet
Cc: Tim Goeglein; Brett Kavanaugh; Tony Feather
Subject: Business Community & Judges

Viet, as discussed, Tim and I met with Fred Nichols of NAM today to start (b) (5) (b) (5) A few things need to be done to start the ball in motion:

(b) (5)

(b) (5)

A few other thoughts to keep in mind:

(b) (5)

can we have a conference call late wednesday to discuss all of this, but start the ball in motion on the 3 action items listed first above?

thanks. jo

Washington, Tracy T

From: Washington, Tracy T
Sent: Monday, June 3, 2002 10:28 AM
To: Andrew Schauder; Anne_Womack@who.eop.gov;
Bradford_A._Berenson@who.eop.gov; Brett_M._Kavanaugh@who.eop.gov;
Brian Benczkowski; Dan Bryant; Don Willett;
H._Christopher_Bartolomucci@who.eop.gov; Heather_Wingate@who.eop.gov;
(b)(6) Jennifer Oschal email Lizette Benedi; Lori SharpeDay;
Matthew_E._Smith@who.eop.gov; Monica Goodling; Nathan Sales; Pat O'Brien;
Sheila Joy; Steve Koebele; Tim_Goeglein@who.eop.gov; Viet Dinh; Wendy
Keefer
Subject: Agenda re 4:00pm Judicial W.G. Conference Call is attached
Attachments: JCWG - agenda (6-3-02).doc

Dial In:
Passco

(b) (5)

Tracy Washington
U.S. Department of Justice
Office of Legal Policy
Room 4640
(202) 514 2737

**Agenda – Weekly Conference Call
Judicial Confirmation Working Group**

6-3-02

1. Most Recent Confirmation Hearing

Lineup:

Lavenski Smith	(8 th Cir.)	follow-up questions from Sen. Cantwell
Amy St. Eve	(ND IL)	possible follow-up questions forthcoming
Henry Hudson	(ED VA)	
Tim Savage	(ED PA)	
Richard Dorr	(ED MO)	
Henry Autrey	(ED MO)	

2. Brooks Smith – Update

Successful mark-up on May 23 (vote: 12-7)

(b) (5)

Meeting with Specter staff later this week to discuss floor strategy

3. Priscilla Owen – Update

(b) (5)

4. PFA Activity

5. WH and DOJ Press Activity

6. WH and DOJ Legislative Affairs Activity

7. Issues re. Other High-Profile Nominees (Estrada, Roberts, McConnell, Sutton, etc.)

Estrada: DOJ response to Leahy letter requesting Miguel's SG-era memoranda

8. New Business

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, May 29, 2002 12:16 PM
To: (b)(6) Jennifer Oschal Email Willett,
Don; 'tim_goeglein@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'pdyck@who.eop.gov'
Subject: Re: NAACP/Lavenski Smith

(b) (5)

-----Original Message-----

From: Jennifer Oschal <(b)(6) Jennifer Oschal Email>
To: Dinh, Viet <Viet.Dinh@USDOJ.gov>; Willett, Don <Don.Willett@USDOJ.gov>; Tim(u)Goeglein <tim_goeglein@who.eop.gov>; Brett Kavanaugh <Brett_M._Kavanaugh@who.eop.gov>; Paul Dyck <pdyck@who.eop.gov>
Sent: Wed May 29 11:55:58 2002
Subject: FW: NAACP/Lavenski Smith

FYI - see below.

-----Original Message-----

From: Roger Dorsey [mailto:RDorsey@DWCPA.com]
Sent: Wednesday, May 29, 2002 11:26 AM
To: (b)(6) Jennifer Oschal Email
Cc: 'jtimothygriffin (b) (6)'
Subject: NAACP/Lavenski Smith

Jennifer,

I just spoke with Dale Charles regarding an NAACP press release in support of Lavenski Smith. It had not appeared in the press, but I thought it might be a good idea to fax such a release to Leahy and Hatch. Mr. Charles said he had discussed it with his organization, and they had decided it was not in their best interest to issue statements supporting the actual confirmation of Lavenski Smith, only a hearing for him. (I didn't really see the logic in that position, but perhaps they are getting complaints for supporting a Republican nominee).

Let me know if I can do anything else to help. Thanks.

Roger

Roger W. Dorsey, Esq.
Douglas W. Coy, P.A.
100 Morgan Keegan Drive, Suite 420
Little Rock, Arkansas 72203
501.661.1522-Office
501.661.1525 Fax

007104-002400

001.001.1522-Fax

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Version: 6.0.344 / Virus Database: 191 - Release Date: 4/2/2002

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.344 / Virus Database: 191 - Release Date: 4/2/2002

007104-002401

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, May 23, 2002 9:57 AM
To: '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; Willett, Don; 'Brett_M._Kavanaugh@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Anne_Womack@who.eop.gov'
Subject: RE: NYT Mag Article

Anne,

Jeff Rosen is finishing up his piece. He focussed on John Roberts and the irony that JR is nominated for Allen Snyder's seat--a bit of the tit for tat angle here. But he will play up strong supporters of JR who have personally observed the human cost of waiting, etc. I have already talked to him regarding John's merits, and I suggested (b) (5)

(b) (5) Can you call Rosen at (202) 265-2749? thanks much

Viet

-----Original Message-----

From: /DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
[mailto:/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/]
Sent: Tuesday, April 30, 2002 9:10 PM
To: Willett, Don; Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov; Bradford_A._Berenson@who.eop.gov; Anne_Womack@who.eop.gov
Subject: NYT Mag Article

I mentioned to some of you today that the New York Times Magazine is working on a story about judges. Turns out this is the piece that Jeff Rosen is working on. Rosen called Allen Snyder, who told John Roberts about the call.

007104-002402

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Wednesday, May 22, 2002 7:57 AM
To: Koebele, Steve
Cc: Loughlin, Ann L (OLP); Willett, Don; Sales, Nathan; Dinh, Viet; Keefer, Wendy J
Subject: RE: Sen Hutchison - Request for Approval to Send
Attachments: pic20032.pcx

Does Feinstein have the Gonzales letter on the Owen/Enron matter?

(Embedded
image moved "Koebele, Steve" <Steve.Koebele@usdoj.gov>
to file: 05/22/2002 07:52:37 AM
pic20032.pcx)

Record Type: Record

To: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Willett, Don" <Don.Willett@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Loughlin, Ann L (OLP)" <Ann.L.Loughlin@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Keefer, Wendy J" <Wendy.J.Keefer@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Sales, Nathan" <Nathan.Sales@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

Subject: RE: Sen Hutchison - Request for Approval to Send

Viet --

(b) (5)

007104-002403

(b) (5)

I will obtain more information today and recommend accordingly. Thank you very much. Steve.

