From: Ho, James (Judiciary) <James_Ho@Judiciary.senate.gov>
To: Brett M. Kavanaugh/WHO/EOP@EOP [WHO] <Brett M. Kavanaugh>
CC: Ledeen, Barbara (Republican-Conf) <Barbara_Ledeen@src.senate.gov>
Sent: 3/24/2003 7:15:36 AM
Subject: : RE: Pro-choice op-eds in support of Justice Owen?

Begin Original ARMS Header
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:"Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> ("Ho, James (Judiciary)" <James_Ho@Judiciary.senate.gov> [UNKNOWN])
CREATION DATE/TIME:24-MAR-2003 12:15:36.00
SUBJECT:: RE: Pro-choice op-eds in support of Justice Owen?
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
CC:"Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> ("Ledeen, Barbara (Republican-Conf)" <Barbara_Ledeen@src.senate.gov> [UNKNOWN])
READ:UNKNOWN
End Original ARMS Header

Great points all -- I was struggling with trying to figure out what she would say (as opposed to what I would say). The Souter comparison, for example, is what Stone said last year. But I will be sure to incorporate all of your other suggestions. Thanks!

James C. Ho
Chief Counsel
Senate Subcommittee on the Constitution, Civil Rights & Property Rights
Chairman, Senator John Cornyn
James_Ho@judiciary.senate.gov
(202) 224-9614 (direct line)
(202) 224-2934 (general office number)

PRA 6

-----Original Message-----
From: Brett_M._Kavanaugh@who.eop.gov
[mailto:Brett_M._Kavanaugh@who.eop.gov]
Sent: Monday, March 24, 2003 11:39 AM
To: Ho, James (Judiciary)
Cc: Ledeen, Barbara (Republican-Conf)
Subject: RE: Pro-choice op-eds in support of Justice Owen?

On substance, I had a few thoughts.
-- I think it very odd to compare Owen to Souter and thereby imply that she
is another Souter or would be another Souter on the US Supreme Court.
-- I am not sure the women appointee point works all that well, and I
actually doubt that is the D's "real motivation" here as you say in last paragraph. Indeed, that strikes me as odd given that Clement, Raggi, and others
were confirmed without a problem (and the King being a Republican point seems
quite obscure). It seems to me that double standard is a better theme and to
compare her to McConnell.
-- I am not sure that all legal scholars refer to Roe as the settled law of
the land at the Supreme Court level since Court can always overrule its precedent, and three current Justices on the Court would do so. The point there
is in the inferior court point.
-- It is hundreds not thousands, I believe, who have obtained bypasses.

My 2 cents. Thanks.

(Embedded
image moved "Ho, James (Judiciary)"
to file: <James_Ho@Judiciary.senate.gov>
pic12126.pcx) 03/24/2003 10:14:55 AM

Record Type: Record

To: "Ledeen, Barbara (Republican-Conf)"
<Barbara_Ledeen@src.senate.gov>, Brett
M. Kavanaugh/WHO/EOP@EOP

cc:
Subject: RE: Pro-choice op-eds in support of Justice Owen?

Thanks, Brett. I assume that you didn't find anything substantively
problematic
with the op-ed draft, then? I don't expect any problems, but just
wanted to
make absolutely certain in case you had a chance to read it.

Barbara, I called you earlier this morning and left a message. If I
don't hear
back from you soon, I will just go ahead and contact Ann Stone. I won't
proceed
on the others, however. Let's talk whenever you get the chance.
Thanks!

James C. Ho
Chief Counsel
Senate Subcommittee on the Constitution, Civil Rights & Property Rights
Chairman, Senator John Cornyn
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PRA 6

Brett_M._Kavanaugh@who.eop.gov wrote:
> Her e-mail is PRA 6 I alerted her this morning that someone
may
contact
> her about activity this week. I am good with her doing an op-ed.
>
>
> Record Type: Record
> To: Brett M. Kavanaugh/WHO/EOP@EOP
> cc: barbara_ledeen@src.senate.gov
> Subject: Re: Pro-choice op-eds in support of Justice Owen?
>
> I have a one page press release from Ann Stone, dated 7/23/2002, and
her
> two-page letter to Leahy and Hatch. Manny Miranda confirmed that
neither
was

> submitted into the committee record, so at a minimum we should do
that.
>
> Barbara, should the three of us coordinate this morning on how to
proceed
on
> getting Stone to do the op-ed?
>
> James C. Ho
> 901 North Wayne Street #302
> Arlington, VA 22201
> (202) 224-9614 (direct line)
> (202) 224-2934 (general office line)
> PRA 6
> <JamesCHo@stanfordalumni.org>
>
> At 08:28 a.m. 3/24/2003, Brett_M._Kavanaugh@who.eop.gov wrote:
> >Do you have the letter from last summer? Barbara, have you talked to
Ann?
I
> am
> >happy to do so again if need be, but you all may have done so.
> >
> > (Embedded
> > image moved "James C. Ho" <JamesCHo@stanfordalumni.org>
> > to file: 03/23/2003 01:20:29 PM
> > pic07668.pcx)
> >
> >Record Type: Record
> >To: See the distribution list at the bottom of this message
> >cc:
> >Subject: Re: Pro-choice op-eds in support of Justice Owen?
> >
> >I have a copy of that, which I'd be happy to provide to anyone who's
> interested.
> >I don't know if it was in the committee record last time, but we
should
> >certainly put it in (again) this time.
> >
> >At 12:15 p.m. 3/23/2003, Brett_M._Kavanaugh@who.eop.gov wrote:
> >>Ann Stone was helpful and did letter/release last summer that should
be
in
> >>committee record and can be used thursday.
> >>
> >>.
> >>
> >>----- Original Message -----
> >>From:<JamesCHo@stanfordalumni.org>
> >>To:Makan_Delrahim@Judiciary.senate.gov,
> >> Rena_Johnson_Comisac@Judiciary.senate.gov,
> >> Alex_Dahl@Judiciary.senate.gov,
> >> Manuel_Miranda@frist.senate.gov,
> >> Barbara_Ledeen@src.senate.gov,
> >> viet.dinh@usdoj.gov,
> >> Steve.Koebele@usdoj.gov,
> >> Kristi.L.Remington@usdoj.gov,
> >> Jamie.E.Brown@usdoj.gov,
> >> Brett M. Kavanaugh/WHO/EOP@EOP,
> >> Wendy J. Grubbs/WHO/EOP@EOP
> >>Cc:
> >>Date: 03/22/2003 08:55:30 PM
> >>Subject: Pro-choice op-eds in support of Justice Owen?
> >>
> >>I learned late Friday that, although high-profile, pro-choice women
such
as

> Ann
> >>Stone, Victoria Toensing, and former members of Congress Susan
Molinari
and
> >>Tillie Fowler may be willing to publish op-eds supporting Justice
Owen's
> >>confirmation, apparently no one has yet signed up to help write
them.
> >>
> >>I presume that such op-eds would be very helpful as this Thursday's
executive
> >>business meeting on Justice Owen approaches. Accordingly, please
find
below
> >two
> >>op-eds I drafted *relatively quickly*. The first draft is a more
political
> >>piece perhaps more appropriate to someone like Toensing, Molinari,
or
Fowler;
> >>the second draft is geared more specifically for someone like Ann
Stone.
> >>
> >>In order to ensure proper coordination, I don't plan to do anything
with
these
> >>until Monday morning. If, however, there are no expressions of
concern
or
> >>objection by Monday morning, I will work with Barbara Ledeen on
Monday to
try
> >to
> >>get these to appropriate authors to get them placed in time for
Thursday.
> >>
> >>Thanks, everyone!
> >>
> >>-----
> >>
> >>DRAFT #1
> >>
> >>Democrats Talk About Diversity, But Practice Only Obstruction
> >>
> >> President Bush named two of the nation's top jurists to the
federal
> courts
> >>of appeals, when he announced the nominations of D.C. attorney
Miguel
Estrada
> >>and Texas Supreme Court Justice Priscilla Owen nearly two years ago.
> >>Unfortunately, however, both nominees still await confirmation by
the
United
> >>States Senate.
> >>
> >> Amazingly, Senate Democrats, who repeatedly claimed the mantle
of
> >diversity
> >>when President Clinton was in the White House, have seen fit to
obstruct
both
> >>nominees. They have done so even though, if confirmed, Estrada
would be
the
> >>first Hispanic ever to serve on the D.C. Circuit, while Owen would
increase
> the