-----Original Message-----

From: Dinh, Viet

Sent: Tuesday, May 21, 2002 7:09 PM

To: Koebele, Steve; Willett, Don; 'brett_m._kavanaugh@who.eop.gov'

Cc: Loughlin, Ann L (OLP); Keefer, Wendy J; Sales, Nathan

Subject: RE: Sen Hutchison - Request for Approval to Send

(b) (5)

-----Original Message-----

----- Original message -----

From: Koebele, Steve
Sent: Tuesday, May 21, 2002 6:54 PM
To: Willett, Don; Dinh, Viet; 'brett_m._kavanaugh@who.eop.gov'
Cc: Loughlin, Ann L (OLP); Keefer, Wendy J; Sales, Nathan
Subject: Sen Hutchison - Request for Approval to Send

Don, Viet & Brett --

Approval Request Re Justice Owen: (b) (5)

(b) (5)

Background: During the May 16 meeting of Justice Owen, Sen Feinstein, Sen. Hutchison and staff of the two senators', Sen Feinstein requested (1) copies of the parental notification and buffer zone cases, (2) two articles published by the Houston Chronicle and the Austin American-Statesman covering the July 1998 buffer zone case, and (3) Enron case information. Further, parroting the Texans for Public Justice Pay to Play report (linking contributions to the contributors' success rate), Sen Feinstein also questioned Justice Owen regarding connections between lawyer/law firm contributions and contributor success at the Court (b) (5)

(b) (5)

(b) (5)

Attached are the following:

1. Index to copies of the parental notification and buffer zone cases.

<< File: Abortion Case Cites-Feinstein Version.wpd >>

2. Enron case information, two items.

<< File: Enron-Cases-Line Comment final 4-17-02.wpd >> << File:

Enron-Cases-Analysis 04-17-02.wpd >>

3. Report rebuttal cover sheet.

<< File: PaytoPlay-Rebuttal-Very Close Hold-Front Page.doc >>

4. Link to Pay to Play report on TPJ website (our Exhibit A).

<http://www.tpj.org/reports/paytoplay/paytoplay.pdf>

5. Report rebuttal Exhibit B.

<< File: PaytoPlay-Rebuttal-Very Close Hold-Exhibit.DOC >>

Thank you very much. Steve 307-3024.

Koebele, Steve

From: Koebele, Steve
Sent: Tuesday, May 21, 2002 1:57 PM
To: 'brett_m._kavanaugh@who.eop.gov'; Willett, Don; Loughlin, Ann L (OLP);
Keefe, Wendy J
Cc: Goodling, Monica;
'/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/
P=GOV+DOJ/A=TELEMAIL/C=US/'; Dinh, Viet
Subject: TX Justices Sued Today

All,

In the Western District of Texas, specifically Del Rio (Valley Border), various plaintiffs filed a complaint seeking to "to force the Texas Supreme Court to disclose records of how each justice votes on whether or not the Court will decide a case" (petitions for review).

Plaintiffs include: Texans for Public Justice, Common Cause, the League of United Latin American Citizens (LULAC), The Texas Observer (a liberal media publication in Austin), Supreme Court candidate Brad Rockwell, attorney Terry Hogwood, and various voters registered in Texas.

Complaint in Federal Court...

http://www.tpj.org/payola/sc_complaint.html

News release link...

http://www.tpj.org/press_releases/suit.html

Thank you. Steve

Joy, Sheila

From: Joy, Sheila
Sent: Tuesday, May 21, 2002 11:10 AM
To: Dinh, Viet; Willett, Don; Keefer, Wendy J; Sales, Nathan; Benczkowski, Brian A; Benedi, Lizette D; Loughlin, Ann L (OLP); 'H._Christopher_Bartolomucci@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; Scottfinan, Nancy; Goodling, Monica; Koebele, Steve
Subject: Richard Dorr(MO,W) & Henry Autrey (MO,E) have been added to Thursday hearing
Importance: High

Sheila C. Joy
Office of Legal Policy
USDOJ, Rm 4641
202 514-1607

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, May 21, 2002 10:51 AM
To: '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Miguel memos

We talked about it at dinner last night, and are reaching out.

-----Original Message-----

From:
/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
[mailto:/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/]
Sent: Monday, May 20, 2002 7:45 PM
To: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov
Subject: Miguel memos

(b) (5)

Sales, Nathan

From: Sales, Nathan
Sent: Monday, May 20, 2002 5:19 PM
To: Brett Kavanaugh (E-mail)
Subject: Judges paper

Brett,

Thanks for your voicemail last week about historical materials for the judges paper. Maybe this email will help clarify what I'm looking for. (b) (5)

[Redacted]

Thanks!
Nathan

Dinh, Viet

From: Dinh, Viet
Sent: Friday, May 10, 2002 10:43 AM
To: Brewster, Albert; Sutton, Jason; Newstead, Jennifer; Washington, Tracy T; Dinh, Viet; Ciongoli, Adam; Petersen, Amy; Beach, Andrew; Willett, Don; Long, Evelyn V; 'Melissa_S._Bennett@who.eop.gov'; 'Carol_J._Thompson@who.eop.gov'; 'Susan_B._Ralston@who.eop.gov'; 'Alison_Jones@who.eop.gov'; 'Michael_J._Conway@who.eop.gov'; 'David_S._Addington@ovp.eop.gov'; '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; 'John_B._Bellinger@nsc.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Rachel_L._Brand@who.eop.gov'; 'Robert_W._Cobb@who.eop.gov'; 'Courtney_S._Elwood@who.eop.gov'; 'Timothy_E._Flanigan@who.eop.gov'; 'Noel_J._Francisco@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Helgard_C._Walker@who.eop.gov'; 'Allison_L._Riepenhoff@who.eop.gov'; 'Dee_Dee_Benkie@who.eop.gov'; 'Brent_D._Greenfield@who.eop.gov'; 'Heather_Wingate@who.eop.gov'; 'Lori_L._Lorenzi@who.eop.gov'; 'Kyle_Sampson@who.eop.gov'; 'Douglas_L._Hoelscher@who.eop.gov'; 'David_McMaster@who.eop.gov'; 'Ann_Gray@who.eop.gov'; 'david.leitch@faa.gov'; Ciongoli, Adam; Clement, Paul D; Willett, Don
Subject: "He's a good kid," says Bart's Mom.
Attachments: tmp.htm

-----Original Message-----

From: Drew Graham [mailto:dgraham@ballastpointventures.com]
Sent: Friday, May 10, 2002 10:35 AM
To: Garre, Gregory G; Dinh, Viet; (b) (6)
'(b) (6)'klein(a)strategy.Com'; 'John.Zecca(a)NASD.com'
Cc: Elwood, John; 'kgoncharenko(a)mercuryllc.com'; 'dnappi(a)nyse.com'
Subject: Bart In the News

Gents,

I know Bart is too modest to pass this on himself, but the following article and his picture appeared in this morning's Vero Beach Press Journal, our hometown paper. Though I'm a little disappointed that Bart didn't point out that I carried him on the high school debate team, I know it's hard to remember the little people sometimes.

Drew

VBHS grad on president's law team

For Christopher Bartolomucci, job as associate counsel for the White House is an interesting challenge.

By Jennifer Sergent staff writer

May 10, 2002

Karen Bartolomucci knew her son, Christopher, had a knack for arguing a point back when he signed up for a debate club in the seventh grade.

One debate class led to another, which led to state and national debate tournaments at Vero Beach High School, which led to Dartmouth College and Harvard Law School, then a law firm partnership, and now he's an associate counsel to President Bush at the White House.

"He debated all the time. That's mainly what he did all through high school," Karen Bartolomucci said. Law, she added, "was just sort of a natural progression."

But most lawyers don't end up advising the president of the United States.

And to think, Christopher Bartolomucci, 35, didn't even apply for the job.

Following the path of most Harvard Law graduates, he became a clerk to a federal judge in Austin the year after he graduated in 1992. Some of his friends there went on to work for then-Gov. Bush.

And once Bush was declared the winner of the 2000 election in December of that year, one of those friends left a voice mail on Bartolomucci's machine, asking him if he wanted to interview for a position as associate counsel.

At the time, his father was about to go to the hospital for heart surgery.

"I've got this family crisis going on, and meanwhile, I get this voice mail," he said from his office in the Old Executive Office Building, which houses most of the White House staff.

That's not the only thing that was going on. He had just been informed that he would make partner at his firm, the prestigious Hogan & Hartson in Washington, on Jan. 1, 2001.

He was a partner for 10 days before moving to the Bush transition operation.

"That was quite a month for me," Bartolomucci said, an understatement that fits his low-key personality.

The extraordinary turn of events that led to his \$105,000-per-year job wasn't just a fluke. His credentials were just right for a Republican White House looking for a good attorney. But he agreed to work for far less than even a just-graduated lawyer could earn at a firm where he had just made full partner.

While he rose through the ranks at Hogan & Hartson, he took two leaves of absence: one to advise the Senate committee investigating former President Bill Clinton's involvement in the Whitewater scandal; and a second time to act as counsel to the inspector general of the District of Columbia.

Additionally, he was part of a group called Lawyers for Bush-Cheney that supported the Bush campaign.

But he's modest again about his involvement in politics: "I've been a lifelong Republican, but I wouldn't say I was active," he said.

Bartolomucci is one of several attorneys who work under White House Counsel Alberto Gonzales.

Gonzales, Bartolomucci and the other attorneys on his team meet with President Bush in the Oval Office once or twice a month to advise the president on pending legal matters. Part of Bartolomucci's job involves drafting and reviewing executive orders and other White House documents.

Bartolomucci and his colleagues also defend litigation when the president is directly named in a lawsuit, such as a case from California where Bush is being sued because the man who performed the invocation at the presidential inauguration made references to God.

Most interesting about his job, he said, is that he and others in the counsel's office advise the president on the selection of federal judges and U.S. attorneys, and he occasionally meets directly with the president on those issues.

He finds it so interesting because "I get to meet people from all over the country," he said.

The job is "very, very different" from his work at Hogan & Hartson, he said. There, his time was spent mostly in solitude, researching and writing on legal issues in the firm's appellate division, where he helped litigate some cases that went all the way to the U.S. Supreme Court, although he never personally argued before the high court. Most of his work involved federal statutory and constitutional law.

His White House job "is much more frenetic meetings all the time, phone calls," he said.

He works nearly 12 hours a day without flinching. "I try to sleep on weekends," he said.

Meanwhile, he's planning a wedding in July to attorney Catherine Guerra, whom he met in Washington in 1998 through a mutual friend. And like so many people he works with at the Bush White House, she's a Texan.

"We hit it off right away," he said. "She'd love it if you could mention we're engaged."

Guerra, who is nearly as busy as her fiance at the Washington firm of Zuckerman Spaeder, could not be reached for comment.

Karen Bartolomucci still lives in Vero Beach, along with Christopher's sister, brother-in-law and grandmother. His father, Anthony Bartolomucci, died in March after a long illness.

He and his future wife intend to stay in the Washington, D.C., area after President Bush leaves office. He said he will probably return to private practice in the area, but in the meantime, he tries to make it back down to Vero Beach a few times a year to see his family.

"He's a good kid," Karen Bartolomucci said. "He's really worked very hard ever since he was a little guy."

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, May 8, 2002 7:01 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: 'Anne_Womack@who.eop.gov'
Subject: RE: FW: TPs for Schumer hearing

Unfortunately, I only have info about Bush 41 and Clinton circuit nominees. I'll try to track down info about Carter and Reagan nominees.

Bush 41: 42 circuit confirmations; 53 individual nominees; 79% Clinton: 65 circuit confirmations; 90 individual nominees; 72%

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, May 08, 2002 6:47 PM
To: Sales, Nathan
Cc: Anne_Womack@who.eop.gov
Subject: Re: FW: TPs for Schumer hearing

I am having trouble nailing down one statistic:

(b) (5)

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 05/08/2002 06:29:33 PM

007104-002415

pic30845.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP, Anne Womack/WHO/EOP@EOP

cc:

Subject: FW: TPs for Schumer hearing

-----Original Message-----

From: Sales, Nathan

Sent: Wednesday, May 08, 2002 6:26 PM

To: Dinh, Viet; Willett, Don; Benczkowski, Brian A; Keefer, Wendy J; Benedi, Lizette D; O'Brien, Pat; Brad Berenson (E-mail); Chris Bartolomucci (E-mail); Heather Wingate (E-mail); Goodling, Monica; Manuel Miranda (E-mail); Ed Haden (E-mail); Joe Matal (E-mail)

Subject: TPs for Schumer hearing

Duplicate

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, May 07, 2002 9:24 AM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Fw: New York Times magazine story on judicial nominations

(b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, May 06, 2002 7:41 PM
To: Dinh, Viet
Subject: Re: Fw: New York Times magazine story on judicial nominations

(b) (5)

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 05/06/2002 05:57:17 PM
pic24676.pcx)

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Fw: New York Times magazine story on judicial nominations

FYI. I will offer up some surrogates.

Original Message

007104-002417

-----Original message-----

From: Jeffrey Rosen <jrosen@law.gwu.edu>

To: Dinh, Viet <Viet.Dinh@USDOJ.gov>

Sent: Mon May 06 16:59:15 2002

Subject: Re: New York Times magazine story on judicial nominations

Viet, many thanks for this nice note. Yes indeed -- (b) (6)

(b) (6)

As for the piece -- Friday, alas, I'm in NY: is there any way we could find just a few minutes before then to talk on the phone so I can tell you what I have in mind? School is out and I'm home this afternoon and much of the week at (b) (6). I understand that the nominees probably can't speak on the record, but I need just enough access to be able to describe their backgrounds, humanize them, and make them sympathetic characters, so that the reader feels that they deserve a hearing and are being victimized by an unfair process. Look forward to talking, and to figuring out how best to proceed. Thanks again for the good words.

Best regards,

Jeff

Dinh, Viet wrote:

> Jeff,

>

> Whoa, brother. (b) (6) would have loved to come, if for no other reason than to congratulate (b) (6) but even better for another reason in Gerry Reynolds. (b) (6)

(b) (6)

Perhaps another time.

>

> W/r/t to your piece, I would love to chat. (Is the Wilkinson speech you are referring to one he gave at the Lib. of Congress last month?) I think it is highly unlikely that we will be able to make the nominees available, but as I deal with them on a daily basis, perhaps I can talk about their situations (but not feelings--I don't do feelings!). I am going to NYC tomorrow, but am pretty open on Friday if that works with your schedule.

>

> All best,

>

> Viet

>

> -----Original Message-----

> From: Jeffrey Rosen [mailto:jrosen@law.gwu.edu]

> Sent: Monday, May 06, 2002 1:13 PM

> To: Dinh, Viet

> Subject: New York Times magazine story on judicial nominations

>

> Dear Viet,

007104-002418

>

> Greetings and congratulations on the excellent job you've been > doing this year. I hope, too, that
you received (b) (6)

(b) (6)

to celebrate Gerry Reynolds's

> appointment as assistant sec'y of education for the office of civil
> rights on May 17. It would be wonderful if by chance you could stop by.
>
> I'm writing now because the New York Times Magazine has asked me
> to write an article about the deadlock in the judicial confirmation
> process for lower court nominees. The piece was inspired by J. Harvie
> Wilkinson's recent speech lamenting the fact that for the past decade or
> so, highly qualified Republican and Democratic nominees -- including
> people like John Roberts and Michael McConnell and, in the previous
> administration, Allen Snyder -- have been unable to get hearings and
> votes in the Senate. By focussing on a few well qualified nominees, I
> want to explore why the confirmation process has broken down, as well as
> examining ways that it might be fixed.
>
> Would it be possible to talk to you in connection with the story?
> You've been at the center of all this for more than a year, and I'd very
> much like you to be part of the piece, discussing the sources of the
> problem as well as potential solutions. I'd also like to discuss with
> you the possibility of talking to one or two of the nominees -- either
> on background or on the record -- so that I can dramatize the unfairness
> of their situation in being unable to get hearings. I understand that
> they're limited in what they can say, but it strikes me that if we could
> select one or two sympathetic nominees -- I have in mind especially John
> Roberts and my friend Michael McConnell -- and contrast them with
> well-qualified Clinton nominees who never got hearings, this would make
> for a dramatic and compelling story.
>
> In any event, a preliminary conversation would be great to decide
> the best way to proceed. Many thanks in advance for any time you can
> spare.
>
> Best regards,
>
> Jeff

Message Sent To: _____

"Goodling, Monica" <Monica.Goodling@usdoj.gov>
"Willett, Don" <Don.Willett@usdoj.gov>
"Comstock, Barbara" <Barbara.Comstock@usdoj.gov>
Bradford A. Berenson/WHO/EOP@EOP
Brett M. Kavanaugh/WHO/EOP@EOP

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Tuesday, May 7, 2002 9:13 AM
To: Heather_Wingate@who.eop.gov
Cc: Benczkowski, Brian A; Dinh, Viet
Subject: Re: Case examples of justice delayed

(b) (5) (Note I cc'ed only DOJ people on this e-mail.)

Heather Wingate
05/07/2002 08:46:50 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Re: Case examples of justice delayed

Viet where are we on this? Brett, do you have anything that could help satisfy this request? John is correct that we've failed to satisfy this long standing request...

Message Sent To: _____

<John_Mashburn@lott.senate.gov>
Brian.A.Benczkowski@usdoj.gov

007104-002421

viet.dinh@usdoj.gov
routing.senate.gov>
ohn Abegg (E-mail)\ " " <John_Abegg@mcconnell.senate.gov>
Brett M. Kavanaugh/WHO/EOP@EOP

Dinh, Viet

From: Dinh, Viet
Sent: Monday, May 6, 2002 4:44 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: dinner

next week.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, May 06, 2002 4:14 PM
To: Dinh, Viet
Subject: dinner

you know anything?

----- Forwarded by Brett M. Kavanaugh/WHO/EOP on 05/06/2002 04:13 PM -----

Brett M. Kavanaugh
05/06/2002 04:10:03 PM

Record Type: Record

To: "Ciongoli, Adam" <Adam.Ciongoli@usdoj.gov>

cc:
Subject: dinner (Document link: Brett M. Kavanaugh)

Is there a dinner tonight?

007104-002423

/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/

From: /DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
Sent: Monday, May 06, 2002 2:22 PM
To: Brett_M._Kavanaugh@who.eop.gov
Cc: Willett, Don; /DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
Subject: RE: Joe Martinez (SD FL) and the Congressional Hispanic Caucus
Attachments: pic17245.pcx

(b) (5)

Brett M. Kavanaugh
05/06/2002 02:20:06 PM

Record Type: Record

To: "Willett, Don" <Don.Willett@usdoj.gov> cc: h. christopher bartolomucci/who/eop@eop bcc:
Subject: RE: Joe Martinez (SD FL) and the Congressional Hispanic Caucus
(Document link: H. Christopher Bartolomucci)

Miguel already had met with a number of Hispanic bar groups and the like.

(b) (5)

(Embedded
image moved "Willett, Don" <Don.Willett@usdoj.gov>
to file: 05/06/2002 02:13:29 PM
pic17245.pcx)

Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP

cc: Brett M. Kavanaugh/WHO/EOP@EOP

Subject: RE: Joe Martinez (SD FL) and the Congressional Hispanic Caucus

(b) (5)

-----Original Message-----

From:

/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/

[mailto:/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/]

Sent: Monday, May 06, 2002 2:09 PM

To: Willett, Don

Cc: Brett_M._Kavanaugh@who.eop.gov

Subject: Re: Joe Martinez (SD FL) and the Congressional Hispanic Caucus

(b) (5)

(Embedded

image moved "Willett, Don" <Don.Willett@usdoj.gov> to file: 05/06/2002 02:02:30 PM pic19969.pcx)

Record Type: Record

To: H. Christopher Bartolomucci/WHO/EOP@EOP

cc: Brett M. Kavanaugh/WHO/EOP@EOP

Subject: Joe Martinez (SD FL) and the Congressional Hispanic Caucus

007104-002425

On May 2, CHC sent a letter inviting Martinez to come before them and answer questions. (I have a copy if you want to see it.)

(b) (5)

My vote: (b) (5)

(b) (5)

Thoughts?

DRW

Brett_M._Kavanaugh@who.eop.gov

From: Brett_M._Kavanaugh@who.eop.gov
Sent: Monday, May 06, 2002 2:13 PM
To: /DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/
Cc: Willett, Don; Brett_M._Kavanaugh@who.eop.gov
Subject: Re: Joe Martinez (SD FL) and the Congressional Hispanic Caucus
Attachments: pic07542.pcx

I think (b) (5)

H. Christopher Bartolomucci
05/06/2002 02:08:21 PM

Record Type: Record

To: "Willett, Don" <Don.Willett@usdoj.gov> cc: brett m. kavanaugh/who/eop@eop bcc:
Subject: Re: Joe Martinez (SD FL) and the Congressional Hispanic Caucus
(Document link: Brett M. Kavanaugh)

Duplicative

007104-002427

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, May 01, 2002 12:25 AM
To: '/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=TELEMAIL/C=US/'; Willett, Don; 'Brett_M._Kavanaugh@who.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Anne_Womack@who.eop.gov'
Subject: Re: NYT Mag Article

I know jeff. Will call and find out his gig and advise. Please note his ealier nyt mag piece on luddig.

-----Original Message-----

From: /DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+DOJ/A=T
ELEMAIL/C=US/ </DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=
GOV+DOJ/A=TELEMAIL/C=US/>
To: Willett, Don <Don.Willett@USDOJ.gov>; Dinh, Viet <Viet.Dinh@USDOJ.gov>;
Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>;
Bradford_A._Berenson@who.eop.gov <Bradford_A._Berenson@who.eop.gov>;
Anne_Womack@who.eop.gov <Anne_Womack@who.eop.gov>
Sent: Tue Apr 30 21:09:33 2002
Subject: NYT Mag Article

I mentioned to some of you today that the New York Times Magazine is working on a story about judges. Turns out this is the piece that Jeff Rosen is working on. Rosen called Allen Snyder, who told John Roberts about the call.

007104-002428

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, April 25, 2002 5:13 PM
To: 'Anne_Womack@who.eop.gov'
Cc: 'Brett_M._Kavanaugh@who.eop.gov'; 'Daniel_J._Bartlett@who.eop.gov'
Subject: Re: NYT on Estrada

(b) (5)

-----Original Message-----

From: Anne_Womack@who.eop.gov <Anne_Womack@who.eop.gov>
To: Dinh, Viet <Viet.Dinh@USDOJ.gov>
CC: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>;
Daniel_J._Bartlett@who.eop.gov <Daniel_J._Bartlett@who.eop.gov>
Sent: Wed Apr 24 09:15:42 2002
Subject: Re: NYT on Estrada

(b) (5)

(Embedded
image moved "Dinh, Viet" <Viet.Dinh@usdoj.gov>
to file: 04/24/2002 09:03:48 AM
pic25979.pcx)

Record Type: Record

To: Anne Womack/WHO/EOP@EOP

cc: Brett M. Kavanaugh/WHO/EOP@EOP
Subject: Re: NYT on Estrada

Yep. He called me yesterday, and I told him I would call him back today. (b) (5)

(b) (5)

(b) (5)

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, April 25, 2002 1:49 PM
To: 'Tim_Goeglein@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'; 'Heather_Wingate@who.eop.gov'
Subject: RE: plead

I am so sorry, Tim. I had meant to attend and would not have missed it, but for the AG's press conference and (b) (5) No excuses; mea culpa.

-----Original Message-----

From: Tim_Goeglein@who.eop.gov [mailto:Tim_Goeglein@who.eop.gov]
Sent: Thursday, April 25, 2002 11:59 AM
To: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov;
Heather_Wingate@who.eop.gov
Subject: plead

Friends

We had an excellent coalitions meeting today, but we truly missed you. Was today bad timing? Forgive me.

I plead for your attendance. Our coalition partners had a few areas in re: Counsel, LegAffairs where things were a little fuzzy. Your help, input, direction is more crucial than you know.

No complaints; I love you.

Warmly

tsg

007104-002431

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, April 25, 2002 12:47 AM
To: 'Anne_Womack@who.eop.gov'
Cc: 'Brett_M._Kavanaugh@who.eop.gov'; 'Daniel_J._Bartlett@who.eop.gov'
Subject: Re: NYT on Estrada

I agree.

-----Original Message-----

From: Anne_Womack@who.eop.gov <Anne_Womack@who.eop.gov>
To: Dinh, Viet <Viet.Dinh@USDOJ.gov>
CC: Brett_M._Kavanaugh@who.eop.gov <Brett_M._Kavanaugh@who.eop.gov>;
Daniel_J._Bartlett@who.eop.gov <Daniel_J._Bartlett@who.eop.gov>
Sent: Wed Apr 24 09:15:42 2002
Subject: Re: NYT on Estrada

Duplicative

007104-002432

Willett, Don

From: Willett, Don
Sent: Tuesday, April 23, 2002 5:26 PM
To: Dinh, Viet
Cc: 'brett_m._kavanaugh@who.eop.gov' (b)(6) Jennifer Oschal Email Koebele, Steve; Keefer, Wendy J; Newstead, Jennifer
Subject: Owen and trial lawyer "support" letters

(b) (5)

DRW

Sales, Nathan

From: Sales, Nathan
Sent: Wednesday, April 17, 2002 3:39 PM
To: Willett, Don
Cc: 'Bartolomucci (E-mail)'; 'brett_m._kavanaugh@who.eop.gov'
Subject: RE: Judge Smith

Concerned Women for America (the nation's largest women's group!) is writing a pro-Smith letter to the Committee.

-----Original Message-----

From: Willett, Don
Sent: Wednesday, April 17, 2002 3:27 PM
To: Sales, Nathan
Cc: 'Bartolomucci (E-mail)'; 'brett_m._kavanaugh@who.eop.gov'
Subject: RE: Judge Smith

What's he looking to do?

-----Original Message-----

From: Sales, Nathan
Sent: Wednesday, April 17, 2002 3:22 PM
To: Willett, Don
Cc: 'Bartolomucci (E-mail)'; 'brett_m._kavanaugh@who.eop.gov'
Subject: RE: Judge Smith

Just did.

-----Original Message-----

From: Willett, Don
Sent: Wednesday, April 17, 2002 3:22 PM
To: Sales, Nathan
Cc: Bartolomucci (E-mail); 'brett_m._kavanaugh@who.eop.gov'
Subject: FW: Judge Smith

We're all over it. Nathan, can you pls. call Jipping?

DRW

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Wednesday, April 17, 2002 2:26 PM

To: Willett, Don

Cc:

/DDV=H._Christopher_Bartolomucci@who.eop.gov/DDT=RFC-822/O=INETGW/P=GOV+

DOJ/A=TELEMAIL/C=US/

Subject: Judge Smith

Don: Tom Jipping called and is interested in some specific info on Brooks Smith that is not covered by the talking points. Can you or someone at OLP (b) (5) call him at 488-7000? Thanks.

Willett, Don

From: Willett, Don
Sent: Tuesday, April 16, 2002 6:48 PM
To: Dinh, Viet; Newstead, Jennifer; 'brett_m._kavanaugh@who.eop.gov'; 'anne_womack@who.eop.gov'; Goodling, Monica; Heather Wingate (E-mail); 'bradford_a._berenson@who.eop.gov'
Cc: Bartolomucci (E-mail); Sales, Nathan
Subject: Judge Smith's brave service on Sept. 11

Below is an e-mail from Judge Smith's clerk re. the Judge's sticking to his judicial post on Sept. 11.



=====
=====

On September 11, 2001, at the request of the Marshal and the GSA, the judge (as Chief Judge) authorized the closing of the Federal Courthouse in Pittsburgh. However, he decided to stay in chambers and continue to work, despite the possible threat on the building. (At some time later, we learned that there have been, at some point, what the FBI called a "specific but not necessarily credible" threat against the Pittsburgh courthouse.) In making the decision to stay, the Judge told all of his staff that we were free to go, but he wasn't about to let anyone run him out the Court, because he had an obligation to stay at his post and "keep the flag flying" (as he put it). Moreover, the fourth plane that crashed---in Somerset County, PA---is within our judicial district, and more specifically, within the Judge's Johnstown Division; the judge thought it was important that he be available for the U.S. Attorney's office and the FBI in case they needed search warrants or anything else related to their investigation of that crash. I don't know exactly how far one can go to wrap the judge the flag, but Judge Harry Pregerson (of the Ninth Circuit) similarly remained at his post on September 11, and the L.A. Times called him "the day's most inspiring figure." See Patt Morrison, Attack Will Test How Much We Believe in America, Los Angeles Times, Sept. 12, 2001, at B3.

Dinh, Viet

From: Dinh, Viet
Sent: Tuesday, April 16, 2002 1:49 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE:

Thank you, Brett. Did you see how (b) (5)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, April 16, 2002 1:27 PM
To: Dinh, Viet
Subject:

Great to work with you on victims rights. And good event today.

Dinh, Viet

From: Dinh, Viet
Sent: Monday, April 15, 2002 3:57 PM
To: Sales, Nathan; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: Re: Viet's essay

(b) (5)

--- Sent from my BlackBerry.

007104-002438

107TH CONGRESS
2D SESSION

S. J. RES. _____

IN THE SENATE OF THE UNITED STATES

introduced the following joint resolution; which was read twice and referred to the Committee on

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled (two*
3 *thirds of each House concurring therein), That the fol-*
4 *lowing article is proposed as an amendment to the Con-*
5 *stitution of the United States, which shall be valid to all*
6 *intents and purposes as part of the Constitution when*
7 *ratified by the legislatures of three-fourths of the several*
8 *States, and which shall take effect on the 180th day after*
9 *ratification of this article:*

1 "ARTICLE

2 "SECTION 1. The rights of victims of violent crime,
3 being capable of protection without denying the constitu-
4 tional rights of those accused of victimizing them, are
5 hereby established and shall not be denied by any State
6 or the United States and may be restricted only as pro-
7 vided in this article.

8 "SECTION 2. A victim of violent crime shall have the
9 right to reasonable and timely notice of any public pro-
10 ceeding involving the crime and of any release or escape
11 of the accused; the rights not to be excluded from such
12 public proceeding and reasonably to be heard at public re-
13 lease, plea, sentencing, reprieve, and pardon proceedings;
14 and the right to adjudicative decisions that duly consider
15 the victim's safety, interest in avoiding unreasonable
16 delay, and just and timely claims to restitution from the
17 offender. These rights shall not be restricted except when
18 and to the degree dictated by a substantial interest in pub-
19 lic safety or the administration of criminal justice, or by
20 compelling necessity.

21 "SECTION 3. Nothing in this article shall be con-
22 strued to provide grounds for a new trial or to authorize
23 any claim for damages. Only the victim or the victim's
24 lawful representative may assert the rights established by

1 this article, and no person accused of the crime may obtain
2 any form of relief hereunder.

3 “SECTION 4. Congress shall have power to enforce
4 by appropriate legislation the provisions of this article.
5 Nothing in this article shall affect the President’s author-
6 ity to grant reprieves or pardons.

7 “SECTION 5. This article shall be inoperative unless
8 it shall have been ratified as an amendment to the Con-
9 stitution by the legislatures of three-fourths of the several
10 States within seven years from the date of its submission
11 to the States by the Congress.”.

Sales, Nathan

From: Sales, Nathan
Sent: Monday, April 15, 2002 2:57 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Dinh, Viet
Subject: RE: Viet's essay

(b) (5) Thanks again for taking a look at the essay.

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, April 15, 2002 2:27 PM
To: Sales, Nathan
Cc: Dinh, Viet
Subject: RE: Viet's essay

(b) (5)

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 04/15/2002 01:51:42 PM
pic12349.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP
cc: "Dinh, Viet" <Viet.Dinh@usdoj.gov>
Subject: RE: Viet's essay

Brett,

007104-002442

I don't mean to be a pest, but we hope to send Viet's essay to the Drake folks quite soon. Can you let me know if you're okay with it?

Thanks,
Nathan

-----Original Message-----

From: Sales, Nathan

Sent: Sunday, April 14, 2002 10:19 AM

To: 'Brett_M._Kavanaugh@who.eop.gov'

Cc: Dinh, Viet

Subject: Viet's essay

Brett,

Viet would like to publish the attached essay on judicial confirmations in the Drake Law Review. He wanted me to give you a heads up.

If you have any comments, please let me know by Monday at noon; we need to get the essay to the Drake folks so they can cite-check it Monday PM. I'm afraid time is very much of the essence.

Best,
Nathan

Sales, Nathan

From: Sales, Nathan
Sent: Friday, April 12, 2002 1:51 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE:

(b) (6)

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, April 12, 2002 1:48 PM
To: Sales, Nathan
Subject: RE:

what's your phone?

(Embedded
image moved "Sales, Nathan" <Nathan.Sales@usdoj.gov>
to file: 04/12/2002 01:33:32 PM
pic25998.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE:

Brett,

Barbara's # is 224-2763.

I'm helping her compile a list of names to invite.

(b) (5)

007104-002444

(b) (5)

Nathan

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Friday, April 12, 2002 1:15 PM
To: Sales, Nathan
Subject:

What is Barbara Lerdeen's phone number? Also (b) (5)

(b) (5)

(b) (6) (home)

-----Original Message-----

From: Matthew Lamberti

[mailto:/DDV=Matthew_Lamberti@judiciary.senate.gov/DDT=RFC-822/O=INETGW/
P=GOV+DOJ/A=TELEMAIL/C=US/]

Sent: Friday, April 12, 2002 1:00 PM

To: Ho, James; Sutton, Jason; Benedi, Lizette D; Martens, Matthew;
Clement, Paul D; Coughlin, Robert; Stephen Higgins; 'Stwist
(a)viad.com'; Brett_M._Kavanaugh@who.eop.gov; 'dshay@viad.com';
'dschacht@opd.eop.gov'; Garry_Malphrus@opd.eop.gov
Cc: 'cwilson@opd.eop.gov'
Subject: Victims' Rights Amendment

It now occurs to me that, logically, Section 5 (the 7-year time limitation) is superfluous. It can only take effect (to render the amendment inoperative) if it is ratified. But if it is ratified, it can never take effect.

I would also note that putting the time limitation in the Resolved Clause has been the custom since after the 22nd Amendment. In addition, I took another look at the Dillon and Freeman cases and they seem to offer strong support for the validity of putting the 7-year limitation in the Resolved Clause.

Maybe I am missing something. Let me know your thoughts as soon as possible.

Dinh, Viet

From: Dinh, Viet
Sent: Thursday, April 11, 2002 11:04 AM
To: (b)(6) Jennifer Oschal Email; Willett, Don; 'Tim(u)Goeglein'; 'Brett Kavanaugh'; 'Heather(u) Wingate'; 'Anne Womack'
Subject: RE: Arkansas NAACP

(b) (5)

-----Original Message-----

From: Jennifer Oschal (b)(6) Jennifer Oschal Email
Sent: Thursday, April 11, 2002 11:00 AM
To: Dinh, Viet; Willett, Don; Tim(u)Goeglein; Brett Kavanaugh; Heather(u)Wingate; Anne Womack
Subject: Arkansas NAACP

the president of AR NAACP supports lavenski smith and is willing to do a press conference in the next few weeks to talk of this. before i have my guy move forward with this - do you see any problems? thanks.

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.344 / Virus Database: 191 - Release Date: 4/2/2002

007104-002447

Sales, Nathan

From: Sales, Nathan
Sent: Tuesday, April 9, 2002 11:08 AM
To: Dinh,
Viet; 'Anne_Womack@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Willett, Don
Subject: RE: do we have a reversal rate for Smith?
Attachments: Brooks Smith Reversals.doc

-----Original Message-----

From: Dinh, Viet
Sent: Tuesday, April 09, 2002 10:49 AM
To: 'Anne_Womack@who.eop.gov'; 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Sales, Nathan; Willett, Don
Subject: RE: do we have a reversal rate for Smith?

Yes we do, with a set of talkers--nathan and don, please provide to Anne

-----Original Message-----

From: Anne_Womack@who.eop.gov [mailto:Anne_Womack@who.eop.gov]
Sent: Tuesday, April 09, 2002 10:24 AM
To: Dinh, Viet; Brett_M._Kavanaugh@who.eop.gov
Subject: do we have a reversal rate for Smith?

007104-002448

Brooks Smith -- Statistics on Cases, Appeals, and Reversals

Absolute Numbers:

Smith has closed 5,298 cases -- of which 526 cases were appealed to the Third Circuit.

Smith has been reversed 53 times over his 13 year career as a federal judge (since 11/1/1988).

Note that in 12 of these 53 cases (i.e., about one-fourth of the cases), Smith was affirmed in part and reversed in part. And some of these were complex cases involving numerous issues where he was affirmed on nearly all of the issues but reversed on one ground or a few grounds.

Percentages:

Smith has been reversed in 10% of appealed cases (i.e., 53 of 526 cases).

He has been reversed in only 1% of closed cases (i.e., 53 of 5,298 cases).

Comparison:

Smith's 10% average reversal rate (in appealed cases) from 1989-2001 is similar to the average annual reversal rate for the Third Circuit and for all circuits for appeals terminated on the merits.

	<u>Smith</u>	<u>3d Cir.</u>	<u>All Circuits</u>
1989	29.16%	12.4%	13.4%
1990	15.38%	11.3%	11.8%
1991	3.7%	10.4%	11.7%
1992	12.5%	10.4%	11.0%
1993	6.66%	10.3%	10.0%
1994	11.9%	11.8%	10.0%
1995	6.55%	9.4%	11.0%
1996	10%	9.9%	9.4%
1997	16.66%	9.9%	9.1%
1998	13.51%	9.0%	10.2%
1999	0%	10.4%	9.1%
2000	9.3%	12.0%	9.7%
2001	5.88%	11.7%	9.2%

Notes: None of the cases closed by Smith in 1988 were appealed. The reversal rates for the Third Circuit and for all circuits were obtained from the Administrative Office of the U.S. Courts; these rates do not include data regarding the Federal Circuit.

Newstead, Jennifer

From: Newstead, Jennifer
Sent: Wednesday, April 03, 2002 7:23 PM
To: 'Timothy_E._Flanigan@who.eop.gov'; 'brett_m._kavanaugh@who.eop.gov'; 'bradford_a._berenson@who.eop.gov'; 'heather_wingate@who.eop.gov'; 'Rachel_L._Brand@who.eop.gov'
Cc: Dinh, Viet; Joy, Sheila; Willett, Don; Keefer, Wendy J; Sales, Nathan; Benedi, Lizette D; Benczkowski, Brian A; Loughlin, Ann L (OLP)
Subject: Thursday hearing and judge numbers

Following up on today's JSC meeting, we have now received word that a hearing has been noticed for next Thursday, April 11, at 2:30 pm. The following will be on the panel:

Jeffrey Howard (CA1)
John Walter (Cal. DCt)
Percy Anderson (Cal. DCt)
Joan Lancaster (Minn. DCt)
William Griesbach (Wisc. DCt)
Michael Baylson (Pa. DCt)
It is possible they will add Cynthia Rufe (DCt Pa); we'll hear tonight or tomorrow.

In response to Tim's question today, after next Thursday (and assuming Rufe is not added to the panel), there will be 25 pending district court judge nominees who have not had hearings. Of those 25, 15 have not yet received ABA ratings.

Jennifer Newstead
Deputy Assistant Attorney General
Office of Legal Policy
Department of Justice
(202) 616-0038

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, April 3, 2002 10:42 AM
To: 'Tim_Goeglein@who.eop.gov'; 'Womack@oa.eop.gov'; 'Heather_Wingate@who.eop.gov'
Cc: (b)(6) Jennifer Oschal Email; Brett_M._Kavanaugh@who.eop.gov; 'Bradford_A._Berenson@who.eop.gov'
Subject: RE: From this week's Texas Lawyer

T,

I defer to your judgment, and I think we should whet the appetite for Friday's meeting by mentioning the (b) (5)

best,

V

-----Original Message-----

From: Tim_Goeglein@who.eop.gov [mailto:Tim_Goeglein@who.eop.gov]
Sent: Wednesday, April 03, 2002 9:37 AM
To: Dinh, Viet; Womack@oa.eop.gov; Heather_Wingate@who.eop.gov
Cc: (b)(6) Jennifer Oschal email; Brett_M._Kavanaugh@who.eop.gov;
Bradford_A._Berenson@who.eop.gov
Subject: Re: From this week's Texas Lawyer

V and A and H-

(b) (5) I had planned to speak only

(b) (5)

Thoughts?

Warmly

tsg

Anne Womack

007104-002451

04/02/2002 06:58:14 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: From this week's Texas Lawyer

But activists from consumer, environmental and abortion rights groups such as Texans for Public Justice, the Sierra Club and the Texas Abortion and Reproductive Rights Action League say they plan to converge on Washington this month to discuss Owen's record with members of the Senate Judiciary Committee.

----- Forwarded by Anne Womack/WHO/EOP on 04/02/2002 06:57 PM -----

-

Heather Wingate

04/02/2002 06:30:59 PM

Record Type: Record

To: Anne Womack/WHO/EOP@EOP

cc:

Subject: latest iteration of comprehensive Owen materials

----- Forwarded by Heather Wingate/WHO/EOP on 04/02/2002 06:30 PM -----

(Embedded

image moved "Willett, Don" <Don.Willett@usdoj.gov>

to file: 04/02/2002 06:03:28 PM

pic04341.pcx)

Record Type: Record

To: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

007104-002452

cc: See the distribution list at the bottom of this message Subject: latest iteration of comprehensive Owen materials

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, April 03, 2002 8:43 AM
To: Keefer, Wendy J; Willett, Don; Koebele, Steve
Cc: Newstead, Jennifer; 'Brett_M._Kavanaugh@who.eop.gov'
Subject: RE: Owen

Wendy, thank you for your extraordinary efforts here. Jennifer and Don, can we get some temporary paralegal help in ASAP to help with the ministerial collation work?

Please make sure that whatever talkers we put out to anyone (b) (5) cases are reviewed and signed off by Brett Kavanaugh. I would also like to see them.

thanks much.

-----Original Message-----

From: Keefer, Wendy J
Sent: Tuesday, April 02, 2002 9:31 PM
To: Willett, Don; Koebele, Steve
Cc: Dinh, Viet; Newstead, Jennifer
Subject: Owen

Guys:

I have the 9 binders for the GOP members of the Judiciary Committee put together. I have also made 5 additional copies for extra staffers who may show up and for you two to have. I have made myself a binder (the prerogative of the binder-maker) to use during the meeting. The only thing left to do is I want, with the copies not in binders (because we ran out of binders big enough), to at least put the tabs in each bundle. So, I will do that tomorrow morning. We will also want to make sure a copy is available for Viet and for Jen, but I assume we can take care of that either tomorrow a.m. or when we return from the meeting, as I am sure the binder materials will be evolving. (b) (5)

[REDACTED]

As I am likely not to get home until about 11pm, I may be a little late tomorrow a.m., but should be here by about 9:15-9:30. I assume that although Don you are meeting us at the Owen meeting that Pat O'Brien has a car coming. I will need some help carrying the box(es) of binders/materials.

See you guys tomorrow.

Don -- I have reviewed much of the (b) (5), but not all, and should have a pretty good idea by the end of the day if there are any troubling issues other than (b) (5)
(b) (5)

Wendy

Washington, Tracy T

Subject: Judicial Confirmation Working Group Conference Call

Start: Monday, April 1, 2002 5:00 PM

End: Monday, April 1, 2002 6:00 PM

Show Time As: Tentative

Recurrence: Weekly

Recurrence Pattern: every Monday from 4:00 PM to 5:00 PM

Meeting Status: Not yet responded

Organizer: Washington, Tracy T

Required Attendees: Benczkowski, Brian A; Newstead, Jennifer; Joy, Sheila; Willett, Don; Schauder, Andrew; Goodling, Monica; O'Brien, Pat; Bryant, Dan; Day, Lori Sharpe; 'Anne_Womack@whop.eop.gov'; 'Bradford_A._Berenson@who.eop.gov'; 'Brett_Mj._Kavanaugh@who.eop.gov'; 'Heather_Wingate@who.eop.gov'; 'Matthew_E._Smith@who.eop.gov'

Importance: High

When: Monday, April 01, 2002 4:00 PM-5:00 PM (GMT-05:00) Eastern Time (US & Canada).

~~*~*~*~*~*~*~*~*

Please be advised that the Judicial Confirmation Working Group will hold a weekly conference call every Monday @ 4:00 p.m. Please see dial-in information below.

Dial In: (b) (6)
Passcode (b) (6)

Dinh, Viet

From: Dinh, Viet
Sent: Wednesday, March 27, 2002 1:53 PM
To: Willett, Don; 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Newstead, Jennifer; Koebele, Steve
Subject: RE: revised draft of Flanigan letter to Leahy

She should be called justice because of her current position.

-----Original Message-----

From: Willett, Don
Sent: Tuesday, March 26, 2002 8:15 PM
To: 'Brett_M._Kavanaugh@who.eop.gov'
Cc: Newstead, Jennifer; Koebele, Steve; Dinh, Viet
Subject: RE: revised draft of Flanigan letter to Leahy

Yes, sir. (Viet's in briefly tomorrow, and he may want a final look-over. He's in NYC speechifying tonight.)

One nit: the letter sometimes calls her Justice Owen and sometimes Judge Owen. We should probably standardize. In Texas, we use them interchangeably, but Justice is more technically correct. (Not sure what Judge/Justice Gonzales's preference is.)

DRW

-----Original Message-----

From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Tuesday, March 26, 2002 7:45 PM
To: Willett, Don
Cc: Newstead, Jennifer; Koebele, Steve; Dinh, Viet
Subject: Re: revised draft of Flanigan letter to Leahy

Great. I think this looks very strong. Are you all ok with me circulating to Judge and Tim as our agreed-upon draft?

(Embedded
image moved "Willett, Don" <Don.Willett@usdoj.gov>
to file: 03/26/2002 06:34:14 PM

007104-002456

pic32764.pcx)

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc: "Dinh, Viet" <Viet.Dinh@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Newstead, Jennifer" <Jennifer.Newstead@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested), "Koebele, Steve" <Steve.Koebele@usdoj.gov> (Receipt Notification Requested) (IPM Return Requested)

Subject: revised draft of Flanigan letter to Leahy

Brett --

Below's a draft that includes some revisions from Viet, Koebele, and me (re.

(b) (5)

Brett, pls. confirm receipt.

Grazie.

DRW