> >>diversity on the Fifth Circuit, which represents Texas, Mississippi
and
> >>Louisiana.
> >>
> >> The reason for the Democrats' apparent reversal is simple, if
> disturbingly
> >>crass and partisan. As the Dallas Morning News recently noted,
"Democrats
> >don't
> >>relish giving President Bush one more thing to brag about when he
goes
into
> >>Hispanic neighborhoods during his re-election campaign next year."
Nor
do
> >>Democrats want to give President Bush credit for placing his second
woman
on
> >the
> >>Fifth Circuit.
> >>
> >> Owen's confirmation would give that court four female judges -
all
of
> whom
> >>happen to be Republican or appointed by Republican Presidents.
[FYI:
King, a
> >>Republican, was appointed by Carter.] By contrast, President
Clinton,
who
> >>appointed four judges to the Fifth Circuit, didn't nominate a single
woman
to
> >>that court - a notable record for a party that claims to emphasize
diversity.
> >>
> >> In light of this record, Democrats simply cannot afford to see
President
> >>Bush succeed in confirming Estrada and Owen, for that would
significantly
> >>discredit their claims that the Democratic Party is for some reason
the
party
> >of
> >>women and minorities.
> >>
> >> Of course, Senate Democrats do not, and cannot, admit that this
is
their
> >>real reason for objecting to Estrada and Owen. Yet they have no
real
grounds
> >on
> >>which to object to either candidate. Both are exceptionally
talented and
> >>deserving of confirmation. Indeed, the ABA unanimously rated both
candidates
> >>well-qualified, its highest rating, and what some Senate Democrats
used
to
> call
> >>the "gold standard."
> >>
> >> Thus, instead of arguing the merits of either nominee,
Democrats
have
> >>concocted reasons to object to their confirmation. With respect to

Estrada,
> >for
> >>example, Democrats complain that Estrada has no prior judicial
experience,
> even
> >>though that describes a majority of the current court for which he
has
been
> >>nominated.
> >>
> >> The invented charge against Owen is similarly groundless. Some
Democrats
> >>claim that confirming Owen would somehow threaten a woman's right to
choose an
> >>abortion. As a fervently pro-choice woman who has studied the law
and
Owen's
> >>nine-year record on the Texas Supreme Court, I find the claim
patently
absurd.
> >>
> >> First of all, it is widely understood accepted by legal
scholars
across
> >the
> >>board that Roe v. Wade and its progeny are the settled law of the
land.
> >>Moreover, federal courts of appeals, which are inferior to the
Supreme
Court,
> >>have no power to overturn Supreme Court precedents like Roe v. Wade.
That's
> >why
> >>the Democrat-controlled Senate last year confirmed Professor Michael
McConnell
> >>to the federal court of appeals with unanimous consent, even though
McConnell
> >>(unlike either Owen or Estrada, and like numerous liberal law
professors
and
> >>commentators) has publicly stated that Roe v. Wade was incorrectly
decided.
> >>
> >> Second of all, there is no evidence that Owen is in fact
opposed to
Roe
> v.
> >>Wade. Quite the contrary, she has cited and applied Roe v. Wade and
its
> >progeny
> >>on a number of occasions as a sitting justice of the Texas Supreme
Court.
> >>
> >> The only thing that Owen's opponents have been able to cite, in
their
> >>reckless crusade to transform Justice Owen from a scholarly and
dispassionate
> >>jurist to a lawless, pro-life zealot, are a series of Texas Supreme
Court
> >>decisions involving that state's parental notification statute. But
here
is
> >the
> >>truth about that statute and those rulings:
> >>
> >>
> >>
> >

> >
>

> ---
> Attachment: